House Bill 2019

Sponsored by Representative HUNT; Representatives GALIZIO, GREENLICK, KOMP, SCHAUFLER, TOMEI

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.**

Authorizes school district to establish impact fee on creation of new residential dwelling. Directs public entity administering building permit program within school district to assess and collect impact fee before issuing building permit for new residential dwelling unit.

Authorizes public entity administering building permit program within school district to charge separate fee to recover administrative costs.

Caps maximum amount of impact fees and system development charges for parks and recreation per dwelling unit.

A BILL FOR AN ACT

Relating to system development charges; creating new provisions; and amending ORS 223.304 and 223.309.

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

SECTION 1. As used in sections 1 to 3 of this 2007 Act:

(1) "Affordable housing" means housing units made available to families with a household income that is less than or equal to 80 percent of the area-wide median household income, as determined by the Housing and Community Services Department, for families with the same number of members and for which the monthly housing payment does not exceed 30 percent of the monthly income of the family.

(2) "Capital improvement" includes, but is not limited to, acquisition of land, construction, reconstruction, renovation or improvement of school facilities, acquisition or installation of new technology or other capital expenditures that improve a school district's ability to educate students. "Capital improvement" does not include costs of the operation or routine maintenance of school facilities.

(3) "School district" has the meaning given that term in ORS 330.003.

SECTION 2. (1) A school district may adopt by resolution an impact fee on the creation of new residential dwelling units as provided in this section.

(2) Prior to the adoption of an impact fee, the school district shall:

(a) Prepare a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the school district intends to fund, in whole or in part, with moneys collected for the impact fee and the estimated cost of and proposed timing for each capital improvement; and

(b) Hold a public hearing at which the school district provides interested persons an opportunity to comment on the adoption of the impact fee.

(3) In the resolution establishing an impact fee, the school district shall include:

(a) The methodology for calculating the impact fee; and

(b) Findings demonstrating that:

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

(A) The new capital improvements are needed to meet the demands placed on school facilities by the establishment of new residential dwelling units within the school district; and

(B) The impact fee is calculated with due consideration given to the estimated cost of and timing for the capital improvements identified in the facilities plan that are needed to meet the demands placed on school facilities by the establishment of new residential dwelling units.

(4) A school district shall exempt new residential dwelling units dedicated to affordable housing from the assessment and collection of the impact fee authorized under this section.

(5) Subject to the limitation described in subsection (6) of this section an impact fee collected pursuant to this section may not exceed $8,000 per new dwelling unit, but the school district may annually adjust the impact fee based on the higher of:

(a) The percentage increase in the real market value for the period, as provided by the county assessor, of the residential land in the school district, excluding buildings, structures and improvements; or

(b) The Engineering News-Record Construction Cost Index for the period.

(6) An impact fee collected by a school district under this section may not exceed the difference between $8,000 per dwelling unit and the amount collected for a system development charge for parks and recreation under ORS 233.304 (6).

(7) A school district that adopts an impact fee resolution pursuant to this section shall transmit the resolution to the public entities that administer a building permit program under ORS chapter 455, within the boundaries of the school district.

(8) A school district may use moneys collected as an impact fee only to pay:

(a) For capital improvements to school facilities that are needed to meet the demands placed on the facilities by the new residential dwelling units; and

(b) The administrative costs of the school district to implement the impact fee authorized under this section.

(9) The official responsible for administering the public entity's building permit program under ORS chapter 455:

(a) Shall assess and collect the impact fee before issuing a building permit to establish a new residential dwelling within the boundaries of a school district that imposes an impact fee;

(b) May establish and collect an additional fee, in an amount that does not exceed one percent of the amount of the impact fee, intended to recover the costs of the public entity to assess and collect the impact fee pursuant to subsection (8) of this section; and

(c) Shall deliver the moneys collected for the impact fee to the appropriate school district.

<u>SECTION 3.</u> A school district that adopts an impact fee pursuant to section 2 of this 2007 Act shall annually prepare a report relating to the collection and expenditure of moneys generated by the impact fee, make the report available to the public and file a copy of the report with the Secretary of State no later than June 30 of each year for the preceding year.

<u>SECTION 4.</u> ORS 223.304 is amended to read:

223.304. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution setting forth a methodology that is, when applicable, based on:

(A) Ratemaking principles employed to finance publicly owned capital improvements;

(B) Prior contributions by existing users;

(C) Gifts or grants from federal or state government or private persons;

(D) The value of unused capacity available to future system users or the cost of the existing facilities; and

(E) Other relevant factors identified by the local government imposing the fee.

(b) The methodology for establishing or modifying a reimbursement fee must:

(A) Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.

(B) Be available for public inspection.

(2) Improvement fees must:

(a) Be established or modified by ordinance or resolution setting forth a methodology that is available for public inspection and demonstrates consideration of:

(A) The projected cost of the capital improvements identified in the plan and list adopted pursuant to ORS 223.309 that are needed to increase the capacity of the systems to which the fee is related; and

(B) The need for increased capacity in the system to which the fee is related that will be required to serve the demands placed on the system by future users.

(b) Be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

(3) A local government may establish and impose a system development charge that is a combination of a reimbursement fee and an improvement fee, if the methodology demonstrates that the charge is not based on providing the same system capacity.

(4) The ordinance or resolution that establishes or modifies an improvement fee shall also provide for a credit against such fee for the construction of a qualified public improvement. A "qualified public improvement" means a capital improvement that is required as a condition of development approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

(a) Not located on or contiguous to property that is the subject of development approval; or

(b) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

(5)(a) The credit provided for in subsection (4) of this section is only for the improvement fee charged for the type of improvement being constructed, and credit for qualified public improvements under subsection (4)(b) of this section may be granted only for the cost of that portion of such improvement that exceeds the local government′s minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under subsection (4)(b) of this section.

(b) A local government may deny the credit provided for in subsection (4) of this section if the local government demonstrates:

(A) That the application does not meet the requirements of subsection (4) of this section; or

(B) By reference to the list adopted pursuant to ORS 223.309, that the improvement for which credit is sought was not included in the plan and list adopted pursuant to ORS 223.309.

(c) When the construction of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. This subsection does not prohibit a local government from providing a greater credit, or from establishing a system providing for the transferability of credits, or from providing a credit for a capital improvement not identified in the plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such improvement by other means, if a local government so chooses.

(d) Credits must be used in the time specified in the ordinance but not later than 10 years from the date the credit is given.

(6) The amount of a system development charge for parks and recreation that:

(a) Is in effect on the effective date of this 2007 Act:

(A) Is capped at the amount being collected on the effective date of this 2007 Act if the amount is larger than $4,000, subject to future modifications pursuant to subsection (9) of this section.

(B) May not be increased to an amount that is larger than $4,000, subject to future modifications pursuant to subsection (9) of this section.

(b) Is established after the effective date of this 2007 Act may not exceed $4,000 per dwelling unit, subject to future modifications pursuant to subsection (9) of this section.

[*(6)*] **(7)** Any local government that proposes to establish or modify a system development charge shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge.

[*(7)(a)*] **(8)(a)** Written notice must be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a system development charge, and the methodology supporting the system development charge must be available at least 60 days prior to the first hearing. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the local government. The local government may periodically delete names from the list, but at least 30 days prior to removing a name from the list shall notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

(b) Legal action intended to contest the methodology used for calculating a system development charge may not be filed after 60 days following adoption or modification of the system development charge ordinance or resolution by the local government. A person shall request judicial review of the methodology used for calculating a system development charge only as provided in ORS 34.010 to 34.100.

[*(8)*] **(9)** A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge methodology if the change in amount is based on:

(a) A change in the cost of materials, labor or real property applied to projects or project capacity as set forth on the list adopted pursuant to ORS 223.309; or

(b) The periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:

(A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;

(B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and

(C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

SECTION 5. ORS 223.309 is amended to read:

223.309. (1) Prior to the establishment of a system development charge by ordinance or resolution, a local government shall prepare a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of the capital improvements that the local government intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.

(2) A local government that has prepared a plan and the list described in subsection (1) of this section may modify the plan and list at any time. If a system development charge will be increased by a proposed modification of the list to include a capacity increasing capital improvement, as described in ORS 223.307 (2):

(a) The local government shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under ORS 223.304 [*(6)*] **(7)**.

(b) The local government shall hold a public hearing if the local government receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption.

(c) Notwithstanding ORS 294.160, a public hearing is not required if the local government does not receive a written request for a hearing.

(d) The decision of a local government to increase the system development charge by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.