



STATE OF OREGON  
Legislative Counsel Committee

April 12, 2021

To: Representative Pam Marsh, Chair  
House Committee on Energy and Environment

From: Sean Brennan, Senior Deputy Legislative Counsel

Subject: Response to the committee's questions concerning the -15 amendments  
to House Bill 2398

The -15 amendments to House Bill 2398 include substantive changes to ORS 455.010, 455.100 and 455.500 that have the following intentions and effects:

- Incorporating the Reach Code into the state building code as a specialty code. The amendments accomplish this in section 1 by adding to the definition of “specialty code” in ORS 455.010 a reference to ORS 455.500 in the list of statutes from which regulations that comprise the specialty code may be adopted. ORS 455.500 describes and details—and gives the Director of the Department of Consumer and Business Services the authority to adopt, amend and administer—the Reach Code.

Please note that the amendments make changes to ORS 455.010 in both section 1 and section 2 because an earlier law (section 10, chapter 401, Oregon Laws 2019) with an operative date of January 2, 2026, also makes changes to this section and would erase the amendments from section 1 if section 2 did not also incorporate the amendments into ORS 455.010 on the 2026 date that the previously amended version of ORS 455.010 becomes operative.

- Giving the director general supervision over, and the power to provide statewide interpretations for, the Reach Code alongside other statewide specialty codes. The amendments accomplish this in section 3 by adding the Reach Code to the list of other specialty codes over which the director has the power of providing statewide interpretations.
- Requiring the director to adopt the Reach Code as a specialty code within the state building code not later than October 31 of this year, to update and amend the code at least every three years, and to administer the code as the director administers other specialty codes. The amendments accomplish this in section 4 by requiring the director in ORS 455.500 (1) to adopt, amend and administer the Reach Code as a specialty code within the state building code and specifying the dates in the new subparagraph (2)(a)(D) and the new paragraph (2)(b) of ORS 455.500.
- Requiring the director, in adopting and amending the Reach Code, to follow the same process the director follows in developing the residential and commercial building codes

and to make amendments to the Reach Code at the same time the director amends a corresponding residential or commercial specialty code. The amendments also accomplish this in section 4 by specifying the requirements in amended paragraph (2)(a) and a new subparagraph (2)(a)(E) of ORS 455.500.

- Requiring the Reach Code to mandate certain standards of energy efficiency. The amendments accomplish this in section 4 by specifying the requirement in a new subparagraph (2)(a)(C) of ORS 455.500.
- Allowing municipalities in the state to choose whether to adopt the Reach Code and, in adopting the Reach Code, to require adherence to the Reach Code as a minimum construction standard and method within the municipality's jurisdiction. The amendments accomplish this in section 4 by giving municipalities the power in a new paragraph (3)(a) of ORS 455.500.

In addition to these changes, the amendments also include other changes that do not create affirmative duties but instead are explanatory in nature, specifying the scope and effects of the changes listed in the previous paragraph. These changes include:

- An explicit statement that a municipality's voluntary adoption of the Reach Code is not itself an amendment to the state building code and therefore does not require the director's approval. This appears in section 4 as a new paragraph (3)(b) of ORS 455.500.
- A disclaimer of a municipality's duty to enforce the Reach Code in common with other specialty codes if the municipality has not adopted the Reach Code. This appears in section 4 as a new paragraph (3)(c) of ORS 455.500.
- A statement that leaves standards for measuring energy efficiency savings, determining cost effectiveness and paying incentives subject to the statewide residential and commercial codes. This appears in section 4 as a new paragraph (3)(d) of ORS 455.500.

Finally, the amendments give the director power to determine whether provisions of the Reach Code might better be incorporated into existing residential or commercial specialty codes, which would make such provisions a mandatory part of the state building code rather than a voluntary standard that a municipality might or might not choose to adopt. This power appears in section 4 as an amendment to a renumbered subsection (4) within ORS 455.500.

Part of the intention of the language in the -15 amendments to HB 2398 is to respond to concerns that the Department of Justice raised in a March 29, 2021, memorandum to Alana Cox, the administrator of the building codes division within the Department of Consumer and Business Services. In that memorandum, the Department of Justice first noted that in the introduced version of HB 2398 the Reach Code would have remained a separate code outside the state building code. The memorandum also noted that because the language of the introduced bill "notwithstands" the provisions of ORS 455.040 that make the statewide building code uniform and applicable throughout the state and preempt any local ordinances, rules or regulations to the contrary, a municipality that adopts the Reach Code, using the authority the introduced bill grants in the amended version of ORS 455.500 (2)(b), would in effect remove itself from the preemptive effect of the state building code and the requirement to maintain the

statewide uniformity of the building code. A further effect of the language in the introduced bill, the memorandum states, would be to remove a municipality that adopts and makes the Reach Code mandatory from a connection to the state's enforcement and administrative apparatus for the state building code, including the appeals process and the director's interpretations of the code, and from the delegated authority to administer and enforce any of the state's specialty codes because a delegation of the authority to administer and enforce any of the specialty codes entails a requirement to administer and enforce all of the specialty codes that make up the state building code.

The -15 amendments to HB 2398 address these concerns first, by incorporating the Reach Code within the state building code as a specialty code. This puts the Reach Code within the director's administrative, interpretive and appeals authority. Second, the amendments narrow the "notwithstanding" effect of the bill's provisions with respect to ORS 455.040 to only those that require the statewide building code to be uniform. This is necessary to allow for local variations to the statewide building code in jurisdictions that do not choose to adopt the Reach Code. Relatedly, the amendments state that a municipality that does not adopt the Reach Code need not enforce its provisions within the municipality's jurisdiction, which is an exception to the requirement that a jurisdiction with a delegated building inspection program enforce all specialty codes if it enforces any of the specialty codes.

The amendments also state explicitly that although the Reach Code is part of the state building code, a municipality may choose whether to adopt the Reach Code within its jurisdiction and make it a mandatory construction standard and method. This, again, is an exception to the requirement in ORS 455.040 that the state building code, and presumably all of its components, be uniform and applicable throughout the state. Although there was some question as to the effect of this provision of ORS 455.040 during the last hearing on HB 2398—that is, whether the language merely requires that whatever elements comprising the state building code that a municipality adopts, those elements must be the same throughout the state or whether the state building code must be adopted in its entirety as a way of ensuring that the building code is uniform and applicable to all municipalities—the language in the amendments addresses this potential ambiguity by "notwithstanding" the requirement that the statewide building code be uniform and applicable to all municipalities should a municipality choose to adopt the Reach Code.

The amendments also make explicit that a municipality's adoption of the Reach Code does not affect the uniformity of the state building code by stating that adopting the Reach Code is not an amendment to the state building code and does not require the director's approval. This does not mean, however, that if a municipality does adopt the Reach Code, it may choose which elements to adopt. Rather, the municipality must adopt the entirety of the Reach Code as a specialty code and enforce the Reach Code as a specialty code in common with the other specialty codes.

c: Erin Pischke, LPRO Analyst  
House Committee on Energy and Environment