

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2398 - 15

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

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

Prepared by: Michael Graham
Reviewed by: Ben Ruef, Doug Wilson, Laurie Byerly
Date: April 12, 2021

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 a specialty code within the state building code.

Government Unit(s) Affected:

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

Summary of Fiscal Impact:

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

Analysis:

House 2398, as amended by the -15 amendments, replaces the introduced version. The measure modifies the definition of “specialty code” to include the Reach Code, thus making the Reach Code a specialty code within the state building code. It provides that the Director of the Department of Consumer and Business Services (DCBS) shall have general supervision over the administration of the state building code regulations, including providing statewide interpretations for the Reach Code. The director, with approval of the appropriate advisory boards, shall adopt, amend and administer the Reach Code as a specialty code within the state building code. The measure provides that the Reach Code must be a set of statewide construction standards and methods that are economically and technically feasible. When adopting or amending the code, the director, with approval of the appropriate advisory boards, shall follow the same process that the director follows in developing the residential and commercial building codes. The director shall also ensure that the 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, as required by other statewide residential and commercial codes. The measure also requires the director to adopt the Reach Code no later than October 31, 2021, and to adopt the residential provisions of the Reach Code at the same time the director adopts a corresponding residential specialty code, and adopt the commercial portions of the Reach Code at the same time the director adopts a structural specialty code. The director shall update the Reach Code at least once every three years. Notwithstanding provisions to the contrary that require the statewide building code to be uniform and applicable to all municipalities, a municipality may choose whether to adopt the Reach Code and, upon choosing to adopt the Reach Code, may require adherence of the Reach Code as a minimum construction standard and method within the municipality’s jurisdiction. If a municipality adopts the Reach Code and requires adherence to the same, measurement of energy efficiency savings and related incentives must remain subject to the statewide residential and commercial codes, as must measurements of cost effectiveness and payment of incentives. The measure takes effect on July 1, 2021.

Cities and Counties

The measure does not require cities and counties to adopt the Reach Code. Notwithstanding ORS 455.040, which requires the state building code to be uniform and applicable to all municipalities, the measure allows cities and counties to decide whether to adopt the Reach Code and, if adopted, whether to require adherence of the Reach Code as a minimum construction standard and method within their jurisdiction. While there would be administrative costs associated with adopting the Reach Code, these costs are anticipated to be minimal.

Current law preempts local ordinances and rules relating to building codes (see ORS 455.040). The State determines if and when forced upgrades are mandated, and while operating under that system, no municipality can enact an ordinance or rule relating to the same matter that the State exclusively regulates. The State regulates the construction, reconstruction, alteration and repair of buildings. ORS 455.040 preempts local governments from regulating these activities in a manner that is inconsistent with state regulations. Current law thus protects existing property owners from having to make forced upgrades when a simple repair occurs or applying a retroactive or new set of rules that impact existing buildings.

By granting an exception to ORS 455.040, the measure would no longer preempt local ordinances and rules, as local governments would be allowed to use the Reach Code as a minimum standard, as opposed to a uniform standard. The measure thus allows municipalities to impose additional regulations above the Reach Code that would no longer be preempted by the state system, which could arguably include retroactive upgrades. The measure is thus anticipated to increase cities and counties operating costs, specifically for construction, remodeling, and renovations.

The League of Oregon Cities estimates that the measure could increase construction costs by as much as 5% for those cities that adopt the Reach Code; however, the increase would depend on the type of building (i.e., commercial, residential, industrial, etc.). It should also be noted that any increase in construction costs could be offset over time by energy efficiency savings. Nevertheless, because it is unclear how many cities and counties plan to adopt the Reach Code and how many buildings will be constructed or renovated, not to mention how many buildings may be subject to retroactive remodeling upgrades, the costs of the measure are indeterminate to cities and counties.

School Districts

The measure is anticipated to increase the construction costs for public schools. The reason for the increase is that the Reach Code presents a minimum 10% energy efficiency upgrade on top of the Governor's executive order (E.O. 20-04), which also requires a 10% upgrade in all areas of the state. Since cities and counties that adopt the Reach Code may require adherence to the Reach Code as a minimum construction standard and method within their jurisdiction, they could theoretically require builders to go even higher than the proposed Reach Code. According to the Oregon Association of School Business Officials, a 10-15% increase in efficiency could increase school districts' construction costs anywhere from 1% to 4%, which would impact school bonds issued for remodeling or facility construction. Furthermore, if cities and counties have authority to require retroactive upgrades under the Reach Code, school districts may experience increased operating costs, including the costs of needed renovations. The Oregon Association of School Business Officials estimates that any renovations due to retroactive mandates could increase school districts' operating costs by approximately 2% per year. Given these uncertainties, the fiscal impact to school districts is indeterminate.

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.

Currently, the Reach Code is an optional code that is separate from the state building code. The measure modifies the definition of "specialty code" to include the Reach Code, thus making the Reach Code a specialty code within the state building code. Generally, the state building code is applicable and uniform throughout the

state and in all municipalities. Notwithstanding ORS 455.040, which requires the state building code to be uniform and applicable to all municipalities, the measure allows municipalities to decide whether to adopt the Reach Code and, if adopted, whether to require adherence of the Reach Code as a minimum construction standard and method within their jurisdiction. Since the director does not need to review or approve a municipality's adoption of the Reach Code, BCD would not incur any fiscal impact related to that process.

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. Adopting these new codes would include soliciting public proposals; 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. It is also unclear whether BCD would need to publish these new reach codes.

To implement the measure, the division's existing staff would need to adopt a commercial and residential Reach Code by October 31, 2021; update the new Reach Code every three years; develop and implement a specialty certification for Reach Code inspections; and develop statewide interpretations of the Reach Code. While the impact to BCD will depend on several factors (e.g., the number of Reach Code proposals received; the level of public engagement; the exact process followed for adoption of the Reach Code; the method used for developing a specialty certification; the need for statewide interpretations; and any legal questions that need to be answered in the process), the measure is anticipated to increase BCD's current workload.

To help manage the anticipated workload of adopting these new codes, 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). 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 Other Funds 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.