

# House Bill 3111

Sponsored by Representative ESQUIVEL; Representative WHISNANT

## 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**.

Provides for extension of time in which credit against improvement fee must be used when construction of qualified public improvement for which credit is granted is suspended for any cause.

## A BILL FOR AN ACT

1  
2 Relating to credits against improvement fees; creating new provisions; and amending ORS 195.205  
3 and 223.304.

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

5 **SECTION 1.** ORS 223.304 is amended to read:

6 223.304. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution  
7 setting forth a methodology that is, when applicable, based on:

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

9 (B) Prior contributions by existing users;

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

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

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

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

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

17 (B) Be available for public inspection.

18 (2) Improvement fees must:

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

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

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

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

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

31 (4) The ordinance or resolution that establishes or modifies an improvement fee shall also pro-

**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 vide for a credit against such fee for the construction of a qualified public improvement. A “qualified  
 2 public improvement” means a capital improvement that is required as a condition of development  
 3 approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

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

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

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

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

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

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

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

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

30 **(B) Notwithstanding subparagraph (A) of this paragraph, the time in which the credit**  
 31 **must be used shall be extended by any period of time during which the construction of the**  
 32 **qualified public improvement for which the credit is granted is suspended for any cause.**

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

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

44 (b) Legal action intended to contest the methodology used for calculating a system development  
 45 charge may not be filed after 60 days following adoption or modification of the system development

1 charge ordinance or resolution by the local government. A person shall request judicial review of  
 2 the methodology used for calculating a system development charge only as provided in ORS 34.010  
 3 to 34.100.

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

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

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

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

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

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

16 **SECTION 2.** ORS 195.205 is amended to read:

17 195.205. (1) A city or district that provides an urban service may annex territory under ORS  
 18 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320[,] **and** 197.335 [*and 223.304*]  
 19 that:

20 (a) Is situated within an urban growth boundary; and

21 (b) Is contained within an annexation plan adopted pursuant to ORS 195.020, 195.060 to 195.085,  
 22 195.205 to 195.235, 197.005, 197.319, 197.320[,] **and** 197.335 [*and 223.304*].

23 (2) A city or district may submit an annexation plan to a vote under subsection (5) of this sec-  
 24 tion only if, prior to the submission of the annexation plan to a vote:

25 (a) The territory contained in the annexation plan is subject to urban service agreements among  
 26 all appropriate counties and cities and the providers of urban services within the territory, as re-  
 27 quired by ORS 195.065 and 195.070, and:

28 (A) Such urban service agreements were in effect on November 4, 1993; or

29 (B) They expressly state that they may be relied upon as a prerequisite of the annexation  
 30 method authorized by ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319,  
 31 197.320[,] **and** 197.335 [*and 223.304*]; and

32 (b) The territory contained in the annexation plan is subject to an agreement between the city  
 33 and county addressing fiscal impacts, if the annexation is by a city and will cause reductions in the  
 34 county property tax revenues by operation of [*section 11b,*] Article XI, **section 11b**, of the Oregon  
 35 Constitution.

36 (3) Prior to adopting an annexation plan, the governing body of a city or district shall hold a  
 37 public hearing at which time interested persons may appear and be heard on the question of estab-  
 38 lishing the annexation plan.

39 (4) The governing body of the city or district shall cause notice of the hearing to be published,  
 40 once each week for two successive weeks prior to the day of the hearing, in a newspaper of general  
 41 circulation in the city or district.

42 (5) If after the public hearing required under subsection (3) of this section, the governing body  
 43 of the city or district decides to proceed with the annexation plan, it shall cause the annexation plan  
 44 to be submitted to the electors of the city or district and to the electors of the territory proposed  
 45 to be annexed under the annexation plan. The proposed annexation plan may be voted upon at a

1 general election or at a special election to be held for that purpose.

2 **SECTION 3. The amendments to ORS 223.304 by section 1 of this 2017 Act apply to credits**  
3 **given before, on or after the effective date of this 2017 Act.**

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