

Requested by Representative LIVELY

**PROPOSED AMENDMENTS TO
HOUSE BILL 3040**

1 In line 2 of the printed bill, after “charges;” delete the rest of the line
2 and insert “creating new provisions; amending ORS 223.299, 223.302, 223.304
3 and 223.309; and declaring an emergency.”.

4 Delete lines 4 through 11 and insert:

5 **“SECTION 1. (1) The Housing and Community Services Department**
6 **shall conduct a study of system development charges to determine best**
7 **practices for fostering the development of affordable housing. As part**
8 **of the study, the department shall develop recommendations, which**
9 **may include recommendations for legislation, regarding, without lim-**
10 **itation:**

11 **“(a) Increasing fee transparency;**

12 **“(b) Ensuring the structure and timing of fee payments foster the**
13 **development of affordable housing;**

14 **“(c) Methodology for setting fees, including whether the analysis**
15 **and formula used accurately captures capacity impacts;**

16 **“(d) Effectiveness of credits for system development charges; and**

17 **“(e) Viability of alternative funding measures.**

18 **“(2) The department shall submit, in the manner provided in ORS**
19 **192.245, a report, including the recommendations made under sub-**
20 **section (1) of this section, to the interim legislative committees related**
21 **to housing and economic recovery and prosperity no later than De-**

1 **ember 31, 2021.**

2 **“SECTION 2. Section 1 of this 2021 Act is repealed on January 2,**
3 **2022.**

4 **“SECTION 3.** ORS 223.299 is amended to read:

5 “223.299. As used in ORS 223.297 to 223.314:

6 “(1)(a) ‘Capital improvement’ means facilities or assets used for the fol-
7 lowing:

8 “(A) Water supply, treatment and distribution;

9 “(B) Waste water collection, transmission, treatment and disposal;

10 “(C) Drainage and flood control;

11 “(D) Transportation; or

12 “(E) Parks and recreation.

13 “(b) ‘Capital improvement’ does not include costs of the operation or
14 routine maintenance of capital improvements.

15 “(2) ‘Improvement fee’ means a fee for costs associated with capital im-
16 provements to be constructed.

17 “(3) ‘Reimbursement fee’ means a fee for costs associated with capital
18 improvements already constructed, or under construction when the fee is
19 established, for which the local government determines that capacity exists.

20 “(4)(a) ‘System development charge’ means a reimbursement fee, an im-
21 provement fee or a combination thereof assessed or collected at the time of
22 increased usage of a capital improvement or issuance of a development per-
23 mit, building permit or connection to the capital improvement **or pursuant**
24 **to a payment deferral plan established by a local government.** ‘System
25 development charge’ includes that portion of a sewer or water system con-
26 nection charge that is greater than the amount necessary to reimburse the
27 local government for its average cost of inspecting and installing con-
28 nections with water and sewer facilities.

29 “(b) ‘System development charge’ does not include any fees assessed or
30 collected as part of a local improvement district or a charge in lieu of a local

1 improvement district assessment, or the cost of complying with requirements
2 or conditions imposed upon a land use decision, expedited land division or
3 limited land use decision.

4 **“SECTION 4.** ORS 223.302 is amended to read:

5 “223.302. (1) Local governments are authorized to establish system devel-
6 opment charges, but the revenues produced therefrom must be expended only
7 in accordance with ORS 223.297 to 223.314. If a local government expends
8 revenues from system development charges in violation of the limitations
9 described in ORS 223.307, the local government shall replace the misspent
10 amount with moneys derived from sources other than system development
11 charges. Replacement moneys must be deposited in a fund designated for the
12 system development charge revenues not later than one year following a de-
13 termination that the funds were misspent.

14 “(2) Local governments shall adopt administrative review procedures by
15 which any citizen or other interested person may challenge an expenditure
16 of system development charge revenues. Such procedures shall provide that
17 such a challenge must be filed within two years of the expenditure of the
18 system development charge revenues. The decision of the local government
19 shall be judicially reviewed only as provided in ORS 34.010 to 34.100.

20 “(3)(a) A local government must advise a person who makes a written
21 objection to the calculation of a system development charge of the right to
22 petition for review pursuant to ORS 34.010 to 34.100.

23 “(b) If a local government has adopted an administrative review procedure
24 for objections to the calculation of a system development charge, the local
25 government shall provide adequate notice regarding the procedure for review
26 to a person who makes a written objection to the calculation of a system
27 development charge.

28 **“(4) A local government that establishes a system development**
29 **charge shall provide the option of a payment deferral plan as follows:**

30 **“(a) For multifamily housing, condominium, industrial and com-**

1 **mercial developments, the payment deferral plan must assess the sys-**
2 **tem development charge at the time a certificate of occupancy is**
3 **issued.**

4 **“(b) For attached single-family housing and detached single-family**
5 **housing, the payment deferral plan must assess the system develop-**
6 **ment charge at the time of sale as part of closing costs.**

7 **“SECTION 5.** ORS 223.304 is amended to read:

8 “223.304. (1)(a) Reimbursement fees must be established or modified by
9 ordinance or resolution setting forth a methodology that is, when applicable,
10 based on:

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

13 “(B) Prior contributions by existing users;

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

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

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

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

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

23 “(B) Be available for public inspection.

24 **“(C) Apply the same computation and assess the same fee for capi-**
25 **tal improvements associated with the development of manufactured**
26 **homes and multifamily housing.**

27 “(2) Improvement fees must:

28 “(a) Be established or modified by ordinance or resolution setting forth
29 a methodology that is available for public inspection and demonstrates con-
30 sideration of:

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

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

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

9 “(c) **Apply the same computation and assess the same fee for capital**
10 **improvements associated with the development of manufactured**
11 **homes and multifamily housing.**

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

16 “(4) The ordinance or resolution that establishes or modifies an improve-
17 ment fee shall also provide for a credit against such fee for the construction
18 of a qualified public improvement. A ‘qualified public improvement’ means
19 a capital improvement that is required as a condition of development ap-
20 proval, identified in the plan and list adopted pursuant to ORS 223.309 and
21 either:

22 “(a) Not located on or contiguous to property that is the subject of de-
23 velopment approval; or

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

28 “(5)(a) The credit provided for in subsection (4) of this section is only for
29 the improvement fee charged for the type of improvement being constructed,
30 and credit for qualified public improvements under subsection (4)(b) of this

1 section may be granted only for the cost of that portion of such improvement
2 that exceeds the local government's minimum standard facility size or ca-
3 pacity needed to serve the particular development project or property. The
4 applicant shall have the burden of demonstrating that a particular improve-
5 ment qualifies for credit under subsection (4)(b) of this section.

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

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

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

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

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

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

29 “(7)(a) Written notice must be mailed to persons on the list at least 90
30 days prior to the first hearing to establish or modify a system development

1 charge, and the methodology supporting the system development charge must
2 be available at least 60 days prior to the first hearing. The failure of a per-
3 son on the list to receive a notice that was mailed does not invalidate the
4 action of the local government. The local government may periodically delete
5 names from the list, but at least 30 days prior to removing a name from the
6 list shall notify the person whose name is to be deleted that a new written
7 request for notification is required if the person wishes to remain on the
8 notification list.

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

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

18 “(a) A change in the cost of materials, labor or real property applied to
19 projects or project capacity as set forth on the list adopted pursuant to ORS
20 223.309; or

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

23 “(A) A relevant measurement of the average change in prices or costs
24 over an identified time period for materials, labor, real property or a com-
25 bination of the three;

26 “(B) Published by a recognized organization or agency that produces the
27 index or data source for reasons that are independent of the system devel-
28 opment charge methodology; and

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

1 **“SECTION 6.** ORS 223.309 is amended to read:

2 “223.309. (1) Prior to the establishment of a system development charge
3 by ordinance or resolution, a local government shall prepare a capital im-
4 provement plan, public facilities plan, master plan or comparable plan that
5 includes a list of the capital improvements that the local government intends
6 to fund, in whole or in part, with revenues from an improvement fee and the
7 estimated cost, timing and percentage of costs eligible to be funded with
8 revenues from the improvement fee for each improvement.

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

14 “(a) The local government shall provide, at least 30 days prior to the
15 adoption of the modification, notice of the proposed modification to the per-
16 sons who have requested written notice under ORS 223.304 (6).

17 “(b) The local government shall hold a public hearing if the local gov-
18 ernment receives a written request for a hearing on the proposed modifica-
19 tion within seven days of the date the proposed modification is scheduled for
20 adoption.

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

23 “(d) The decision of a local government to increase the system develop-
24 ment charge by modifying the list may be judicially reviewed only as pro-
25 vided in ORS 34.010 to 34.100.

26 **“(3) At the time a payment is made for a system development**
27 **charge, a local government shall publish on a publicly accessible**
28 **website a disclosure statement that lists:**

29 **“(a) The cost of the system development charge;**

30 **“(b) The methodology used for calculating the system development**

1 charge;

2 “(c) The process and timing for collecting the system development
3 charge;

4 “(d) The capital improvement for which the system development
5 charge is assessed; and

6 “(e) The estimated timeframe for completing the capital improve-
7 ment for which the system development charge is assessed.

8 “SECTION 7. The amendments to ORS 223.299, 223.302, 223.304 and
9 223.309 by sections 3 to 6 of this 2021 Act apply to system development
10 charges established on or after the effective date of this 2021 Act.

11 “SECTION 8. This 2021 Act being necessary for the immediate
12 preservation of the public peace, health and safety, an emergency is
13 declared to exist, and this 2021 Act takes effect on its passage.”.

14
