



OREGON STATE SENATE
900 COURT STREET ST NE
SALEM, OREGON 97301

May 4, 2021

Dear Chair Hudson, Vice-Chairs Breese-Iverson and McLain, and members of the House Committee on Agriculture and Natural Resources,

Thank you for a thorough discussion of Senate Bill 605 A in your committee today. On more than one occasion, the concern was raised regarding the annexation process itself and what is and is not required per the bill. I believe that there were misstatements on this issue, which I attempted to address in part at the end of the hearing. For the record, I would like to submit the following written opinion from Legislative Counsel which resulted from a conversation between my Chief of Staff Nathan Soltz, the assigned LC Attorney Aurora Goddard, Legislative Counsel Dexter Johnson, and myself. The most relevant portions are boldened:

“[...]In short, I believe that the A-engrossed bill likely (1) exempts the annexations from hearing and election requirements in ORS chapter 198, (2) does not prohibit elections, and (3) requires annexation regardless of any election results, and also that (4) the election requirements in ORS 198.855 likely do not apply to the annexations. [...]

“First, **the A-engrossed bill expressly exempts the annexations from the requirements for special district formation found in ORS 198.800 to 198.825 and 198.835 to 198.845.** As relevant here, ORS 198.805 requires a hearing on a petition for formation, and ORS 198.815 requires an election. As discussed below, I believe **the A-engrossed bill also effectively exempts the annexations from election requirements in ORS 198.855 for elector-driven annexation petitions.**

“Second and third, the A-engrossed bill does not prohibit an election, although I believe the results of an election likely may not override the mandate in section 2 (2) that a county board ‘shall annex lands to the district’ if the lands meet certain criteria. Section 2 (4) provides that a ‘county board shall establish and implement a process for the annexation.’ Thus a county board apparently could decide to call an election. However, the A-engrossed bill does not authorize the county board-established ‘process for the annexation’ to result in a decision that declines to annex lands that ‘shall’ be annexed under section 2 (2).

“Accordingly, a county board could call an election but be legally obligated not to follow the results of the election if electors voted down the annexation. This is a bad outcome from a public policy perspective because it undermines the validity of election processes.

“Finally, under the A-engrossed bill, I believe the provisions of ORS 198.855 likely do not apply to the annexations. **ORS 198.855 imposes election requirements for ‘the annexation petition.’** That term likely references ‘an annexation petition’ described in ORS 198.850, which authorizes ‘the electors of an area’ who ‘wish to annex to a district’ to ‘file an annexation petition with the county board.’ **The A-engrossed bill mandates certain annexations ‘upon request by a rural fire protection district’ (RFPD) but does not reference an ‘annexation petition.’ Further, the A-engrossed bill provides for establishment of the process of annexation. Thus I believe a court likely would not impose on the mandatory, RFPD-driven annexations described in the A-engrossed bill the election requirements for the elector-driven annexations described in ORS 198.850 to 198.869.”**

Mr. Chair and members, despite statements to the contrary, this bill is not vague, either in fact or in intent. The legislative counsel statements are as definite as legislative counsel statements can be. I remain steadfast in my belief that this bill not only is ready to move in its current A-Engrossed version, but it should move in its current A-Engrossed version as soon as possible. We have engaged in good-faith discussions with all interested parties to get to this point. This is a critically important bill for all of the reasons you heard in committee. Again, at its core, this bill closes a loophole that should have never existed. We heard from a few county commissioners that there were rural fire protection districts in their district that don't support this bill and wouldn't want the lands – I want to again stress that the A-Engrossed bill already addresses this issue by leaving it up to each RFPD to determine for itself if it wants to utilize these provisions. All of the technical concerns raised during today's hearing have been previously addressed, either via amendment or simple clarification.

As always, I look forward to further conversations on wildfire prevention with any and all interested parties. However, SB 605 A is ready to pass this session and is needed as soon as possible so that our rural fire protection districts can continue their incredible service to our communities that we are asking of them.

I ask for and strongly urge your support of SB 605 A. Please do not hesitate to reach out with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lew Frederick", written in a cursive style.

Lew Frederick
State Senator
District 22 – N & NE Portland