Senate Bill 963

Sponsored by Senator SMITH DB

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.

Requires additional cities to develop urban reserves.

Allows approval of certain development within urban reserves not designated by Metro and expansion of urban growth boundary to include development.

A BILL FOR AN ACT

Relating to urban reserves; creating new provisions; and amending ORS 195.141, 195.143, 195.145, 197.651 and 268.390.

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

SECTION 1. ORS 195.145 is amended to read:

195.145. (1) To ensure that the supply of land available for urbanization is maintained:

(a) [Local governments may] Each city outside of Metro with a population of more than 10,000 in a county with a population of more than 20,000 shall, with the county, cooperatively designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to 197.626.

(b) A city and county not subject to paragraph (a) of this subsection may designate urban reserves under the process and criteria adopted pursuant to paragraph (a) of this subsection.

(b)(c) Alternatively, [a metropolitan service district established under ORS chapter 268] Metro and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

(2)(a) The Land Conservation and Development Commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) during its periodic review in accordance with the conditions for periodic review under ORS 197.628.

(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic review if:

[(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and]

[(B) The local government has been required to designate an urban reserve by rule prior to November 4, 1993.]

(3) In carrying out subsections (1) and (2) of this section:

(a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve.

NOTE: Matter in boldfaced type in an amended section is new; matter in italic and bracketed is existing law to be omitted. New sections are in boldfaced type.

LC 3821
(b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserves.

(4) Urban reserves designated by [a metropolitan service district] Metro and a county pursuant to subsection [(1)(b)] (1)(e) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.

(5) A district and a county shall base the designation of urban reserves under subsection [(1)(b)] (1)(c) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;

(b) Includes sufficient development capacity to support a healthy urban economy;

(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

(e) Can be designed to preserve and enhance natural ecological systems; and

(f) Includes sufficient land suitable for a range of housing types.

(6) A county may take an exception under ORS 197.732 to a statewide land use planning goal to allow the establishment of a transportation facility in an area designated as urban reserve under subsection [(1)(b)] (1)(c) of this section.

(7) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection [(1)(b)] (1)(c) of this section.

SECTION 2. Section 3 of this 2023 Act is added to and made a part of ORS chapter 197.286 to 197.314.

SECTION 3. (1) A local government with jurisdiction over urban reserves designated under ORS 195.145 (1)(a) or (b) may approve a land use application for:

(a) The subdivision of 10 or more lots for residential development;

(b) The development of a multifamily dwelling with 10 or more units; or

(c) The development of a commercial or industrial use that will result in 10 or more jobs that will pay salaries greater than the area median income.

(2) During or after the approval of an application under subsection (1) of this section, and notwithstanding ORS 197.286 to 197.314 or 197A.310 or any statewide planning goal, a city may amend its urban growth boundary to include the lands to be developed or subdivided.

SECTION 4. ORS 195.141 is amended to read:

195.141. (1) A county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(e).

(2) Land designated as a rural reserve:

(a) Must be outside an urban growth boundary.

(b) May not be designated as an urban reserve during the urban reserve planning period de-
scribed in ORS 195.145 (4).

(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

(b) Is capable of sustaining long-term agricultural operations;

(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

(d) Is suitable to sustain long-term agricultural operations, taking into account:

(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

(D) The sufficiency of agricultural infrastructure in the area.

(4) The Land Conservation and Development Commission shall, after consultation with the State Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural reserves pursuant to this section.

SECTION 5. ORS 195.143 is amended to read:

195.143. (1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

(a) Rural reserves pursuant to ORS 195.141; and

(b) Urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c).

(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 [(1)(b)] (1)(c) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.

(3) A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county pursuant to ORS 195.145 [(1)(b)] (1)(c) unless the county and the district also agree to designate rural reserves in the county.

(4) Designation and protection of rural reserves pursuant to ORS 195.141 or urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c):

(a) Is not a basis for a claim for compensation under ORS 195.305 unless the designation and
protection of rural reserves or urban reserves imposes a new restriction on the use of private real
property.
(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.

SECTION 6. ORS 197.651 is amended to read:
197.651. (1) Judicial review of a final order of the Land Conservation and Development Com-
mission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 [(I)/(b)]
(1)(c) or rural reserves under ORS 195.141 is as provided in subsections (3) to (12) of this section.
(2) Judicial review of any other final order of the commission under ORS 197.626 or of a final
order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659,
215.780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.
(3) A proceeding for judicial review under this section may be instituted by filing a petition in
the Court of Appeals. The petition must be filed within 21 days after the date the commission de-
livered or mailed the order upon which the petition is based.
(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a peti-
tion on the persons who submitted oral or written testimony in the proceeding before the commis-
ion are jurisdictional and may not be waived or extended.
(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies
of the petition must be served by registered or certified mail upon the commission and the persons
who submitted oral or written testimony in the proceeding before the commission.
(6) Within 21 days after service of the petition, the commission shall transmit to the Court of
Appeals the original or a certified copy of the entire record of the proceeding under review. How-
ever, by stipulation of the parties to the review proceeding, the record may be shortened. The Court
of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the addi-
tional costs. The Court of Appeals may require or permit subsequent corrections or additions to the
record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost
of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the
costs to a party that files a frivolous petition for judicial review.
(7) Petitions and briefs must be filed within time periods and in a manner established by the
Court of Appeals by rule.
(8) The Court of Appeals shall:
(a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court
of Appeals determines that the ends of justice served by holding oral argument on a later day out-
weigh the best interests of the public and the parties. However, the Court of Appeals may not hold
oral argument more than 49 days after the date of transmittal of the record because of general
congestion of the court calendar or lack of diligent preparation or attention to the case by a member
of the court or a party.
(b) Set forth in writing and provide to the parties a determination to hear oral argument more
than 49 days from the date the record is transmitted, together with the reasons for the determina-
tion. The Court of Appeals shall schedule oral argument as soon as is practicable.
(c) Consider, in making a determination under paragraph (b) of this subsection:
(A) Whether the case is so unusual or complex, due to the number of parties or the existence
of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
the case and for the Court of Appeals to prepare for oral argument; and
(B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
riage of justice.
(9) The court:
   (a) Shall limit judicial review of an order reviewed under this section to the record.
   (b) May not substitute its judgment for that of the Land Conservation and Development Com-
       mission as to an issue of fact.
(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section.
   The Court of Appeals shall reverse or remand the order only if the court finds the order is:
      (a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal
          or remand unless the Court of Appeals determines that substantial rights of the petitioner were
          prejudiced.
      (b) Unconstitutional.
      (c) Not supported by substantial evidence in the whole record as to facts found by the commis-
          sion.
(11) The Court of Appeals shall issue a final order on the petition for judicial review with the
      greatest possible expediency.
(12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court,
      the commission shall respond to the court’s appellate judgment within 30 days.

SECTION 7. ORS 268.390 is amended to read:

268.390. (1) A district may define and apply a planning procedure that identifies and designates
areas and activities having significant impact upon the orderly and responsible development of the
metropolitan area, including, but not limited to, impact on:
   (a) Air quality;
   (b) Water quality; and
   (c) Transportation.
(2) A district may prepare and adopt functional plans for those areas designated under sub-
section (1) of this section to control metropolitan area impact on air and water quality, transporta-
tion and other aspects of metropolitan area development the district may identify.
   (3)(a) A district shall adopt an urban growth boundary for the district in compliance with ap-
applicable goals adopted under ORS chapters 195, 196 and 197. When a district includes land desig-
nated as urban reserve under ORS 195.145 [(1)(b)] [(1)(c)] within an urban growth boundary pursuant
to ORS 197.298 (1), the district is not required to consider the capability classification system or the
cubic foot site class of the land as described in ORS 197.298 (2).
   (b) Notwithstanding the procedural requirements for boundary changes under ORS 268.354, when
the district adopts an urban growth boundary, the urban growth boundary becomes the boundary
of the district.
   (4) A district may review the comprehensive plans adopted by the cities and counties within the
district that affect areas designated by the district under subsection (1) of this section or the urban
growth boundary adopted under subsection (3) of this section and recommend or require cities and
counties, as it considers necessary, to make changes in any plan to ensure that the plan and any
actions taken under the plan substantially comply with the district’s functional plans adopted under
subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this
section.
   (5) Pursuant to a regional framework plan, a district may adopt implementing ordinances that:
      (a) Require local comprehensive plans and implementing regulations to substantially comply
with the regional framework plan within two years after compliance acknowledgment.
      (b) Require adjudication and determination by the district of the consistency of local compre-
hensive plans with the regional framework plan.

(c) Require each city and county within the jurisdiction of the district and making land use deci-
disions concerning lands within the land use jurisdiction of the district to make those decisions
consistent with the regional framework plan. The obligation to apply the regional framework plan
to land use decisions shall not begin until one year after the regional framework plan is acknowl-
edged as complying with the statewide land use planning goals adopted under ORS chapters 195, 196
and 197.

d) Require changes in local land use standards and procedures if the district determines that
changes are necessary to remedy a pattern or practice of decision-making inconsistent with the re-
gional framework plan.

(6) A process established by the district to enforce the requirements of this section must provide:
(a) Notice of noncompliance to the city or county.
(b) Opportunity for the city or county to be heard.
(c) Entry of an order by the district explaining its findings, conclusions and enforcement reme-
dies, if any.

(7) Enforcement remedies ordered under subsection (6) of this section may include, but are not
limited to:
(a) Direct application of specified requirements of functional plans to land use decisions by the
city or county;
(b) Withholding by the district of discretionary funds from the city or county; and
(c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding mon-
eys pursuant to an enforcement order resulting from the enforcement action.

(8) An order issued under subsection (6) of this section:
(a) Must provide for relief from enforcement remedies upon action by the city or county that
brings the comprehensive plan and implementing regulations into substantial compliance with the
requirement.
(b) Is subject to review under ORS 197.830 to 197.845 as a land use decision.

(9) The regional framework plan, ordinances that implement the regional framework plan and
any determination by the district of consistency with the regional framework plan are subject to
review under ORS 197.274.