

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2398 - 14

81st Oregon Legislative Assembly – 2021 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

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Measure Description:

Requires the Director of the Department of Consumer and Business Services, with approval of the appropriate advisory boards, to adopt, amend and administer the Reach Code as part of the State Building Code.

Government Unit(s) Affected:

Cities, Counties, Department of Consumer and Business Services (DCBS)

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Analysis:

House Bill 2398, with the -14 amendments, replaces the introduced version. The measure would require the Director of the Department of Consumer and Business Services (DCBS), with approval of the appropriate advisory boards, to adopt, amend and administer the Reach Code as part of the State Building Code. The Reach Code must be a set of statewide construction standards and methods that are economically and technically feasible. When adopting or amending the Reach Code, the director, with approval of the appropriate advisory boards, would be required to follow the same process that the director follows in developing the residential and commercial building codes. More specifically, the director would be required to: ensure that standards for energy efficiency in the Reach Code mandate achieving a site energy use of not more than 90 percent of the site energy use that other statewide residential and commercial codes require; adopt the Reach Code not later than October 31, 2021; and adopt the residential provisions of the Reach Code at the same time that the director adopts a corresponding residential specialty code and adopt the commercial portions of the Reach Code at the same time that the director adopts a structural specialty code. The director would be required to update the Reach Code at least every three years. A municipality may adopt the Reach Code and may also require adherence to the Reach Code as a minimum construction standards and method within the municipality’s jurisdiction; however, the DCBS would not be required to review or approve a municipality’s adoption of the Reach Code. If a municipality were to adopt the Reach Code and require adherence to the Reach Code as a minimum construction standard and method, measurement of energy efficiency savings and related incentives must remain subject to the statewide residential and commercial codes. The measure would take effect on July 1, 2021

Cities

The measure would not require cities to adopt the Reach Code. While there would be administrative costs associated with adopting the Reach Code, the impact to cities would be minimal. However, it should be noted that it appears from the wording of the measure that the Reach Code would be part of the State Building Code; thus, it would be mandatory statewide. If that were the case, the measure would be internally inconsistent, since if the Reach Code were uniform and mandatory statewide, there would be no need for municipalities to adopt the Reach Code (as the measure permits), because the Reach Code would be mandatory within city limits.

Counties

The measure would not require counties to adopt the Reach Code. While there would be administrative costs associated with adopting the Reach Code, the impact to counties would be minimal. However, it appears from the wording of the measure that the Reach Code would be part of the State Building Code; thus, it would be

mandatory statewide. If that were the case, the measure would be internally inconsistent, since if the Reach Code were uniform and mandatory statewide, there would be no need for municipalities to adopt the Reach Code (as the measure permits), because the Reach Code would be mandatory in counties.

Department of Consumer and Business Services

The DCBS Building Codes Division (BCD or the division) is currently responsible for the Mechanical Code, the energy provisions of the Residential and Commercial Codes, the Reach Code, and implementation of the Governor's Executive Orders, the latter of which includes an analysis of progress towards the Governor's energy goals. BCD adopts a Residential Reach Code and Commercial Reach Code that are voluntary for builders. Together, they cover all building types (homes, businesses, schools, factories, etc.). The codes are adopted on different cycles to fit the framework of adopting the Oregon Residential Specialty Code and the Oregon Structural Specialty Code. By adopting the baseline code first, and then the Reach Code, it becomes clear where the "reach" is occurring. Since the Reach Code is optional, there is no rulemaking that occurs alongside code updates; and no board approval is required, only board consultation. Passage of the Reach Code does not guarantee its adoption in the next building code update, but provisions of the Reach Code are considered for inclusion in the next code.

While the Reach Code is currently separate from the State Building Code, the measure would make the Reach Code part of the State Building Code. BCD is unclear what the impact of this would be, as ORS 455.040 requires the State Building Code to be "applicable and uniform throughout this state and in all municipalities." The measure would also require the Reach Code to be a set of statewide construction standards and methods, as opposed to a set of optional statewide standards and methods. Although the measure would allow a municipality to adopt the Reach Code locally, it is unclear how the State Building Code would be applicable and uniform throughout the state and municipalities, if a municipality chose not to adopt the Reach Code. Currently, the Reach Code is optional. Unlike the codes that make up the State Building Code, the Reach Code is not applicable and enforceable as a minimum construction standard and method statewide. It appears from the wording of the measure that the Reach Code would be part of the State Building Code; thus, it would be mandatory statewide. If that were the case, the measure would be internally inconsistent since if the Reach Code were uniform and mandatory statewide, there would be no need for municipalities to adopt the Reach Code (as the measure permits) because the Reach Code would be mandatory in municipal jurisdictions.

The measure would require the director, with approval from the appropriate advisory boards to adopt or amend the Reach Code, to use the same process that the director followed in developing or amending the residential or commercial building codes. BCD assumes that the board approval process would include specific cost findings related to the code adoption, including a housing cost impact statement, and rulemaking to ratify the code after the boards have approved it. However, BCD is unclear whether the same process would be followed only for development of the Reach Code (i.e., accepting public proposals, using a board appointed code committee, etc.) or whether it would include adoption of the Reach Code (i.e., rulemaking) as well.

The measure would also require the director, with approval from the appropriate advisory boards, to administer the Reach Code as part of the State Building Code. BCD is unclear on what the intent of seeking approval of the advisory boards is when administering the Reach Code. In addition, given a municipality's ability to adopt the Reach Code and require adherence to the Reach Code as a minimum construction standard and method, BCD is unclear on what the intent of having BCD administer the Reach Code (with the approval of the appropriate advisory boards) would be.

In short, BCD anticipates it would need to resolve questions relating to what municipal adherence to the Reach Code would involve, what additional processes the code would need to follow, if any, and how elements of the broader statutory code would apply to the Reach Code. To resolve questions about enforcement, training, interpretations, appeals, certifications, and how the State Building Code would apply to the Reach Code, BCD anticipates it would incur minimal up-front costs to resolve these questions, from consultations with the Department of Justice and policy staff time.

Once these questions have been resolved, BCD anticipates it would incur ongoing costs to adopt two new codes (i.e., the Residential Reach Code and the Commercial Reach Code). Adopting these new codes would involve soliciting a public proposal; board appointment of a code committee; a public code committee process; consultation with and/or approval by appropriate advisory board(s); and proposing and adopting new administrative rules. BCD also might need to publish these new Reach Codes.

The division also anticipates an ongoing fiscal to perform the work of adopting essentially two new codes (assuming there is intended to be a Residential Reach Code and a Commercial Reach Code) through a complete code adoption process. This work would likely include soliciting public proposals, board appointment of a code committee, a public code committee process, approval by the appropriate advisory boards, rulemaking, and adoption. It is also unclear how the reach codes would be published.

While the division indicates it is difficult to provide an exact cost estimate in light of the ambiguities in the measure, the division estimates it would need a permanent, full-time Operations and Policy Analyst 4 position (0.88 FTE in 2021-23, 1.00 FTE in 2023-25) to implement the measure. The OPA4 would solicit public proposals, consult appropriate advisory boards, facilitate the development and adoption of the Reach Code, including rulemaking, and possibly assist with publishing the new Reach Codes. The estimated total cost for the OPA4 position, including related services and supplies, is \$238,232 Other Funds in 2021-23 and \$278,596 in 2023-25. However, because the measure does not provide any additional funding, the division would need additional position authority and increased expenditure limitation to hire the new OPA4 position, which would be funded through Other Funds fee revenue within BCD.

The measure warrants a subsequent referral to the Joint Committee on Ways and Means for consideration of its impact to DCBS's biennial budget.