House Bill 2668

Sponsored by Representative NERON, Senator WOODS (at the request of City of Wilsonville) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Establishes Aurora State Airport Advisory Council for purpose of developing intergovernmental planning agreement among its members. Requires land use decisions to be compatible with agreement. Sunsets January 2, 2037.

Amends regulations regarding through the fence airports and use of transportation facilities as basis for land use goal exceptions.

A BILL FOR AN ACT

Relating to transportation; creating new provisions; and amending ORS 197.732, 836.608 and 836.642.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) There is established the Aurora State Airport Advisory Council to negotiate and execute an intergovernmental agreement to facilitate intergovernmental communications and coordinated planning of land use, transportation, environmental, infrastructure, through the fence access and related issues of concern regarding operations of the Aurora State Airport and the implementation of any master plan or airport layout plan recommendations, projects or programs.

(2) The council shall review and include within its intergovernmental agreement decisions on or a methodology for approving decisions on:

(a) Surface transportation issues on local city and county and state roads pertaining to safety and traffic congestion for business and employee access to the Aurora State Airport, including the provision of public transit services to the airport;

(b) Environmental assessments of current airport pollution levels, including storm and surface water, ground water, air and noise, that provide a scientific baseline of information;

(c) Planning for the potential annexation by the City of Aurora of the airport for the purpose of providing municipal governance and public urban infrastructure services to support operations at the airport;

(d) Obtaining Land Conservation and Development Commission certification of the Oregon Department of Aviation's state agency coordination program under ORS 197.180 (4) to (7); and

(e) The implementation of all relevant components of the Oregon Department of Aviation's state agency coordination program pertaining to the approval, adoption and implementation of an Aurora State Airport master plan or airport layout plan project or other program for the airport.

(3) The council consists of up to nine members, appointed as follows:

(a) One member appointed by the Director of the Oregon Department of Aviation to represent the Oregon Department of Aviation;

(b) One member appointed by the Director of Agriculture to represent the State De-
partment of Agriculture;

c) One member appointed by the Director of the Department of Environmental Quality
to represent the Department of Environmental Quality;

d) One member appointed by the Director of the Department of Land Conservation and
Development to represent the Department of Land Conservation and Development;

e) One member appointed by the Director of Transportation to represent the Depart-
ment of Transportation;

(f) One member appointed by the governing body of Clackamas County, if the county
chooses to participate, representing Clackamas County;

g) One member appointed by the governing body of Marion County, if the county chooses
to participate, representing Marion County;

(h) One member appointed by the governing body of the City of Aurora, if the city
chooses to participate, representing the City of Aurora; and

(i) One member appointed by the governing body of the City of Wilsonville, if the city
chooses to participate, representing the City of Wilsonville.

4) Each member shall serve for a term of four years, but the member serves at the
pleasure of the appointing authority. A member may be reappointed. Before the expiration
of the term of a member, the appointing authority shall appoint a successor or reappoint the
member. If there is a vacancy for any cause, the appointing authority shall make an ap-
pointment to become immediately effective for the unexpired term.

5) The council shall elect a chairperson who represents a local government and a vice
chairperson who represents a state agency to serve for one-year terms.

6) The members shall serve on the council as volunteers and are not entitled to re-
imbursement for expenses.

7) The Oregon Department of Aviation shall staff the council, assist with the develop-
ment of meeting agendas, record and publish council meeting minutes, assist with drafting
the intergovernmental agreement of the council and shall otherwise support the work of the
council.

8) Except as provided under subsection (9)(b) of this section, the council is not a
decision-making body.

9) Until an intergovernmental agreement described in this section has been executed by
each participating appointing authority under subsection (3) of this section or until the
council membership unanimously agrees that the work of the council has been completed:

a) The council shall meet monthly or at the call of the chairperson or a majority of the
council membership.

b) The Oregon Department of Aviation may not approve any new operations, expansions
or runway lengthening of the Aurora State Airport and may not implement any master plan
or airport layout plan recommendations, project or programs without an agreement by the
unanimous consent of the council.

10) Meetings of the council shall be open to the public and shall provide the opportunity
for public written and oral testimony on matters before the council.

11) A local government under subsection (3)(f) to (i) of this section that does not choose
to participate or that appoints a member who does not participate in the council may not
challenge any provision of an intergovernmental agreement executed under this section or
object to any decision made under the agreement.
SECTION 2. Section 3 of this 2023 Act is added to and made a part of ORS chapter 197.

SECTION 3. A public body, as defined in ORS 174.109, may not make a land use decision that would allow an expansion of the runway or allow new or expanded facilities of the Aurora State Airport unless the expansion is consistent with an intergovernmental agreement entered into under section 1 of this 2023 Act.

SECTION 4. Sections 1 and 3 of this 2023 Act are repealed on January 2, 2037.

SECTION 5. ORS 836.608 is amended to read:

836.608. (1) The continued operation and vitality of airports registered, licensed or otherwise recognized by the Department of Transportation on December 31, 1994, is a matter of state concern.

(2) A local government shall recognize in its planning documents the location of private-use airports and privately owned public-use airports not listed under ORS 836.610 (3) if the airport was the base for three or more aircraft, as shown in the records of the Department of Transportation, on December 31, 1994. Local planning documents shall establish a boundary showing areas in airport ownership, or subject to long-term lease, that are developed or committed to airport uses described in ORS 836.616 (2). Areas committed to airport uses shall include those areas identified by the airport owner that the local government determines can be reasonably expected to be devoted to airport uses allowed under ORS 836.616 (2).

(3)(a) A local government shall not impose limitations on the continued operation of uses described in ORS 836.616 (2) that existed at any time during 1996 at an airport described in subsection (2) of this section. A local government shall allow for the growth of uses described in ORS 836.616 (2) that existed at any time during 1996 at an airport described in subsection (2) of this section. A local government shall not impose additional limitations on a use approved by the local government prior to January 1, 1997, for an airport described in subsection (2) of this section. Notwithstanding subsection (4) of this section, the construction of additional hangars or tie-downs by the owner of an airport described in subsection (2) of this section, basing additional aircraft and increases in flight activity shall be permitted at an airport described in subsection (2) of this section.

(b) A local government may authorize the establishment of a new use described in ORS 836.616 (2) at an airport described in subsection (2) of this section following a public hearing on the use. The hearing shall be for the purpose of establishing compliance with adopted clear and objective standards relating to the compatibility and adequacy of public facilities and services as provided under subsection (5) of this section. Standards and requirements as adopted by the local government shall further the policy of ORS 836.600 to the maximum extent practicable.

(4) Growth of an existing use on an airport as described in subsection (3)(a) of this section that requires a building permit shall be allowed as an administrative decision without public hearing unless the growth:

(a) Cannot be supported by existing public facilities and services and transportation systems authorized by applicable statewide land use planning goals;

(b) Forces a significant change or significantly increases the costs of conducting existing uses on surrounding lands; or

(c) Exceeds the standards of ORS 215.296 (1) if the airport is adjacent to land zoned for exclusive farm use.

(5) A local government shall authorize a new use described in subsection (3)(b) of this section provided the use:

(a) Is or will be supported by adequate types and levels of public facilities and services and transportation systems authorized by applicable statewide land use planning goals[;]. For airport
and through the fence properties totaling 150 acres or more, “adequate public facilities”
means public potable and firefighting water service, public sanitary sewer and public
stormwater utilities.

(b) Does not seriously interfere with existing land uses in areas surrounding the airport; and.
(c) [The local government reviews the use under] Satisfies the standards described in ORS
215.296 if the airport is adjacent to land zoned for exclusive farm use.

(6) An applicant for a new use under subsection (5) of this section may demonstrate that the
standards for approval will be satisfied through the imposition of conditions. Any conditions imposed
shall be clear and objective.

(7) A local government may adopt standards and requirements for the establishment of new
airports, the expansion of existing airports and the regulation of uses and activities at airports
serving as the base for two or fewer aircraft on December 31, 1994, as shown in the records of the
Department of Transportation. The standards and requirements shall comply with applicable state-
wide land use planning laws.

(8) The Land Conservation and Development Commission shall adopt rules regulating the height
of structures to protect approach corridors at airports described in subsection (2) of this section and
at publicly owned airports that are the base for two or fewer aircraft.

SECTION 6. ORS 836.642 is amended to read:

836.642. (1) The Oregon Department of Aviation shall establish a pilot program at up to six rural
airports to encourage development of through the fence operations designed to promote economic
development by creating family wage jobs, by increasing local tax bases and by increasing financial
support for rural airports. To the extent practicable, the airport sponsor of a pilot site shall use
public-private partnerships that incorporate:

(a) Innovative and creative technologies for increasing airport usability and safety;
(b) Innovative and creative performance of aviation services to make the services more com-
petitive and useful for the public;

(c) Development of the pilot site as a setting for customary and usual aviation-related activities
to develop and thrive, in concert with the goals of the Oregon Business Development Department;
and

(d) Shared responsibility for:
(A) Establishing and meeting the fiscal needs of the pilot site;
(B) Maintaining safety of operations; and
(C) Maintaining positive community relations and compatibility with existing uses.

(2) The pilot program shall operate at:
(a) The Aurora State Airport; and
(b) Not more than five additional rural airports that volunteer to participate and are selected
by the Oregon Department of Aviation with the concurrence of the county in which each rural air-
port is located.

(3) The Oregon Department of Aviation, by rule, shall provide standards and guidelines for
through the fence operations that:

(a) Ensure that the operations provide financial support to the pilot sites in compliance with
Federal Aviation Administration regulations;
(b) Require submission, review, approval and, as appropriate, revision of a facility site plan for
each through the fence operation so that the real property covered by the site plan can be incor-
porated into the airport boundary and coordinated with the other aspects of the airport master plan;
(c) Ensure that the operations are conducted according to a written contract between the commercial or industrial user of property within the airport boundary and the airport sponsor;
(d) Ensure that pilot sites continue to operate in a safe manner and to fulfill their roles in Oregon’s emergency response system;
(e) Preserve investments in pilot sites and the level of service provided by pilot sites;
(f) Facilitate orderly management of pilot sites;
(g) Provide equitable and uniform treatment of airport tenants and users at pilot sites;
(h) Advance economic development through qualified customary and usual aviation-related activities within the airport boundaries of pilot sites;
(i) Encourage well-ordered economic development within the airport boundaries of the pilot sites;
(j) Facilitate and foster good relations with the communities surrounding the pilot sites;
(k) Enable conformity with approved airport master plans;
(L) Make pilot sites available for public use on reasonable terms; and
(m) Assist pilot sites in developing financial self-sufficiency through the use of innovative funding and economic development programs; and
(n) Limit through the fence aviation, commercial and industrial uses to 50 acres per pilot site.

(4) The Department of Land Conservation and Development, the county and a city, if any, within whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans and land use regulations, including airport zoning classifications pursuant to ORS 836.600 to 836.630, facilitate through the fence operations and support the development or expansion of the pilot site consistent with applicable statewide land use planning requirements.

(5) The Oregon Business Development Department shall assist the pilot sites to:
(a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and
(b) Develop innovative short-term and long-term funding opportunities.

(6) To the extent practicable, the airport sponsors shall utilize innovative airport infrastructure and operations funding to support the pilot sites including, but not limited to:
(a) Airport districts as provided in ORS chapter 838;
(b) Economic development programs administered by the Oregon Business Development Department;
(c) Tax increment financing to provide funding for airport-related infrastructure;
(d) United States Department of Agriculture Rural Development grants or low-interest loans; and
(e) Programs, including funding for short line railroads under ORS 367.067, designed to facilitate development of intermodal transportation projects.

SECTION 7. ORS 197.732 is amended to read:

197.732. (1) As used in this section:
(a) “Compatible” is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.
(b) “Exception” means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:
(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

(2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(3) The commission shall adopt rules establishing:

(a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use[.];

(b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (2)(c)(A) of this section[; and].

(c) Which uses allowed by the applicable goal must be found impracticable under subsection (2) of this section.

(d) That the presence of a transportation facility, as defined in ORS 197.798, may not justify an exception under subsection (2)(c)(A) of this section.

(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.

(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(6) Upon review of a decision approving or denying an exception:

(a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The board upon petition, or the commission, shall determine whether the local government’s findings and reasons demonstrate that the standards of subsection (2) of this section have or have not been met; and

(c) The board or commission shall adopt a clear statement of reasons that sets forth the basis for the determination that the standards of subsection (2) of this section have or have not been met.

(7) The commission shall by rule establish the standards required to justify an exception to the definition of “needed housing” authorized by ORS 197.303.

(8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement
Part) on or before August 9, 1983, continues to be valid and is not subject to this section.