

House Bill 3438

Sponsored by Representative SHEEHAN; Representative WAND

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**.

Eliminates authority for metropolitan service district to establish urban growth boundary. Eliminates authority for district to undertake coordinative role for land within district that is otherwise undertaken by county for land within county. Eliminates authority for district to review comprehensive plans of local governments within district for compliance with regional goals.

A BILL FOR AN ACT

1
2 Relating to regional land use planning; creating new provisions; amending ORS 94.536, 94.538,
3 195.020, 195.025, 195.060, 195.065, 195.110, 195.145, 197.015, 197.254, 197.296, 197.298, 197.313,
4 197.314, 197.319, 197.320, 197.626, 197.651, 199.705, 221.034, 268.354, 268.380, 268.385, 268.390,
5 285C.500, 308A.350, 308A.700, 451.010, 459A.005 and 459A.010 and sections 6 and 7, chapter 844,
6 Oregon Laws 2005; and repealing ORS 195.137, 195.139, 195.141, 195.143, 197.299, 197.301, 197.302
7 and 221.036.

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

9 **SECTION 1. The Legislative Assembly finds and declares that making the land use plan-**
10 **ning process simpler and more efficient is a matter of statewide concern.**

11 **SECTION 2.** ORS 268.354 is amended to read:

12 268.354. (1) In addition to the requirements established by ORS chapters 198, 221 and 222 for a
13 boundary change, a metropolitan service district, in consultation with the Metro Policy Advisory
14 Committee, may establish requirements for a boundary change that is subject to the jurisdiction of
15 the district pursuant to ORS 268.347.

16 (2) For a boundary change that is subject to the jurisdiction of the district pursuant to ORS
17 268.347, the district shall:

18 (a) Establish a uniform hearing and notification process.

19 (b) Establish an expedited process for uncontested boundary changes.

20 (c) Establish clear and objective criteria for a boundary change.

21 (d) Ensure that a boundary change is in compliance with the Metro regional framework plan,
22 as defined in ORS 197.015, and cooperative agreements and urban service agreements adopted pur-
23 suant to ORS chapter 195.

24 (3) The role of a metropolitan service district in the boundary determination process shall be
25 ministerial only.

26 (4) Except as provided in this section and ORS 268.347 and 268.351, for a boundary change
27 subject to the jurisdiction of the metropolitan service district:

28 (a) Proceedings for annexation of territory to a city and for all other changes in city boundaries
29 shall be conducted as provided in ORS chapter 222.

30 (b) Proceedings for annexation of territory to a district, and for all other changes to the

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.

1 boundaries of a district, shall be conducted as provided in ORS chapter 198. Notwithstanding ORS
2 268.020, as used in this paragraph, “district” means a special district as defined in ORS 197.015.

3 (c) Proceedings for annexation of territory to the metropolitan service district[, *including*
4 *annexation of territory not within the urban growth boundary of the district,*] and for all other changes
5 to the boundaries of the district shall be conducted as provided in ORS chapter 198.

6 (d) Notwithstanding contrary provisions regarding the party responsible for conducting hearings
7 under ORS chapter 198, the metropolitan service district is the governing body responsible for con-
8 ducting proceedings for a minor boundary change to the district. [*Except for a change to the district*
9 *boundary by adoption of an urban growth boundary under ORS 268.390,*] Proceedings for a minor
10 boundary change to the boundaries of a district shall be conducted as provided in ORS chapter 198.

11 **SECTION 3.** ORS 268.380 is amended to read:

12 268.380. (1) A district may[:]

13 [(a)] adopt [*land-use*] **land use** planning goals and objectives for the district consistent with
14 **statewide land use planning** goals adopted under ORS chapters 195, 196 and 197. **The goals and**
15 **objectives do not constitute a comprehensive plan.**[:]

16 [(b) *Review the comprehensive plans in effect on January 1, 1979, or subsequently adopted by the*
17 *cities and counties within the district and recommend that cities and counties, as the district considers*
18 *necessary, make changes in any plan to ensure that the plan conforms to the district’s metropolitan area*
19 *goals and objectives and the statewide goals;*]

20 [(c) *Coordinate the land-use planning activities of that portion of the cities and counties within the*
21 *district; and*]

22 [(d) *Coordinate its activities and the related activities of the cities and counties within the district*
23 *with the land-use planning development activities of the federal government, other local governmental*
24 *bodies situated within this state or within any other state and any agency of this state or another*
25 *state.*]

26 (2) When a district is required by a district charter to adopt a regional framework plan, the
27 regional framework plan shall include and be consistent with land use planning goals and objectives
28 adopted by the district. **The regional framework plan and the individual components of the**
29 **regional framework plan do not constitute a comprehensive plan.**

30 **SECTION 4.** ORS 268.385 is amended to read:

31 268.385. [(1) *For the purposes of ORS 195.025, the district formed under this chapter shall exercise*
32 *within the district the review, advisory and coordinative functions assigned under ORS 195.025 (1) to*
33 *each county and city that is within the district.*]

34 [(2) *ORS 195.025 (3) and (4) shall not apply to a district formed under this chapter.*] **ORS 195.025**
35 **(4) and (5) does not apply to cities and counties within a district formed under this chapter.**

36 **SECTION 5.** ORS 268.390 is amended to read:

37 268.390. (1) A district may [*define and apply a planning procedure that identifies and designates*]
38 **identify and designate** areas and activities having significant impact upon the orderly and respon-
39 sible development of the metropolitan area, including, but not limited to, impact on:

40 (a) Air quality;

41 (b) Water quality; and

42 (c) Transportation.

43 (2) A district may prepare and adopt functional plans for those areas designated under sub-
44 section (1) of this section to control metropolitan area impact on air and water quality, transporta-
45 tion and other aspects of metropolitan area development the district may identify.

1 [(3)(a) A district shall adopt an urban growth boundary for the district in compliance with appli-
2 cable goals adopted under ORS chapters 195, 196 and 197. When a district includes land designated
3 as urban reserve under ORS 195.145 (1)(b) within an urban growth boundary pursuant to ORS 197.298
4 (1), the district is not required to consider the capability classification system or the cubic foot site class
5 of the land as described in ORS 197.298 (2).]

6 [(b) Notwithstanding the procedural requirements for boundary changes under ORS 268.354, when
7 the district adopts an urban growth boundary, the urban growth boundary becomes the boundary of
8 the district.]

9 [(4)] **(3)** A district may review the comprehensive plans adopted by the cities and counties within
10 the district that affect areas designated by the district under subsection (1) of this section [or the
11 urban growth boundary adopted under subsection (3) of this section and recommend or require cities
12 and counties, as it considers necessary, to] **and recommend that the cities and counties** make
13 changes in any plan to ensure that the plan and any actions taken under the plan substantially
14 comply with the district's functional plans adopted under subsection (2) of this section [and its urban
15 growth boundary adopted under subsection (3) of this section].

16 [(5) Pursuant to a regional framework plan, a district may adopt implementing ordinances that:]

17 [(a) Require local comprehensive plans and implementing regulations to substantially comply with
18 the regional framework plan within two years after compliance acknowledgment.]

19 [(b) Require adjudication and determination by the district of the consistency of local comprehen-
20 sive plans with the regional framework plan.]

21 [(c) Require each city and county within the jurisdiction of the district and making land use deci-
22 sions concerning lands within the land use jurisdiction of the district to make those decisions consistent
23 with the regional framework plan. The obligation to apply the regional framework plan to land use
24 decisions shall not begin until one year after the regional framework plan is acknowledged as com-
25 plying with the statewide land use planning goals adopted under ORS chapters 195, 196 and 197.]

26 [(d) Require changes in local land use standards and procedures if the district determines that
27 changes are necessary to remedy a pattern or practice of decision-making inconsistent with the regional
28 framework plan.]

29 [(6) A process established by the district to enforce the requirements of this section must provide:]

30 [(a) Notice of noncompliance to the city or county.]

31 [(b) Opportunity for the city or county to be heard.]

32 [(c) Entry of an order by the district explaining its findings, conclusions and enforcement remedies,
33 if any.]

34 [(7) Enforcement remedies ordered under subsection (6) of this section may include, but are not
35 limited to:]

36 [(a) Direct application of specified requirements of functional plans to land use decisions by the city
37 or county;]

38 [(b) Withholding by the district of discretionary funds from the city or county; and]

39 [(c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding moneys
40 pursuant to an enforcement order resulting from the enforcement action.]

41 [(8) An order issued under subsection (6) of this section:]

42 [(a) Must provide for relief from enforcement remedies upon action by the city or county that brings
43 the comprehensive plan and implementing regulations into substantial compliance with the
44 requirement.]

45 [(b) Is subject to review under ORS 197.830 to 197.845 as a land use decision.]

1 [(9)] (4) The regional framework plan[,] **and** ordinances that implement the regional framework
 2 plan [*and any determination by the district of consistency with the regional framework plan*] are sub-
 3 ject to review under ORS 197.274.

4 **SECTION 6.** ORS 94.536, as amended by section 1, chapter 5, Oregon Laws 2010, is amended
 5 to read:

6 94.536. As used in this section and ORS 94.538:

7 (1) “Conservation easement” has the meaning given that term in ORS 271.715.

8 (2) “Governmental unit” means a city, county, metropolitan service district or state agency as
 9 defined in ORS 171.133.

10 (3) “Holder” has the meaning given that term in ORS 271.715.

11 (4) “Lot” has the meaning given that term in ORS 92.010.

12 (5) “Parcel” has the meaning given that term in ORS 92.010.

13 (6) “Receiving area” means a designated area of land to which a holder of development credits
 14 generated from a sending area may transfer the development credits and in which additional uses
 15 or development, not otherwise allowed, are allowed by reason of the transfer.

16 (7) “Resource land” means:

17 (a) Lands outside an urban growth boundary planned and zoned for farm use, forest use or mixed
 18 farm and forest use.

19 (b) Lands inside or outside urban growth boundaries identified:

20 (A) In an acknowledged local or regional government inventory as containing significant
 21 wetland, riparian, wildlife habitat, historic, scenic or open space resources; or

22 (B) As containing important natural resources, estuaries, coastal shorelands, beaches and dunes
 23 or other resources described in the statewide land use planning goals.

24 (c) “Conservation Opportunity Areas” identified in the “Oregon Conservation Strategy” adopted
 25 by the State Fish and Wildlife Commission and published by the State Department of Fish and
 26 Wildlife in September of 2006.

27 (8) “Sending area” means a designated area of resource land from which development credits
 28 generated from forgone development are transferable, for uses or development not otherwise al-
 29 lowed, to a receiving area.

30 (9) “Tract” has the meaning given that term in ORS 215.010.

31 (10) “Transferable development credit” means a severable development interest in real property
 32 that can be transferred from a lot, parcel or tract in a sending area to a lot, parcel or tract in a
 33 receiving area.

34 (11) “Transferable development credit system” means a land use planning tool that allows the
 35 record owner of a lot, parcel or tract of resource land in a sending area to voluntarily sever and
 36 sell development interests from the lot, parcel or tract for purchase and use by a potential developer
 37 to develop a lot, parcel or tract in a receiving area at a higher intensity than otherwise allowed.

38 (12) “Urban growth boundary” has the meaning given that term in ORS 195.060.

39 [(13)] *“Urban reserve” has the meaning given that term in ORS 195.137.*

40 **SECTION 7.** ORS 94.538, as amended by section 2, chapter 5, Oregon Laws 2010, is amended
 41 to read:

42 94.538. (1) One or more governmental units may establish a transferable development credit
 43 system, including a process for allowing transfer of development interests from a sending area
 44 within the jurisdiction of one governmental unit to a receiving area within the jurisdiction of an-
 45 other governmental unit.

1 (2) If the transferable development credit system allows transfer of development interests be-
 2 tween the jurisdictions of different governmental units, the process must be described in an inter-
 3 governmental agreement under ORS 190.003 to 190.130 entered into by the governmental units with
 4 land use jurisdiction over the sending and receiving areas and, for purposes of administration of the
 5 process, the Department of Land Conservation and Development. The intergovernmental agreement
 6 may contain provisions for sharing between governmental units of the prospective ad valorem tax
 7 revenues derived from new development in the receiving area authorized under the system.

8 (3) A transferable development credit system must provide for:

9 (a) The record owner of a lot, parcel or tract in a sending area to voluntarily sever and sell
 10 development interests of the lot, parcel or tract for use in a receiving area;

11 (b) A potential developer of land in a receiving area to purchase transferable development
 12 credits that allow a higher intensity use or development of the land, including development bonuses
 13 or other incentives not otherwise allowed, through changes to the planning and zoning or waivers
 14 of density, height or bulk limitations in the receiving area;

15 (c) The governmental units administering the system to determine the type, extent and intensity
 16 of uses or development allowed in the receiving area, based on the transferable development credits
 17 generated from severed and sold development interests; and

18 (d) The holder of a recorded instrument encumbering a lot, parcel or tract from which the re-
 19 cord owner proposes to sever development interests for transfer to be given prior written notice of
 20 the proposed transaction and to approve or disapprove the transaction.

21 (4) A transferable development credit system must offer:

22 (a) Incentives for a record owner of resource land to voluntarily prohibit or limit development
 23 on the resource land and to sell or transfer forgone development to lands within receiving areas.

24 (b) Benefits to landowners by providing monetary compensation for limiting development in
 25 sending areas.

26 (c) Benefits to developers by allowing increased development and development incentives in re-
 27 ceiving areas.

28 (5) The governmental units administering a transferable development credit system must:

29 (a) Designate sending areas that are chosen to achieve the requirements set forth in this section
 30 and the objectives set forth in ORS 94.534.

31 (b) Designate receiving areas that are chosen to achieve the requirements set forth in this sec-
 32 tion and the objectives set forth in ORS 94.534.

33 (c) Provide development bonuses and incentives to stimulate the demand for the purchase and
 34 sale of transferable development credits.

35 (d) Require that the record owner of development interests transferred as development credits
 36 from a sending area to a receiving area cause to be recorded, in the deed records of the county in
 37 which the sending area is located, a conservation easement that:

38 (A) Limits development of the lot, parcel or tract from which the interests are severed consist-
 39 ent with the transfer; and

40 (B) Names an entity, approved by the governmental units administering the system, as the
 41 holder of the conservation easement.

42 (e) Maintain records of:

43 (A) The lots, parcels and tracts from which development interests have been severed;

44 (B) The lots, parcels and tracts to which transferable development credits have been transferred;

45 and

1 (C) The allowable level of use or development for each lot, parcel or tract after a transfer of
2 development credits.

3 (f) Provide periodic summary reports of activities of the system to the department.

4 (6) A receiving area must be composed of land that is within an urban growth boundary or,
5 subject to subsection (7) of this section, within an urban reserve established under ORS [195.137
6 to] 195.145 and that is:

7 (a) Appropriate and suitable for development.

8 (b) Not subject to limitations designed to protect natural resources, scenic and historic areas,
9 open spaces or other resources protected under the statewide land use planning goals.

10 (c) Not within an area identified as a priority area for protection in the "Oregon Conservation
11 Strategy" adopted by the State Fish and Wildlife Commission and published by the State Department
12 of Fish and Wildlife in September of 2006.

13 (d) Not within a "Conservation Opportunity Area" identified in the "Oregon Conservation
14 Strategy" adopted by the State Fish and Wildlife Commission and published by the State Department
15 of Fish and Wildlife in September of 2006.

16 (7) Land within an urban reserve:

17 (a) May be the site of a receiving area only if:

18 (A) The receiving area is likely to be brought within an urban growth boundary at the next
19 periodic review under ORS 197.628 to 197.650 or legislative review under ORS 197.626; and

20 (B) Development pursuant to the transferable development credits is allowed only after the re-
21 ceiving area is brought within an urban growth boundary.

22 (b) That is selected for use as a receiving area may be designated for priority inclusion in the
23 urban growth boundary, when the urban growth boundary is amended, if the land qualifies under the
24 boundary location factors in a goal relating to urbanization.

25 (8) The governing body of a governmental unit administering a transferable development credit
26 system may, directly or indirectly through a contract with a nonprofit corporation, establish a
27 transferable development credit bank to facilitate:

28 (a) Buying severable development interests from lots, parcels or tracts of resource land in a
29 sending area.

30 (b) Selling transferable development credits to potential developers of lots, parcels or tracts in
31 a receiving area.

32 (c) Entering into agreements or contracts and performing acts necessary, convenient or desira-
33 ble to achieve the requirements set forth in this section and the objectives set forth in ORS 94.534.

34 (d) Managing funds available for the purchase and sale of transferable development credits.

35 (e) Authorizing and monitoring expenditures associated with the system.

36 (f) Maintaining records of the transactions, including dates, purchase amounts and locations of
37 severed development interests and development pursuant to transferred development credits, that
38 are sufficient to manage and evaluate the effectiveness of the system.

39 (g) Providing periodic summary reports of activities of the system to the governing body of a
40 governmental unit administering the system.

41 (h) Obtaining appraisals of development interests and transferable development credits as nec-
42 essary and pricing transferable development credits for purchase or sale.

43 (i) Serving as a clearinghouse and information source for buyers and sellers of transferable de-
44 velopment credits.

45 (j) Accepting donations of transferable development credits.

1 (k) Soliciting and receiving grant funds for the implementation of this section and ORS 94.536.

2 (9) A holder of a conservation easement shall hold, monitor and enforce the conservation ease-
3 ment to ensure that lands in sending areas do not retain development credits transferred under this
4 section and ORS 94.536.

5 **SECTION 8.** ORS 195.020 is amended to read:

6 195.020. (1) Special districts shall exercise their planning duties, powers and responsibilities and
7 take actions that are authorized by law with respect to programs affecting land use, including a city
8 or special district boundary change as defined in ORS 197.175 (1), in accordance with goals approved
9 pursuant to ORS chapters 195, 196 and 197.

10 (2) A county assigned coordinative functions under ORS 195.025 (1)[, *or the Metropolitan Service*
11 *District, which is assigned coordinative functions for Multnomah, Washington and Clackamas counties*
12 *by ORS 195.025 (1),]* shall enter into a cooperative agreement with each special district **and met-**
13 **ropolitan service district** that provides an urban service within the boundaries of the county [*or*
14 *the metropolitan district*]. A county [*or the Metropolitan Service District*] may enter into a cooperative
15 agreement with any other special district **or metropolitan service district** operating within the
16 boundaries of the county [*or the metropolitan district*].

17 (3) The appropriate city and county [*and, if within the boundaries of the metropolitan service*
18 *district, the metropolitan service district,*] shall enter into a cooperative agreement with each special
19 district **and metropolitan service district** that provides an urban service within an urban growth
20 boundary. The appropriate city and county[, *and the metropolitan service district,*] may enter into a
21 cooperative agreement with any other special district **or metropolitan service district** operating
22 within an urban growth boundary.

23 (4) The agreements described in subsection (2) of this section shall conform to the requirements
24 of paragraphs (a) to (d), (f) and (g) of this subsection. The agreements described in subsection (3) of
25 this section shall:

26 (a) Describe how the city or county will involve the special district **or metropolitan service**
27 **district** in comprehensive planning, including plan amendments, periodic review and amendments to
28 land use regulations;

29 (b) Describe the responsibilities of the special district **or the metropolitan service district** in
30 comprehensive planning, including plan amendments, periodic review and amendments to land use
31 regulations regarding provision of urban services;

32 (c) Establish the role and responsibilities of each party to the agreement with respect to city
33 or county approval of new development;

34 (d) Establish the role and responsibilities of the city or county with respect to district interests
35 including, where applicable, water sources, capital facilities and real property, including rights of
36 way and easements;

37 (e) Specify the units of local government which shall be parties to an urban service agreement
38 under ORS 195.065;

39 (f) If a metropolitan service district is a party to the agreement, describe how the metropolitan
40 service district will involve the special district in the exercise of the metropolitan service district's
41 regional planning responsibilities; and

42 (g) Contain [*such*] other provisions as **may be required by rule of** the Land Conservation and
43 Development Commission [*may require by rule*].

44 (5) Agreements required under subsections (2) and (3) of this section are subject to review by
45 the commission. The commission may provide by rule for periodic submission and review of cooper-

1 ative agreements to [*insure*] **ensure** that they are consistent with acknowledged comprehensive
2 plans.

3 **SECTION 9.** ORS 195.025 is amended to read:

4 195.025. (1) In addition to the responsibilities stated in ORS 197.175, each county, through its
5 governing body, shall be responsible for coordinating all planning activities affecting land uses
6 within the county, including planning activities of the county, cities, **metropolitan service dis-**
7 **tricts**, special districts and state agencies, to [*assure*] **ensure** an integrated comprehensive plan for
8 the entire area of the county. [*In addition to being*]

9 **(2) The metropolitan service district is** subject to the provisions of ORS chapters 195, 196 and
10 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1)[, *the*
11 *governing body of the Metropolitan Service District shall be considered the county review, advisory and*
12 *coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that dis-*
13 *trict*].

14 [(2)] **(3)** For the purposes of carrying out ORS chapters 195, 196 and 197, counties may volun-
15 tarily join together with adjacent counties as authorized in ORS 190.003 to 190.620.

16 [(3)] **(4)** Whenever counties and cities representing 51 percent of the population in their area
17 petition the Land Conservation and Development Commission for an election in their area to form
18 a regional planning agency to exercise the authority of the counties under subsection (1) of this
19 section in the area, the commission shall review the petition. If it finds that the area described in
20 the petition forms a reasonable planning unit, it shall call an election in the area on a date specified
21 in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner
22 provided in ORS chapter 255. The county clerk shall be considered the elections officer and the
23 commission shall be considered the district elections authority. The agency shall be considered es-
24 tablished if the majority of votes favor the establishment.

25 [(4)] **(5)** If a voluntary association of local governments adopts a resolution ratified by each
26 participating county and a majority of the participating cities therein which authorizes the associ-
27 ation to perform the review, advisory and coordination functions assigned to the counties under
28 subsection (1) of this section, the association may perform such duties.

29 **SECTION 10.** ORS 195.060 is amended to read:

30 195.060. As used in ORS 195.020, 195.065 to 195.085 and 197.005, unless the context requires
31 otherwise:

32 (1) "District" has the meaning given that term in ORS 198.010. In addition, the term includes a
33 county service district organized under ORS chapter 451.

34 (2) "Urban growth boundary" means an acknowledged urban growth boundary contained in a
35 city or county comprehensive plan [*or an acknowledged urban growth boundary that has been adopted*
36 *by a metropolitan service district council under ORS 268.390 (3)*].

37 (3) "Urban service" has the meaning given that term in ORS 195.065.

38 **SECTION 11.** ORS 195.065 is amended to read:

39 195.065. (1) Under ORS 190.003 to 190.130, units of local government and special districts that
40 provide an urban service to an area within an urban growth boundary that has a population greater
41 than 2,500 persons, and that are identified as appropriate parties by a cooperative agreement under
42 ORS 195.020, shall enter into urban service agreements that:

43 (a) Specify whether the urban service will be provided in the future by a city, county, district,
44 authority or a combination of one or more cities, counties, districts or authorities.

45 (b) Set forth the functional role of each service provider in the future provision of the urban

1 service.

2 (c) Determine the future service area for each provider of the urban service.

3 (d) Assign responsibilities for:

4 (A) Planning and coordinating provision of the urban service with other urban services;

5 (B) Planning, constructing and maintaining service facilities; and

6 (C) Managing and administering provision of services to urban users.

7 (e) Define the terms of necessary transitions in provision of urban services, ownership of facili-
 8 ties, annexation of service territory, transfer of moneys or project responsibility for projects pro-
 9 posed on a plan of the city or district prepared pursuant to ORS 223.309 and merger of service
 10 providers or other measures for enhancing the cost efficiency of providing urban services.

11 (f) Establish a process for review and modification of the urban service agreement.

12 (2)(a) Each county shall have responsibility for convening representatives of all cities and spe-
 13 cial districts that provide or declare an interest in providing an urban service inside an urban
 14 growth boundary within the county, for the purpose of negotiating an urban service agreement. A
 15 county may establish two or more subareas inside an urban growth boundary for the purpose of such
 16 agreements. If an urban service is to be provided within the boundaries of a metropolitan service
 17 district, a county shall notify the metropolitan service district in advance of the time for cities and
 18 special districts to meet for the purpose of negotiating an urban service agreement[, *and the Met-*
 19 *ropolitan Service District shall exercise its review, advisory and coordination functions under ORS*
 20 *195.025*].

21 (b) When negotiating for an urban service agreement, a county shall consult with recognized
 22 community planning organizations within the area affected by the urban service agreement.

23 (3) Decisions on a local government structure to be used to deliver an urban service under ORS
 24 195.070 are not land use decisions under ORS 197.015.

25 (4) For purposes of ORS 195.020, 195.070, 195.075, 197.005 and this section, “urban services”
 26 means:

27 (a) Sanitary sewers;

28 (b) Water;

29 (c) Fire protection;

30 (d) Parks;

31 (e) Open space;

32 (f) Recreation; and

33 (g) Streets, roads and mass transit.

34 (5) Whether the requirement of subsection (1) of this section is met by a single urban service
 35 agreement among multiple providers of a service, by a series of agreements with individual providers
 36 or by a combination of multiprovider and single-provider agreements shall be a matter of local dis-
 37 cretion.

38 **SECTION 12.** ORS 195.110 is amended to read:

39 195.110. (1) As used in this section, “large school district” means a school district that has an
 40 enrollment of over 2,500 students based on certified enrollment numbers submitted to the Depart-
 41 ment of Education during the first quarter of each new school year.

42 (2) A city or county containing a large school district shall:

43 (a) Include as an element of its comprehensive plan a school facility plan prepared by the dis-
 44 trict in consultation with the affected city or county.

45 (b) Initiate planning activities with a school district to accomplish planning as required under

1 ORS 195.020.

2 (3) The provisions of subsection (2)(a) of this section do not apply to a city or a county that
 3 contains less than 10 percent of the total population of the large school district.

4 (4) The large school district shall select a representative to meet and confer with a represen-
 5 tative of the city or county, as described in subsection (2)(b) of this section, to accomplish the
 6 planning required by ORS 195.020 and shall notify the city or county of the selected representative.
 7 The city or county shall provide the facilities and set the time for the planning activities. The rep-
 8 resentatives shall meet at least twice each year, unless all representatives agree in writing to an-
 9 other schedule, and make a written summary of issues discussed and proposed actions.

10 (5)(a) The school facility plan must cover a period of at least 10 years and must include, but
 11 need not be limited to, the following elements:

12 (A) Population projections by school age group.

13 (B) Identification by the city or county and by the large school district of desirable school sites.

14 (C) Descriptions of physical improvements needed in existing schools to meet the minimum
 15 standards of the large school district.

16 (D) Financial plans to meet school facility needs, including an analysis of available tools to en-
 17 sure facility needs are met.

18 (E) An analysis of:

19 (i) The alternatives to new school construction and major renovation; and

20 (ii) Measures to increase the efficient use of school sites including, but not limited to, multiple-
 21 story buildings and multipurpose use of sites.

22 (F) Ten-year capital improvement plans.

23 (G) Site acquisition schedules and programs.

24 (b) Based on the elements described in paragraph (a) of this subsection and applicable laws and
 25 rules, the school facility plan must also include an analysis of the land required for the 10-year pe-
 26 riod covered by the plan that is suitable, as a permitted or conditional use, for school facilities in-
 27 side the urban growth boundary.

28 (6) If a large school district determines that there is an inadequate supply of suitable land for
 29 school facilities for the 10-year period covered by the school facility plan, the city or county, or
 30 both, and the large school district shall cooperate in identifying land for school facilities and take
 31 necessary actions, including, but not limited to, adopting appropriate zoning, aggregating existing
 32 lots or parcels in separate ownership[,] **and** adding one or more sites designated for school facilities
 33 to an urban growth boundary[, or *petitioning a metropolitan service district to add one or more sites*
 34 *designated for school facilities to an urban growth boundary pursuant to applicable law*].

35 (7) The school facility plan shall provide for the integration of existing city or county land
 36 dedication requirements with the needs of the large school district.

37 (8) The large school district shall:

38 (a) Identify in the school facility plan school facility needs based on population growth
 39 projections and land use designations contained in the city or county comprehensive plan; and

40 (b) Update the school facility plan during periodic review or more frequently by mutual agree-
 41 ment between the large school district and the affected city or county.

42 (9)(a) In the school facility plan, the district school board of a large school district may adopt
 43 objective criteria to be used by an affected city or county to determine whether adequate capacity
 44 exists to accommodate projected development. Before the adoption of the criteria, the large school
 45 district shall confer with the affected cities and counties and agree, to the extent possible, on the

1 appropriate criteria. After a large school district formally adopts criteria for the capacity of school
 2 facilities, an affected city or county shall accept those criteria as its own for purposes of evaluating
 3 applications for a comprehensive plan amendment or for a residential land use regulation amend-
 4 ment.

5 (b) A city or county shall provide notice to an affected large school district when considering
 6 a plan or land use regulation amendment that significantly impacts school capacity. If the large
 7 school district requests, the city or county shall implement a coordinated process with the district
 8 to identify potential school sites and facilities to address the projected impacts.

9 (10) A school district that is not a large school district may adopt a school facility plan as de-
 10 scribed in this section in consultation with an affected city or county.

11 (11) The capacity of a school facility is not the basis for a development moratorium under ORS
 12 197.505 to 197.540.

13 (12) This section does not confer any power to a school district to declare a building morato-
 14 rium.

15 (13) A city or county may deny an application for residential development based on a lack of
 16 school capacity if:

17 (a) The issue is raised by the school district;

18 (b) The lack of school capacity is based on a school facility plan formally adopted under this
 19 section; and

20 (c) The city or county has considered options to address school capacity.

21 **SECTION 13.** ORS 195.145 is amended to read:

22 195.145. (1) To ensure that the supply of land available for urbanization is maintained,[:]

23 [(a)] local governments may cooperatively designate lands outside urban growth boundaries as
 24 urban reserves subject to ORS 197.610 to 197.625.

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

29 (2)(a) The Land Conservation and Development Commission may require a local government to
 30 designate an urban reserve pursuant to subsection [(1)(a)] (1) of this section during its periodic re-
 31 view in accordance with the conditions for periodic review under ORS 197.628.

32 (b) Notwithstanding paragraph (a) of this subsection, the commission may require a local gov-
 33 ernment to designate an urban reserve pursuant to subsection [(1)(a)] (1) of this section outside of
 34 its periodic review if:

35 (A) The local government is located inside a Primary Metropolitan Statistical Area or a Met-
 36ropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

37 (B) The local government has been required to designate an urban reserve by rule prior to No-
 38 vember 4, 1993.

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

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

43 (b) The commission shall provide to local governments a list of options, rather than prescribing
 44 a single planning technique, to ensure the efficient transition from rural to urban use in urban re-
 45 serves.

1 (4) As used in this section, “urban reserve” means land outside an urban growth bound-
 2 ary that will provide for:

3 (a) Future expansion over a long-term period; and

4 (b) The cost-effective provision of public facilities and services within the area when the
 5 lands are included within the urban growth boundary.

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

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

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

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

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

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

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

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

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

25 **SECTION 14.** ORS 197.015 is amended to read:

26 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

27 (1) “Acknowledgment” means a commission order that certifies that a comprehensive plan and
 28 land use regulations, land use regulation or plan or regulation amendment complies with the goals
 29 or certifies that [Metro] **regional** land use planning goals and objectives, Metro regional framework
 30 plan, amendments to [Metro] **regional** planning goals and objectives or amendments to the Metro
 31 regional framework plan comply with the goals.

32 (2) “Board” means the Land Use Board of Appeals.

33 (3) “Carport” means a stationary structure consisting of a roof with its supports and not more
 34 than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

35 (4) “Commission” means the Land Conservation and Development Commission.

36 (5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement
 37 of the governing body of a local government that interrelates all functional and natural systems and
 38 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
 39 portation systems, educational facilities, recreational facilities, and natural resources and air and
 40 water quality management programs. “Comprehensive” means all-inclusive, both in terms of the
 41 geographic area covered and functional and natural activities and systems occurring in the area
 42 covered by the plan. “General nature” means a summary of policies and proposals in broad catego-
 43 ries and does not necessarily indicate specific locations of any area, activity or use. A plan is “co-
 44 ordinated” when the needs of all levels of governments, semipublic and private agencies and the
 45 citizens of Oregon have been considered and accommodated as much as possible. “Land” includes

1 water, both surface and subsurface, and the air.

2 (6) "Department" means the Department of Land Conservation and Development.

3 (7) "Director" means the Director of the Department of Land Conservation and Development.

4 (8) "Goals" means the mandatory statewide land use planning standards adopted by the com-
5 mission pursuant to ORS chapters 195, 196 and 197.

6 (9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation,
7 adoption and implementation of comprehensive plans in compliance with goals and to aid state
8 agencies and special districts in the preparation, adoption and implementation of plans, programs
9 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
10 agencies, cities, counties and special districts to a single approach.

11 (10) "Land use decision":

12 (a) Includes:

13 (A) A final decision or determination made by a local government or special district that con-
14 cerns the adoption, amendment or application of:

15 (i) The goals;

16 (ii) A comprehensive plan provision;

17 (iii) A land use regulation; or

18 (iv) A new land use regulation;

19 (B) A final decision or determination of a state agency other than the commission with respect
20 to which the agency is required to apply the goals; or

21 (C) A decision of a county planning commission made under ORS 433.763;

22 (b) Does not include a decision of a local government:

23 (A) That is made under land use standards that do not require interpretation or the exercise
24 of policy or legal judgment;

25 (B) That approves or denies a building permit issued under clear and objective land use stan-
26 dards;

27 (C) That is a limited land use decision;

28 (D) That determines final engineering design, construction, operation, maintenance, repair or
29 preservation of a transportation facility that is otherwise authorized by and consistent with the
30 comprehensive plan and land use regulations;

31 (E) That is an expedited land division as described in ORS 197.360;

32 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal
33 of a liquefied petroleum gas container or receptacle regulated exclusively by the State Fire Marshal
34 under ORS 480.410 to 480.460;

35 (G) That approves or denies approval of a final subdivision or partition plat or that determines
36 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or
37 partition plan; or

38 (H) That a proposed state agency action subject to ORS 197.180 (1) is compatible with the ac-
39 knowledged comprehensive plan and land use regulations implementing the plan, if:

40 (i) The local government has already made a land use decision authorizing a use or activity that
41 encompasses the proposed state agency action;

42 (ii) The use or activity that would be authorized, funded or undertaken by the proposed state
43 agency action is allowed without review under the acknowledged comprehensive plan and land use
44 regulations implementing the plan; or

45 (iii) The use or activity that would be authorized, funded or undertaken by the proposed state

1 agency action requires a future land use review under the acknowledged comprehensive plan and
 2 land use regulations implementing the plan;

3 (c) Does not include a decision by a school district to close a school;

4 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or
 5 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120
 6 hours in any three-month period; and

7 (e) Does not include:

8 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

9 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
 10 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179; or

11 (C) A state agency action subject to ORS 197.180 (1), if:

12 (i) The local government with land use jurisdiction over a use or activity that would be au-
 13 thorized, funded or undertaken by the state agency as a result of the state agency action has already
 14 made a land use decision approving the use or activity; or

15 (ii) A use or activity that would be authorized, funded or undertaken by the state agency as a
 16 result of the state agency action is allowed without review under the acknowledged comprehensive
 17 plan and land use regulations implementing the plan.

18 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-
 19 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
 20 implementing a comprehensive plan.

21 (12) "Limited land use decision":

22 (a) Means a final decision or determination made by a local government pertaining to a site
 23 within an urban growth boundary that concerns:

24 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS
 25 92.040 (1).

26 (B) The approval or denial of an application based on discretionary standards designed to reg-
 27 ulate the physical characteristics of a use permitted outright, including but not limited to site re-
 28 view and design review.

29 (b) Does not mean a final decision made by a local government pertaining to a site within an
 30 urban growth boundary that concerns approval or denial of a final subdivision or partition plat or
 31 that determines whether a final subdivision or partition plat substantially conforms to the tentative
 32 subdivision or partition plan.

33 (13) "Local government" means any city, county or metropolitan service district formed under
 34 ORS chapter 268 or an association of local governments performing land use planning functions
 35 under ORS 195.025.

36 (14) "Metro" means a metropolitan service district organized under ORS chapter 268 **for the**
 37 **Portland metropolitan area.**

38 [(15) "Metro planning goals and objectives" means the land use goals and objectives that a metro-
 39 politan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute
 40 a comprehensive plan.]

41 [(16)] (15) "Metro regional framework plan" means the regional framework plan required by the
 42 1992 Metro Charter or its separate components. [Neither the regional framework plan nor its indi-
 43 vidual components constitute a comprehensive plan.]

44 [(17)] (16) "New land use regulation" means a land use regulation other than an amendment to
 45 an acknowledged land use regulation adopted by a local government that already has a compre-

1 comprehensive plan and land regulations acknowledged under ORS 197.251.

2 [(18)] (17) "Person" means any individual, partnership, corporation, association, governmental
 3 subdivision or agency or public or private organization of any kind. The Land Conservation and
 4 Development Commission or its designee is considered a person for purposes of appeal under ORS
 5 chapters 195 and 197.

6 (18) **"Regional planning goals and objectives" means the land use goals and objectives**
 7 **adopted by a metropolitan service district under ORS 268.380.**

8 (19) "Special district" means any unit of local government, other than a city, county, metropol-
 9 itan service district formed under ORS chapter 268 or an association of local governments per-
 10 forming land use planning functions under ORS 195.025, authorized and regulated by statute and
 11 includes but is not limited to water control districts, domestic water associations and water coop-
 12 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,
 13 school districts, hospital districts, mass transit districts and sanitary districts.

14 (20) "Urban unincorporated community" means an area designated in a county's acknowledged
 15 comprehensive plan as an urban unincorporated community after December 5, 1994.

16 (21) "Voluntary association of local governments" means a regional planning agency in this
 17 state officially designated by the Governor pursuant to the federal Office of Management and Budget
 18 Circular A-95 as a regional clearinghouse.

19 (22) "Wetlands" means those areas that are inundated or saturated by surface or ground water
 20 at a frequency and duration that are sufficient to support, and that under normal circumstances do
 21 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

22 **SECTION 15.** ORS 197.254 is amended to read:

23 197.254. (1) A state agency [shall be] **is** barred after the date set for submission of programs by
 24 the Land Conservation and Development Commission as provided in ORS 197.180 (4), from contesting
 25 a request for acknowledgment submitted by a local government under ORS 197.251 or from filing
 26 an appeal under ORS 197.620 (1) or (2), if the commission finds that:

27 (a) The state agency has not complied with ORS 197.180; or

28 (b) The state agency has not coordinated its plans, programs or rules affecting land use with the
 29 comprehensive plan or land use regulations of the city or county pursuant to a coordination program
 30 approved by the commission under ORS 197.180.

31 (2) A state agency [shall be] **is** barred from seeking a commission order under ORS 197.644 re-
 32 quiring amendment of a local government comprehensive plan or land use regulation in order to
 33 comply with the agency's plan or program unless the agency has first requested the amendment from
 34 the local government and has had its request denied.

35 (3) A special district [shall be] **is** barred from contesting a request for initial compliance ac-
 36 knowledgment submitted by a local government under ORS 197.251 or from filing an appeal under
 37 ORS 197.620 (1) or (2), if the county [or Metropolitan Service District] assigned coordinative functions
 38 under ORS 195.025 (1) finds that:

39 (a) The special district has not entered into a cooperative agreement under ORS 195.020; or

40 (b) The special district has not coordinated its plans, programs or regulations affecting land use
 41 with the comprehensive plan or land use regulations of the local government pursuant to its coop-
 42 erative agreement made under ORS 195.020.

43 (4) A special district [shall be] **is** barred from seeking a commission order under ORS 197.644
 44 requiring amendment of a local government comprehensive plan or land use regulation in order to
 45 comply with the special district's plan or program unless the special district has first requested the

1 amendment from the local government and has had its request denied.

2 **SECTION 16.** ORS 197.296 is amended to read:

3 197.296. (1)(a) The provisions of this section apply to [*metropolitan service district regional*
4 *framework plans and*] local government comprehensive plans for lands within the urban growth
5 boundary of a city that [*is located outside of a metropolitan service district and*] has a population of
6 25,000 or more.

7 (b) The Land Conservation and Development Commission may establish a set of factors under
8 which additional cities are subject to the provisions of this section. In establishing the set of factors
9 required under this paragraph, the commission shall consider the size of the city, the rate of popu-
10 lation growth of the city or the proximity of the city to another city with a population of 25,000 or
11 more or to a metropolitan service district.

12 (2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of
13 the comprehensive plan [*or regional plan*] that concerns the urban growth boundary and requires the
14 application of a statewide planning goal relating to buildable lands for residential use, a local gov-
15 ernment shall demonstrate that its comprehensive plan [*or regional plan*] provides sufficient
16 buildable lands within the urban growth boundary established pursuant to statewide planning goals
17 to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the
18 date initially scheduled for completion of the periodic or legislative review.

19 (3) In performing the duties under subsection (2) of this section, a local government shall:

20 (a) Inventory the supply of buildable lands within the urban growth boundary and determine the
21 housing capacity of the buildable lands; and

22 (b) Conduct an analysis of housing need by type and density range, in accordance with ORS
23 197.303 and statewide planning goals and rules relating to housing, to determine the number of units
24 and amount of land needed for each needed housing type for the next 20 years.

25 (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, “buildable
26 lands” includes:

27 (A) Vacant lands planned or zoned for residential use;

28 (B) Partially vacant lands planned or zoned for residential use;

29 (C) Lands that may be used for a mix of residential and employment uses under the existing
30 planning or zoning; and

31 (D) Lands that may be used for residential infill or redevelopment.

32 (b) For the purpose of the inventory and determination of housing capacity described in sub-
33 section (3)(a) of this section, the local government must demonstrate consideration of:

34 (A) The extent that residential development is prohibited or restricted by local regulation and
35 ordinance, state law and rule or federal statute and regulation;

36 (B) A written long term contract or easement for radio, telecommunications or electrical facili-
37 ties, if the written contract or easement is provided to the local government; and

38 (C) The presence of a single family dwelling or other structure on a lot or parcel.

39 (c) Except for land that may be used for residential infill or redevelopment, a local government
40 shall create a map or document that may be used to verify and identify specific lots or parcels that
41 have been determined to be buildable lands.

42 (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of
43 housing capacity and need pursuant to subsection (3) of this section must be based on data relating
44 to land within the urban growth boundary that has been collected since the last periodic review or
45 five years, whichever is greater. The data shall include:

1 (A) The number, density and average mix of housing types of urban residential development that
2 have actually occurred;

3 (B) Trends in density and average mix of housing types of urban residential development;

4 (C) Demographic and population trends;

5 (D) Economic trends and cycles; and

6 (E) The number, density and average mix of housing types that have occurred on the buildable
7 lands described in subsection (4)(a) of this section.

8 (b) A local government shall make the determination described in paragraph (a) of this sub-
9 section using a shorter time period than the time period described in paragraph (a) of this subsection
10 if the local government finds that the shorter time period will provide more accurate and reliable
11 data related to housing capacity and need. The shorter time period may not be less than three years.

12 (c) A local government shall use data from a wider geographic area or use a time period for
13 economic cycles and trends longer than the time period described in paragraph (a) of this subsection
14 if the analysis of a wider geographic area or the use of a longer time period will provide more ac-
15 curate, complete and reliable data relating to trends affecting housing need than an analysis per-
16 formed pursuant to paragraph (a) of this subsection. The local government must clearly describe the
17 geographic area, time frame and source of data used in a determination performed under this para-
18 graph.

19 (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than
20 the housing capacity determined pursuant to subsection (3)(a) of this section, the local government
21 shall take one or more of the following actions to accommodate the additional housing need:

22 (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate
23 housing needs for the next 20 years. As part of this process, the local government shall consider the
24 effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include
25 sufficient land reasonably necessary to accommodate the siting of new public school facilities. The
26 need and inclusion of lands for new public school facilities shall be a coordinated process between
27 the affected public school districts and the local government that has the authority to approve the
28 urban growth boundary;

29 (b) Amend its comprehensive plan[, *regional plan, functional plan*] or land use regulations to in-
30 clude new measures that demonstrably increase the likelihood that residential development will oc-
31 cur at densities sufficient to accommodate housing needs for the next 20 years without expansion
32 of the urban growth boundary. A local government [*or metropolitan service district*] that takes this
33 action shall monitor and record the level of development activity and development density by hous-
34 ing type following the date of the adoption of the new measures; or

35 (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

36 (7) Using the analysis conducted under subsection (3)(b) of this section, the local government
37 shall determine the overall average density and overall mix of housing types at which residential
38 development of needed housing types must occur in order to meet housing needs over the next 20
39 years. If that density is greater than the actual density of development determined under subsection
40 (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined
41 under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall
42 adopt measures that demonstrably increase the likelihood that residential development will occur
43 at the housing types and density and at the mix of housing types required to meet housing needs
44 over the next 20 years.

45 (8)(a) A local government [*outside a metropolitan service district*] that takes any actions under

1 subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use
 2 regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to
 3 197.314.

4 (b) The local government shall determine the density and mix of housing types anticipated as a
 5 result of actions taken under subsections (6) and (7) of this section and monitor and record the ac-
 6 tual density and mix of housing types achieved. The local government shall compare actual and
 7 anticipated density and mix. The local government shall submit its comparison to the commission
 8 at the next periodic review or at the next legislative review of its urban growth boundary, which-
 9 ever comes first.

10 (9) In establishing that actions and measures adopted under subsections (6) or (7) of this section
 11 demonstrably increase the likelihood of higher density residential development, the local government
 12 shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the
 13 housing types identified under subsection (3) of this section and is zoned at density ranges that are
 14 likely to be achieved by the housing market using the analysis in subsection (3) of this section.
 15 Actions or measures, or both, may include but are not limited to:

- 16 (a) Increases in the permitted density on existing residential land;
- 17 (b) Financial incentives for higher density housing;
- 18 (c) Provisions permitting additional density beyond that generally allowed in the zoning district
 19 in exchange for amenities and features provided by the developer;
- 20 (d) Removal or easing of approval standards or procedures;
- 21 (e) Minimum density ranges;
- 22 (f) Redevelopment and infill strategies;
- 23 (g) Authorization of housing types not previously allowed by the plan or regulations;
- 24 (h) Adoption of an average residential density standard; and
- 25 (i) Rezoning or redesignation of nonresidential land.

26 **SECTION 17.** ORS 197.298 is amended to read:

27 197.298. (1) In addition to any requirements established by rule addressing urbanization, land
 28 may not be included within an urban growth boundary except under the following priorities:

29 (a) First priority is land that is designated urban reserve land under ORS 195.145[,] **or** rule [*or*
 30 *metropolitan service district action plan*].

31 (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of
 32 land needed, second priority is land adjacent to an urban growth boundary that is identified in an
 33 acknowledged comprehensive plan as an exception area or nonresource land. Second priority may
 34 include resource land that is completely surrounded by exception areas unless such resource land
 35 is high-value farmland as described in ORS 215.710.

36 (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the
 37 amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247
 38 (1991 Edition).

39 (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the
 40 amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan
 41 for agriculture or forestry, or both.

42 (2) Higher priority shall be given to land of lower capability as measured by the capability
 43 classification system or by cubic foot site class, whichever is appropriate for the current use.

44 (3) Land of lower priority under subsection (1) of this section may be included in an urban
 45 growth boundary if land of higher priority is found to be inadequate to accommodate the amount

1 of land estimated in subsection (1) of this section for one or more of the following reasons:

2 (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority
3 lands;

4 (b) Future urban services could not reasonably be provided to the higher priority lands due to
5 topographical or other physical constraints; or

6 (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion
7 of lower priority lands in order to include or to provide services to higher priority lands.

8 **SECTION 18.** ORS 197.313 is amended to read:

9 197.313. Nothing in ORS 197.312 or in the amendments to ORS 197.295[, 197.303,] **and** 197.307
10 by sections 1[, 2] and 3, chapter 795, Oregon Laws 1983, shall be construed to require a city or
11 county to contribute to the financing, administration or sponsorship of government assisted housing.

12 **SECTION 19.** ORS 197.314 is amended to read:

13 197.314. (1) Notwithstanding ORS 197.296, 197.298, [197.299, 197.301, 197.302,] 197.303, 197.307,
14 197.312 and 197.313, within urban growth boundaries each city and county shall amend its compre-
15 hensive plan and land use regulations for all land zoned for single-family residential uses to allow
16 for siting of manufactured homes as defined in ORS 446.003. A local government may only subject
17 the siting of a manufactured home allowed under this section to regulation as set forth in ORS
18 197.307 (5).

19 (2) Cities and counties shall adopt and amend comprehensive plans and land use regulations
20 under subsection (1) of this section according to the provisions of ORS 197.610 to 197.650.

21 (3) Subsection (1) of this section does not apply to any area designated in an acknowledged
22 comprehensive plan or land use regulation as a historic district or residential land immediately ad-
23 jacent to a historic landmark.

24 (4) Manufactured homes on individual lots zoned for single-family residential use in subsection
25 (1) of this section shall be in addition to manufactured homes on lots within designated manufac-
26 tured dwelling subdivisions.

27 (5) Within any residential zone inside an urban growth boundary where a manufactured dwelling
28 park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot
29 size for a manufactured dwelling park that is larger than one acre.

30 (6) A city or county may adopt the following standards for the approval of manufactured homes
31 located in manufactured dwelling parks that are smaller than three acres:

32 (a) The manufactured home shall have a pitched roof, except that no standard shall require a
33 slope of greater than a nominal three feet in height for each 12 feet in width.

34 (b) The manufactured home shall have exterior siding and roofing that, in color, material and
35 appearance, is similar to the exterior siding and roofing material commonly used on residential
36 dwellings within the community or that is comparable to the predominant materials used on sur-
37 rounding dwellings as determined by the local permit approval authority.

38 (7) This section shall not be construed as abrogating a recorded restrictive covenant.

39 **SECTION 20.** ORS 197.319 is amended to read:

40 197.319. (1) Before a person may request adoption of an enforcement order under ORS 197.320,
41 the person shall:

42 (a) Present the reasons, in writing, for such an order to the affected local government; and

43 (b) Request:

44 (A) Revisions to the local comprehensive plan, land use regulations, special district cooperative
45 or urban service agreement or decision-making process which is the basis for the order; or

1 (B) That an action be taken regarding the local comprehensive plan, land use regulations, spe-
 2 cial district agreement or decision-making process that is the basis for the order.

3 (2)(a) The local government or special district shall issue a written response to the request
 4 within 60 days of the date the request is mailed to the local government or special district.

5 (b) The requestor and the local government or special district may enter into mediation to re-
 6 solve issues in the request. The Department of Land Conservation and Development shall provide
 7 mediation services when jointly requested by the local government or special district and the
 8 requestor.

9 (c) If the local government or special district does not act in a manner which the requestor
 10 believes is adequate to address the issues raised in the request within the time period provided in
 11 paragraph (a) of this subsection, a petition may be presented to the Land Conservation and Devel-
 12 opment Commission under ORS 197.324.

13 *[(3) A metropolitan service district may request an enforcement order under ORS 197.320 (12)*
 14 *without first complying with subsections (1) and (2) of this section.]*

15 **SECTION 21.** ORS 197.320 is amended to read:

16 197.320. The Land Conservation and Development Commission shall issue an order requiring a
 17 local government, state agency or special district to take action necessary to bring its compre-
 18 hensive plan, land use regulation, limited land use decisions or other land use decisions into compliance
 19 with the goals, acknowledged comprehensive plan provisions or land use regulations if the commis-
 20 sion has good cause to believe:

21 (1) A comprehensive plan or land use regulation adopted by a local government not on a com-
 22 pliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for
 23 such compliance;

24 (2) A plan, program, rule or regulation affecting land use adopted by a state agency or special
 25 district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such
 26 compliance;

27 (3) A local government is not making satisfactory progress toward performance of its compliance
 28 schedule;

29 (4) A state agency is not making satisfactory progress in carrying out its coordination agree-
 30 ment or the requirements of ORS 197.180;

31 (5) A local government has no comprehensive plan or land use regulation and is not on a com-
 32 pliance schedule directed to developing the plan or regulation;

33 (6) A local government has engaged in a pattern or practice of decision making that violates
 34 an acknowledged comprehensive plan or land use regulation. In making its determination under this
 35 subsection, the commission shall determine whether there is evidence in the record to support the
 36 decisions made. The commission shall not judge the issue solely upon adequacy of the findings in
 37 support of the decisions;

38 (7) A local government has failed to comply with a commission order entered under ORS 197.644;

39 (8) A special district has engaged in a pattern or practice of decision-making that violates an
 40 acknowledged comprehensive plan or cooperative agreement adopted pursuant to ORS 197.020;

41 (9) A special district is not making satisfactory progress toward performance of its obligations
 42 under ORS chapters 195 and 197;

43 (10) A local government is applying approval standards, special conditions on approval of spe-
 44 cific development proposals or procedures for approval that do not comply with ORS 197.307 (6); or

45 (11) A local government is not making satisfactory progress toward meeting its obligations un-

1 der ORS 195.065.

2 [(12) A local government within the jurisdiction of a metropolitan service district has failed to make
3 changes to the comprehensive plan or land use regulations to comply with the regional framework plan
4 of the district or has engaged in a pattern or practice of decision-making that violates a requirement
5 of the regional framework plan.]

6 **SECTION 22.** ORS 197.626 is amended to read:

7 197.626. [A metropolitan service district that amends its urban growth boundary to include more
8 than 100 acres, or that amends the district's regional framework plan or land use regulations imple-
9 menting the plan to establish urban reserves designated under ORS 195.145 (1)(b),] A city with a
10 population of 2,500 or more within its urban growth boundary that amends the urban growth
11 boundary to include more than 50 acres or that designates urban reserve under ORS 195.145[, or a
12 county that amends the county's comprehensive plan or land use regulations implementing the plan to
13 establish rural reserves designated under ORS 195.141,] shall submit the amendment or designation
14 to the Land Conservation and Development Commission in the manner provided for periodic review
15 under ORS 197.628 to 197.650.

16 **SECTION 23.** ORS 197.651 is amended to read:

17 197.651. (1) Notwithstanding ORS 197.650, a Land Conservation and Development Commission
18 order concerning the designation of urban reserves under ORS 195.145 [(1)(b) or rural reserves under
19 ORS 195.141] may be appealed to the Court of Appeals by the persons described in ORS 197.650.

20 (2) Judicial review of orders described in subsection (1) of this section is as provided in this
21 section.

22 (3) Jurisdiction for judicial review is conferred upon the Court of Appeals. A proceeding for ju-
23 dicial review may be instituted by filing a petition in the Court of Appeals. The petition must be
24 filed within 21 days after the date the commission delivered or mailed the order upon which the
25 petition is based.

26 (4) The filing of the petition, as set forth in subsection (3) of this section, and service of a peti-
27 tion on the persons who submitted oral or written testimony in the proceeding before the commis-
28 sion are jurisdictional and may not be waived or extended.

29 (5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies
30 of the petition must be served by registered or certified mail upon the commission and the persons
31 who submitted oral or written testimony in the proceeding before the commission.

32 (6) Within 21 days after service of the petition, the commission shall transmit to the Court of
33 Appeals the original or a certified copy of the entire record of the proceeding under review. How-
34 ever, by stipulation of the parties to the review proceeding, the record may be shortened. The Court
35 of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the addi-
36 tional costs. The Court of Appeals may require or permit subsequent corrections or additions to the
37 record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost
38 of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the
39 costs to a party that files a frivolous petition for judicial review.

40 (7) Petitions and briefs must be filed within time periods and in a manner established by the
41 Court of Appeals by rule.

42 (8) The Court of Appeals shall:

43 (a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court
44 of Appeals determines that the ends of justice served by holding oral argument on a later day out-
45 weigh the best interests of the public and the parties. However, the Court of Appeals may not hold

1 oral argument more than 49 days after the date of transmittal of the record because of general
 2 congestion of the court calendar or lack of diligent preparation or attention to the case by a member
 3 of the court or a party.

4 (b) Set forth in writing and provide to the parties a determination to hear oral argument more
 5 than 49 days from the date the record is transmitted, together with the reasons for the determi-
 6 nation. The Court of Appeals shall schedule oral argument as soon as is practicable.

7 (c) Consider, in making a determination under paragraph (b) of this subsection:

8 (A) Whether the case is so unusual or complex, due to the number of parties or the existence
 9 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
 10 the case and for the Court of Appeals to prepare for oral argument; and

11 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
 12 riage of justice.

13 (9) The court:

14 (a) Shall limit judicial review of an order reviewed under this section to the record.

15 (b) May not substitute its judgment for that of the Land Conservation and Development Com-
 16 mission as to an issue of fact.

17 (10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section.
 18 The Court of Appeals shall reverse or remand the order only if the court finds the order is:

19 (a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal
 20 or remand unless the Court of Appeals determines that substantial rights of the petitioner were
 21 prejudiced.

22 (b) Unconstitutional.

23 (c) Not supported by substantial evidence in the whole record as to facts found by the commis-
 24 sion.

25 (11) The Court of Appeals shall issue a final order on the petition for judicial review with the
 26 greatest possible expediency.

27 (12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court,
 28 the commission shall respond to the court's appellate judgment within 30 days.

29 **SECTION 24.** ORS 199.705 is amended to read:

30 199.705. In ORS 199.705 to 199.795:

31 (1) "City-county" means a city incorporated under ORS 199.705 to 199.795 and having both city
 32 and county functions.

33 (2) "City in the county" means a city having more than 50 percent of its population in the
 34 county.

35 (3) "Most populous city" means a city of not less than 300,000 population.

36 (4) "Unincorporated area" means the area of unincorporated territory within the county [*that*
 37 *is outside the urban growth boundary adopted under ORS 268.390*].

38 **SECTION 25.** ORS 221.034 is amended to read:

39 221.034. (1) As used in this section:

40 (a) "Neighboring city" means a city that has any part of its territory situated within three miles
 41 of the area proposed to be incorporated.

42 (b) "Rural unincorporated community" means a settlement with a boundary identified in an ac-
 43 knowledged comprehensive plan of a county and that:

44 (A) Is made up primarily of lands subject to an exception to statewide planning goals related to
 45 agricultural lands or forestlands;

1 (B) Either was identified in the acknowledged comprehensive plan of a county as a “rural com-
 2 munity,” “service center,” “rural center,” “resort community” or similar term before October 28,
 3 1994, or is listed in the Department of Land Conservation and Development’s “Survey of Oregon
 4 Unincorporated Communities” (January 30, 1997);

5 (C) Lies outside the urban growth boundary of a city [*or a metropolitan service district*]; and

6 (D) Is not incorporated as a city.

7 (c) “Urban reserve” has the meaning given that term in ORS [195.137] **195.145**.

8 (d) “Urban services” has the meaning given that term in ORS 195.065.

9 (2) When any of the area proposed to be incorporated as a city lies within an urbanized area,
 10 but outside the urban growth boundary of a city [*or a metropolitan service district*]:

11 (a) The area proposed to be incorporated must also be located entirely within a designated rural
 12 unincorporated community and contiguous lands subject to an exception to statewide planning goals
 13 related to agricultural lands or forestlands.

14 (b) The petition required by ORS 221.031 must be accompanied by an affidavit, signed by a chief
 15 petitioner, stating that:

16 (A) Ten percent of the electors registered within the area proposed for incorporation favor the
 17 incorporation; and

18 (B) The chief petitioners have engaged the neighboring cities in discussions concerning the ef-
 19 fects of the proposed incorporation, including discussions specifically relating to how those cities
 20 and the proposed city will allow for expansion of urban growth boundaries and, where applicable,
 21 for creation or expansion of urban reserves.

22 (c) The economic feasibility statement required by ORS 221.035 must:

23 (A) Indicate that the proposed city must plan for and provide urban services in a cost-effective
 24 manner at the minimum level adequate to meet current needs and projected growth;

25 (B) Contain a proposed permanent rate limit for operating taxes to provide revenues for urban
 26 services; and

27 (C) Indicate that the proposed city must plan for residential development at or above the same
 28 urban density planned for an existing city, within the county, that has a similar geographic area
 29 within the existing city’s urban growth boundary or, for a proposed city within three miles of
 30 Metro’s boundary, a minimum urban residential density in accordance with a statewide planning
 31 goal and rules pertaining to needed housing for cities within Metro’s urban growth boundary.

32 (d) If the proposed city will be required to complete a public facility plan and a transportation
 33 systems plan, the proposed city must demonstrate the ability to provide urban services to meet
 34 current needs and projected growth. The proposed city may meet this requirement, in whole or in
 35 part, by establishing an agreement in principle with a city or a district, as defined in ORS 195.060,
 36 to provide the urban services.

37 (3) If the governing body of a neighboring city determines that the proposed incorporation ad-
 38 versely affects that city, the governing body may ask the county court with which the petition for
 39 incorporation was filed to reject the petition and terminate the incorporation proceedings. The ob-
 40 jections by the city to the incorporation shall be heard and considered by the county court at a
 41 public hearing held under ORS 221.040.

42 (4) If, at the hearing held under ORS 221.040, the county court finds that any of the require-
 43 ments of subsection (2) of this section are not met or that the proposed incorporation will adversely
 44 affect a neighboring city, the county court shall provide by order for the termination of the incor-
 45 poration proceedings. The order shall contain the findings of the county court relating to the pro-

1 posed incorporation and the reasons for terminating the incorporation proceedings.

2 (5) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals shall re-
 3 view, upon the petition of a party to the incorporation proceedings, the order of the county court
 4 under subsection (4) of this section.

5 **SECTION 26.** Section 6, chapter 844, Oregon Laws 2005, is amended to read:

6 **Sec. 6.** An area of land within the urban growth boundary of the metropolitan service district
 7 established in the Portland metropolitan area, **as the urban growth boundary existed on Sep-**
 8 **tember 2, 2005**, may not be annexed under ORS 222.750 if:

9 (1) The area of land is larger than seven acres and is zoned for industrial use;

10 (2) The land is owned by an Oregon-based business entity that has been in continuous operation,
 11 either directly or through a predecessor, for at least 60 years; and

12 (3) The business entity employs more than 500 individuals on the land.

13 **SECTION 27.** Section 7, chapter 844, Oregon Laws 2005, is amended to read:

14 **Sec. 7.** An area of land within the urban growth boundary of the metropolitan service district
 15 established in the Portland metropolitan area, **as the urban growth boundary existed on Sep-**
 16 **tember 2, 2005**, may not be annexed under ORS 222.750 if:

17 (1) The area of land is larger than 14 acres and is zoned for industrial use;

18 (2) The land is owned by an Oregon-based business entity that has been in continuous operation
 19 on a portion of the land for at least 40 years; and

20 (3) The business entity employs more than 300 individuals on the land.

21 **SECTION 28.** ORS 285C.500, as amended by section 1, chapter 595, Oregon Laws 2005, is
 22 amended to read:

23 285C.500. As used in ORS 285C.500 to 285C.506:

24 (1) "Business firm" has the meaning given that term in ORS 285C.050.

25 (2) "County per capita personal income" means the per capita personal income level published
 26 by the Bureau of Economic Analysis of the United States Department of Commerce for a county.

27 (3) "County unemployment rate" means the most recently available unemployment rate for the
 28 county, as determined by the Employment Department.

29 (4) "Facility" means the land, real property improvements and personal property that are used
 30 by a business firm to conduct business operations, and that are the subject of an application for
 31 preliminary certification under ORS 285C.503 or annual certification under ORS 285C.506.

32 (5) "Qualified location" means any area that is:

33 (a) Zoned for industrial use or is within the urban growth boundary of a city that has 15,000 or
 34 fewer residents; and

35 (b) Located in a county that, during either of the two years preceding the date an application
 36 for preliminary certification is filed under ORS 285C.503, had both:

37 (A) A county unemployment rate that was in the top half of county unemployment rates in this
 38 state; and

39 (B) A county per capita personal income that was in the bottom half of county per capita per-
 40 sonal incomes in this state.

41 (6) "Urban growth boundary" means an urban growth boundary contained in a city or county
 42 comprehensive plan that has been acknowledged by the Land Conservation and Development Com-
 43 mission pursuant to ORS 197.251 [*or an urban growth boundary that has been adopted by a metro-*
 44 *politan service district under ORS 268.390 (3)*].

45 **SECTION 29.** ORS 308A.350 is amended to read:

1 308A.350. As used in ORS 308A.350 to 308A.383:

2 (1) "Owner" means the party or parties having the fee interest in land, except that where land
3 is subject to a real estate sales contract, "owner" means the contract vendee under a recorded
4 contract.

5 (2) "Department" means the State Department of Fish and Wildlife.

6 (3) "Designated riparian land" means the beds of streams, the adjacent vegetation communities,
7 and the land thereunder, which are predominantly influenced by their association with water, not
8 to extend more than 100 feet landward of the line of nonaquatic vegetation, which are privately
9 owned and which qualify for exemption under ORS 308A.350 to 308A.383.

10 (4) "Urban growth boundary" means an urban growth boundary contained in a city or county
11 comprehensive plan that has been acknowledged by the Land Conservation and Development Com-
12 mission pursuant to ORS 197.251 [*or an urban growth boundary that has been adopted by a metro-*
13 *politan service district council under ORS 268.390 (3)*].

14 **SECTION 30.** ORS 308A.700 is amended to read:

15 308A.700. As used in ORS 308A.700 to 308A.733:

16 (1) "Disqualification" includes the removal of forestland designation under ORS 321.359, 321.712,
17 321.716 or 321.842.

18 (2) "Urban growth boundary" means an urban growth boundary contained in a city or county
19 comprehensive plan that has been acknowledged by the Land Conservation and Development Com-
20 mission pursuant to ORS 197.251 [*or an urban growth boundary that has been adopted by a metro-*
21 *politan service district under ORS 268.390 (3)*].

22 **SECTION 31.** ORS 451.010 is amended to read:

23 451.010. (1) Master plans and service districts may be established as provided by this chapter
24 regarding:

25 (a) Sewage works, including all facilities necessary for collecting, pumping, treating and dispos-
26 ing of sanitary or storm sewage.

27 (b) Drainage works, including all facilities necessary for collecting, pumping and disposing of
28 storm and surface water.

29 (c) Street lighting works, including all facilities necessary for the lighting of streets and high-
30 ways.

31 (d) Public parks and recreation facilities, including land, structures, equipment, supplies and
32 personnel necessary to acquire, develop and maintain such public park and recreation facilities and
33 to administer a program of supervised recreation services.

34 (e) Diking and flood control works, including all facilities necessary for diking and control of
35 watercourses.

36 (f) Water supply works and service, including all facilities necessary for tapping natural sources
37 of domestic and industrial water, treating and protecting the quality of the water and transmitting
38 it to the point of sale to any person, city, domestic water supply corporation or other public or
39 private agency for domestic, municipal and industrial water supply service.

40 (g) Solid waste disposal. This paragraph does not apply in Clackamas, Multnomah and
41 Washington Counties.

42 (h) Public transportation, including public depots, public parking and the motor vehicles and
43 other equipment necessary for the transportation of persons together with their personal property.

44 (i) Agricultural educational extension services.

45 (j) Emergency medical services, including ambulance services.

- 1 (k) Library services.
- 2 (L) Roads.
- 3 (m) Emergency communications services, including a 9-1-1 emergency reporting system estab-
- 4 lished under ORS 403.115.
- 5 (n) Law enforcement services.
- 6 (o) Human services.
- 7 (p) Cemetery maintenance.
- 8 (q) Animal control.
- 9 (2) Within the geographical jurisdiction of any local government boundary commission estab-
- 10 lished by or pursuant to ORS 199.410 to 199.519, in addition to the purposes described in subsection
- 11 (1) of this section, master plans and service districts may be established as provided by this chapter
- 12 regarding:
 - 13 (a) Fire prevention and protection.
 - 14 (b) Hospital and ambulance services.
 - 15 (c) Vector control.
 - 16 (d) Weather modification.
- 17 (3) Within the boundaries of any subdivision, service districts may be established as provided
- 18 by this chapter regarding:
 - 19 (a) Fire prevention and protection.
 - 20 (b) Security services provided by contract with an association of homeowners whose property
 - 21 is located entirely within the boundaries of the service district, which services may include the
 - 22 enforcement of the rules or regulations of the association dealing with public access to or the use
 - 23 of the property of the association, routine patrolling and inspection of private areas located within
 - 24 the jurisdiction of the association and matters of traffic and safety within such areas.
 - 25 (c) Law enforcement services.
 - 26 (d) Hospital and ambulance services.
 - 27 (e) Vector control.
 - 28 (f) Activities set forth in subsection (1)(a), (f), (g), (j) and (m) of this section.
- 29 (4) As used in subsection (3) of this section, "subdivision" means a subdivision as defined by ORS
- 30 92.010 or any contiguous group of such subdivisions that:
 - 31 (a) Is a planned community within the meaning of ORS 94.550 without regard to whether such
 - 32 subdivision or group of subdivisions is subject to ORS 94.550 to 94.783;
 - 33 (b) Is located entirely within an unincorporated area and is everywhere separated by a distance
 - 34 of five miles or more from an urban growth boundary described in an acknowledged comprehensive
 - 35 plan of a city [*or the urban growth boundary adopted by a metropolitan service district under ORS*
 - 36 *268.390 (3)*]; and
 - 37 (c) Prior to the establishment of a service district under subsection (3) of this section, is desig-
 - 38 nated a subdivision for purposes of this subsection by the governing body of the county in which the
 - 39 subdivision or group of subdivisions is located.
- 40 (5) Within the boundaries of Washington County, master plans and service districts may be es-
- 41 tablished as provided by this chapter regarding water resource management services that affect the
- 42 quality and quantity of water within a single watershed, basin or planning area. As used in this
- 43 subsection, "water resource management services" means:
 - 44 (a) Planning for and provision of two or more services or facilities such as sewage works,
 - 45 drainage works, surface water management, endangered species recovery management, water quality

1 management, diking and flood control works, river flow management, water supply works,
 2 wastewater reuse and irrigation facilities.

3 (b) Activities ancillary to the services and facilities listed in paragraph (a) of this subsection,
 4 including facilities for the production, sale or purchase of energy when such facilities are integrated
 5 in a master plan adopted under ORS 451.120.

6 **SECTION 32.** ORS 459A.005 is amended to read:

7 459A.005. (1) As used in ORS 459.015, 459.250 and 459A.005 to 459A.665, the “opportunity to
 8 recycle” means at least that the city, county or metropolitan service district responsible for solid
 9 waste management:

10 (a)(A) Provides a place for collecting source separated recyclable material located either at a
 11 disposal site or at another location more convenient to the population being served and, if a city
 12 has a population of 4,000 or more, collection at least once a month of source separated recyclable
 13 material from collection service customers within the city’s urban growth boundary [*or, where ap-
 14 plicable, within the urban growth boundary established by a metropolitan service district*]; or

15 (B) Provides an alternative method which complies with rules of the Environmental Quality
 16 Commission; and

17 (b) Complies with the rates and program elements required under ORS 459A.010.

18 (2) The “opportunity to recycle” defined in subsection (1) of this section also includes a public
 19 education and promotion program that:

20 (a) Gives notice to each person of the opportunity to recycle; and

21 (b) Encourages source separation of recyclable material.

22 **SECTION 33.** ORS 459A.010 is amended to read:

23 459A.010. (1) It is the goal of the State of Oregon that:

24 (a) For the calendar year 2005, the amount of recovery from the general solid waste stream shall
 25 be at least 45 percent;

26 (b) For the calendar year 2009, the amount of recovery from the general solid waste stream shall
 27 be at least 50 percent;

28 (c) For the calendar year 2005 and subsequent years, that there be no annual increase in per
 29 capita municipal solid waste generation; and

30 (d) For the calendar year 2009 and subsequent years, that there be no annual increase in total
 31 municipal solid waste generation.

32 (2) In addition to the requirements of ORS 459A.005, the “opportunity to recycle” shall include
 33 the requirements of subsection (3) of this section using the following program elements:

34 (a) Provision of at least one durable recycling container to each residential service customer.

35 (b) On-route collection at least once each week of source separated recyclable material to resi-
 36 dential customers, provided on the same day that solid waste is collected from each customer.

37 (c) An expanded education and promotion program conducted to carry out the policy set forth
 38 in ORS 459.015, to inform solid waste generators of the manner and benefits of reducing, reusing,
 39 recycling and composting material and to promote use of recycling services. The city, county or
 40 metropolitan service district responsible for providing an opportunity to recycle under ORS 459A.005
 41 and this section shall provide the education and promotion program in either of the following two
 42 ways:

43 (A) Preparing and implementing an education and promotion plan that includes actions to ef-
 44 fectively reach solid waste generators and all new and existing collection service customers, as
 45 necessary to fulfill the intent of this paragraph. The plan shall be submitted to the Department of

1 Environmental Quality the first year that the plan is in effect. Thereafter, the wasteshed shall sub-
 2 mit a summary of activities in the plan to the Department of Environmental Quality at the same
 3 time the county submits the periodic report required under ORS 459A.050 (1)(a). The summary shall
 4 cover at least the time period until the next periodic report is due to the department.

5 (B) Implementing all of the following:

6 (i) Provision of recycling notification and education packets to all new residential, commercial
 7 and institutional collection service customers that include at a minimum the materials collected, the
 8 schedule for collection, the way to prepare materials for collection and the reasons persons should
 9 separate their material for recycling. The educational and promotional materials provided to com-
 10 mercial collection customers should be targeted to meet the needs of various types of businesses and
 11 should include reasons to recycle, including economic benefits, common barriers to recycling and
 12 solutions, additional resources for commercial generators of solid waste and other information de-
 13 signed to assist and encourage recycling efforts. The educational and promotional materials provided
 14 to commercial collection customers shall encourage each commercial collection customer to have a
 15 goal to achieve 50 percent recovery from its solid waste stream by the year 2009.

16 (ii) Provision of recycling information in a variety of formats and materials at least four times
 17 a calendar year to collection service customers that includes at a minimum the materials collected
 18 and the schedule for collection.

19 (iii) Provision at least annually to all residential, commercial and institutional collection service
 20 customers, of the information under sub-subparagraph (i) of this subparagraph.

21 (iv) Targeting of community and media events to promote recycling.

22 (d) Collection of at least four principal recyclable materials or the number of materials required
 23 to be collected under the residential on-route collection program, whichever is less, from each
 24 multifamily dwelling complex having five or more units. The multifamily collection program shall
 25 include promotion and education directed to the residents of the multifamily dwelling units.

26 (e) An effective residential yard debris collection and composting program that includes the
 27 promotion of home composting of yard debris, and that also includes either:

28 (A) Monthly or more frequent on-route collection of yard debris from residences for production
 29 of compost or other marketable products; or

30 (B) A system of yard debris collection depots conveniently located and open to the public at
 31 least once a week.

32 (f) A commercial recycling program that includes:

33 (A) Weekly, or on a more appropriate regular schedule, onsite collection of source separated
 34 principal recyclable materials from, at a minimum, commercial solid waste generators employing 10
 35 or more persons and occupying 1,000 square feet or more in a single location.

36 (B) An education and promotion program conducted to inform all commercial generators of solid
 37 waste of the manner and benefits of the commercial recycling program that provides effective pro-
 38 motion of the program to the generators.

39 (C) In addition to the requirements of subparagraphs (A) and (B) of this paragraph, a commercial
 40 recycling program may also consist of other elements including but not limited to waste assessments
 41 and recycling recognition programs. A wasteshed is encouraged to involve local business organiza-
 42 tions in publicly recognizing outstanding recycling efforts by commercial generators of solid waste.
 43 The recognition may include awards designed to provide additional incentives to increase recycling
 44 efforts.

45 (D) Each commercial generator of solid waste shall strive to achieve 50 percent recovery from

1 its solid waste stream by the year 2009.

2 (g) Expanded depots for recycling of at least all principal recyclable materials and provisions
 3 for promotion and education to maximize the use of the depots. The depots shall have regular and
 4 convenient hours and shall be open on the weekend days and, when feasible, shall collect additional
 5 recyclable materials.

6 (h) Solid waste residential collection rates that encourage waste reduction, reuse and recycling
 7 through reduced rates for smaller containers, including at least one rate for a container that is 21
 8 gallons or less in size. Based on the average weight of solid waste disposed per container for con-
 9 tainers of different sizes, the rate on a per pound disposed basis shall not decrease with increasing
 10 size of containers, nor shall the rates per container service be less with additional containers ser-
 11 viced.

12 (i) A collection and composting system for food, paper that is not recyclable because of con-
 13 tamination and other compostable waste from commercial and institutional entities that generate
 14 large amounts of such wastes.

15 (3)(a) Each city with a population of at least 4,000 but not more than 10,000 [*that is not within*
 16 *a metropolitan service district*] and any county responsible for the area between the city limits and
 17 the urban growth boundary of such city shall implement one of the following:

- 18 (A) The program elements set forth in subsection (2)(a), (b) and (c) of this section;
- 19 (B) A program that includes at least three elements set forth in subsection (2) of this section;

20 or

21 (C) An alternative method of achieving recovery rates that complies with rules of the Environ-
 22 mental Quality Commission.

23 (b) Each city [*that is within a metropolitan service district or*] that has a population of more than
 24 10,000 and any county responsible for the area [*within a metropolitan service district or the area*]
 25 between the city limits and the urban growth boundary of such city shall implement one of the fol-
 26 lowing:

27 (A) Program elements set forth under subsection (2)(a), (b) and (c) of this section and one addi-
 28 tional element set forth under subsection (2) of this section;

29 (B) A program that includes at least five elements set forth under subsection (2) of this section;

30 or

31 (C) An alternative method of achieving recovery rates that complies with rules of the Environ-
 32 mental Quality Commission.

33 (4)(a) Recovery rates shall be determined by dividing the total weight of material recovered by
 34 the sum of the total weight of the material recovered plus the total weight of solid waste disposed
 35 that was generated in each watershed. It is the policy of the State of Oregon that recovery of ma-
 36 terial shall be consistent with the priority of solid waste management in ORS 459.015 (2).

37 (b) Each watershed implementing a waste prevention program shall receive a two percent credit
 38 on the watershed's recovery rate. A waste prevention program shall include:

39 (A) A watershed-wide program to provide general educational materials to residents about waste
 40 prevention and examples of things residents can do to prevent generation of waste; and

41 (B) Two of the following:

- 42 (i) Reduce the watershed annual per capita waste generation by two percent each year;
- 43 (ii) Conduct a waste prevention media promotion campaign targeted at residential generators;
- 44 (iii) Expand the education program in primary and secondary schools to include waste pre-
 45 vention and reuse;

- 1 (iv) Household hazardous waste prevention education program;
- 2 (v) Local governments will conduct waste prevention assessments of their operations, or provide
- 3 waste prevention assessments for businesses and institutions and document any waste prevention
- 4 measures implemented;
- 5 (vi) Conduct a material specific waste prevention campaign for businesses throughout the
- 6 watershed;
- 7 (vii) Implement a Resource Efficiency Model City program;
- 8 (viii) Conduct a material-specific waste prevention education campaign that focuses on a toxic
- 9 or energy-intensive material;
- 10 (ix) Local governments will implement programs to buy recycled-content products for their op-
- 11 erations, consistent with procurement guidelines issued by the United States Environmental Pro-
- 12 tection Agency; or
- 13 (x) Local governments will implement programs for new construction and remodeling of local
- 14 government buildings that incorporate recycled-content materials, energy conservation features,
- 15 water conservation and stormwater management features and other elements to increase the re-
- 16 source efficiency and lower the environmental impact of these buildings.
- 17 (c) Each watershed implementing a reuse program shall receive a two percent credit on the
- 18 watershed's recovery rate. A reuse program shall include:
- 19 (A) A promotion and education campaign on the benefits and opportunities for reuse available
- 20 to the public in the watershed; and
- 21 (B) Two of the following:
- 22 (i) Operate construction and demolition debris salvage programs with depots;
- 23 (ii) Promote reuse programs offered by local resale businesses, thrift stores and equipment ven-
- 24 dors, such as computer and photocopier refurbishers, to the public and businesses;
- 25 (iii) Identify and promote local businesses that will take back white goods for refurbishing and
- 26 resale to the public;
- 27 (iv) Develop and promote use of waste exchange programs for the public and private sectors;
- 28 (v) Site accommodation for recovery of reusable material at transfer stations and landfills; or
- 29 (vi) Sidewalk pickup or community fair program in cities over 4,000 population in the watershed.
- 30 (d) Each watershed implementing a residential composting program shall receive a two percent
- 31 credit on the watershed's recovery rate. A residential composting program shall include:
- 32 (A) Promotion of the residential composting program through public information and demon-
- 33 stration sites or sites; and
- 34 (B) Two of the following:
- 35 (i) A program to encourage leaving grass clippings generated by lawn mowing on-site rather
- 36 than bagging the clippings for disposal or composting;
- 37 (ii) A composting program for local schools;
- 38 (iii) An increase in availability of compost bins for residents; or
- 39 (iv) Another program increasing a household's ability to manage yard trimmings or food wastes.
- 40 (e) A watershed may receive, upon application to the Department of Environmental Quality, a
- 41 recovery credit greater than two percent for a residential composting program. To receive the re-
- 42 covery credit under this paragraph, the watershed must provide quantitatively verifiable documen-
- 43 tation of residential composting tonnage to the department. The documentation must show that more
- 44 than two percent of the watershed's generated tonnage of solid waste is diverted from the
- 45 wastestream by residential composting.

1 (f)(A) If there is not a viable market for recycling a material under paragraph (a) of this sub-
 2 section, the composting or burning of the material for energy recovery may be included in the re-
 3 covery rate for the wasteshed.

4 (B) If the material is burned for energy recovery and then included in the recovery rate for
 5 Clackamas, Multnomah or Washington Counties in aggregate or for Benton, Lane, Linn, Marion,
 6 Polk or Yamhill County wastesheds, the same material, when burned as part of mixed solid waste,
 7 may be included in the recovery rate for a wasteshed that burns mixed solid waste for energy re-
 8 covery. The amount of the material within the mixed solid waste that may be included in the re-
 9 covery rate for energy recovery shall be determined by a waste composition study performed by the
 10 wasteshed at least every four years.

11 (C) Mixtures of materials that are composted or burned for energy recovery shall not be in-
 12 cluded in the recovery rate if more than half of the mixed materials by weight could have been re-
 13 cycled if properly source separated.

14 (D) In its annual report to the department, the county or metropolitan service district shall state
 15 how much composting or energy recovery under this paragraph is included as recovery and state
 16 the basis for the determination that there was not a viable market for recycling the material.

17 (E) As used in this paragraph, “viable market” means a place within a wasteshed that will pay
 18 for the material or accept the material free of charge or a place outside a wasteshed that will pay
 19 a price for the material that, at minimum, covers the cost of transportation of the material.

20 (g) Recovery rates shall not include:

21 (A) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are
 22 recycled before becoming part of a product that has entered the wholesale or retail market.

23 (B) Metal demolition debris in which arrangements are made to sell or give the material to
 24 processors before demolition such that it does not enter the solid waste stream.

25 (C) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream.

26 (D) Material recovered for composting or energy recovery from mixed solid waste, except as
 27 provided in paragraph (f) of this subsection.

28 (h) “Solid waste disposed” shall mean the total weight of solid waste disposed other than the
 29 following:

30 (A) Sewage sludge or septic tank and cesspool pumpings;

31 (B) Waste disposed of at an industrial waste disposal site;

32 (C) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a
 33 municipal solid waste disposal site or demolition disposal site and if a record is kept of such deliv-
 34 eries and submitted as part of the annual report submitted under ORS 459A.050;

35 (D) Waste received at an ash monofill from an energy recovery facility; and

36 (E) Solid waste not generated within this state.

37 (i) The statewide recovery rate shall include the two percent credit for reuse programs under
 38 paragraph (c) of this subsection and the credit for residential composting under paragraphs (d) and
 39 (e) of this subsection, beginning with the statewide recovery rate calculated for the calendar year
 40 2001.

41 (5)(a) Each local government that franchises or licenses the collection of solid waste and es-
 42 tablishes the rates to be charged for collection service shall either:

43 (A) Include in those rates all net costs incurred by the franchisee or licensee for providing the
 44 “opportunity to recycle” under ORS 459A.005 and for implementing the requirements of subsection
 45 (3) of this section; or

1 (B) Fund implementation of the “opportunity to recycle” under ORS 459A.005 or the require-
 2 ments of subsection (3) of this section through an alternative source of funding including but not
 3 limited to disposal fees.

4 (b) As used in this subsection, “net costs” includes but is not limited to the reasonable costs for
 5 collecting, handling, processing, storing, transporting and delivering recyclable material to market
 6 and for providing any required education and promotion or data collection services adjusted by a
 7 factor to account for proceeds from the sale of recyclable material.

8 (6)(a) Clackamas, Multnomah and Washington counties, in aggregate, shall achieve a recovery
 9 rate of 62 percent for the calendar year 2005 and 64 percent for the calendar year 2009.

10 (b) The wastesheds shall achieve the following recovery rates for the calendar year 2005:

- 11 (A) Baker County, 25 percent;
- 12 (B) Benton County, 45 percent;
- 13 (C) Clatsop County, 25 percent;
- 14 (D) Columbia County, 28 percent;
- 15 (E) Coos County, 30 percent;
- 16 (F) Crook County, 20 percent;
- 17 (G) Curry County, 30 percent;
- 18 (H) Deschutes County, 32 percent;
- 19 (I) Douglas County, 35 percent;
- 20 (J) Gilliam County, 20 percent;
- 21 (K) Grant County, 19 percent;
- 22 (L) Harney County, 30 percent;
- 23 (M) Hood River County, 25 percent;
- 24 (N) Jackson County, 40 percent;
- 25 (O) Jefferson County, 25 percent;
- 26 (P) Josephine County, 38 percent;
- 27 (Q) Klamath County, 15 percent;
- 28 (R) Lake County, 8 percent;
- 29 (S) Lane County, 45 percent;
- 30 (T) Lincoln County, 19 percent;
- 31 (U) Linn County, 40 percent;
- 32 (V) Malheur County, 21 percent;
- 33 (W) Marion County, 37 percent;
- 34 (X) City of Milton-Freewater, 22 percent;
- 35 (Y) Morrow County, 18 percent;
- 36 (Z) Polk County, 30 percent;
- 37 (AA) Sherman County, 20 percent;
- 38 (BB) Tillamook County, 30 percent;
- 39 (CC) Umatilla County, 20 percent;
- 40 (DD) Union County, 25 percent;
- 41 (EE) Wallowa County, 20 percent;
- 42 (FF) Wasco County, 35 percent;
- 43 (GG) Wheeler County, 20 percent; and
- 44 (HH) Yamhill County, 39 percent.

45 (c) The wastesheds shall achieve the following recovery rates for the calendar year 2009:

- 1 (A) Baker County, 25 percent;
- 2 (B) Benton County, 50 percent;
- 3 (C) Clatsop County, 25 percent;
- 4 (D) Columbia County, 32 percent;
- 5 (E) Coos County, 30 percent;
- 6 (F) Crook County, 20 percent;
- 7 (G) Curry County, 30 percent;
- 8 (H) Deschutes County, 45 percent;
- 9 (I) Douglas County, 40 percent;
- 10 (J) Gilliam County, 20 percent;
- 11 (K) Grant County, 19 percent;
- 12 (L) Harney County, 40 percent;
- 13 (M) Hood River County, 25 percent;
- 14 (N) Jackson County, 40 percent;
- 15 (O) Jefferson County, 25 percent;
- 16 (P) Josephine County, 38 percent;
- 17 (Q) Klamath County, 20 percent;
- 18 (R) Lake County, 10 percent;
- 19 (S) Lane County, 54 percent;
- 20 (T) Lincoln County, 20 percent;
- 21 (U) Linn County, 40 percent;
- 22 (V) Malheur County, 22 percent;
- 23 (W) Marion County, 54 percent;
- 24 (X) City of Milton-Freewater, 25 percent;
- 25 (Y) Morrow County, 20 percent;
- 26 (Z) Polk County, 35 percent;
- 27 (AA) Sherman County, 20 percent;
- 28 (BB) Tillamook County, 30 percent;
- 29 (CC) Umatilla County, 20 percent;
- 30 (DD) Union County, 25 percent;
- 31 (EE) Wallowa County, 20 percent;
- 32 (FF) Wasco County, 35 percent;
- 33 (GG) Wheeler County, 20 percent; and
- 34 (HH) Yamhill County, 45 percent.

35 (d) Each wasteshed shall prepare an individualized plan that identifies policies or programs
36 specific to the wasteshed's local conditions to achieve the required recovery goals. The plan shall
37 be available to the department upon the department's request by December 31, 2001. The plan shall
38 be updated by December 31, 2006, and updated again by December 31, 2010. Clackamas, Multnomah
39 and Washington Counties, in aggregate, may meet this requirement through the programs under ORS
40 459.340, 459.345, 459.350 and 459A.050.

41 (e) If a wasteshed does not achieve its 2005 or 2009 waste recovery goal, the wasteshed shall
42 conduct a technical review of existing policies or programs and determine revisions to meet the
43 recovery goal. The department shall, upon the request of the wasteshed, assist in the technical re-
44 view. The wasteshed may request, and may assist the department in conducting, a technical review
45 to determine whether the wasteshed goal is valid.

1 (7) In calculating the recovery rates set forth in subsection (6) of this section, commercial, in-
2 dustrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances
3 that are handled or processed for use in manufacturing new products and that do not routinely enter
4 the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route
5 collection programs shall not be counted as material recovery or recycling. The department shall
6 annually conduct an industry survey to determine the contribution of post-consumer residential
7 scrap metal, including home appliances, to recycling and recovery levels in a manner which prevents
8 double counting of material recovered. Information collected under the provisions of this section,
9 as it relates specifically to private sector customer lists or specific amounts and types of materials
10 collected or marketed, shall be maintained as confidential by the department and exempt from dis-
11 closure under ORS 192.410 to 192.505. The department may use and disclose such information in
12 aggregated form.

13 **SECTION 34. ORS 195.137, 195.139, 195.141, 195.143, 197.299, 197.301, 197.302 and 221.036 are**
14 **repealed.**

15
