

# House Bill 2668

Sponsored by Representative NERON, Senator WOODS (at the request of City of Wilsonville) (Presession filed.)

## 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**.

Establishes Aurora State Airport Advisory Council for purpose of developing intergovernmental planning agreement among its members. Requires land use decisions to be compatible with agreement. Sunsets January 2, 2037.

Amends regulations regarding through the fence airports and use of transportation facilities as basis for land use goal exceptions.

## A BILL FOR AN ACT

1 Relating to transportation; creating new provisions; and amending ORS 197.732, 836.608 and 836.642.

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

3 **SECTION 1. (1) There is established the Aurora State Airport Advisory Council to nego-**  
4 **tiate and execute an intergovernmental agreement to facilitate intergovernmental commu-**  
5 **nications and coordinated planning of land use, transportation, environmental,**  
6 **infrastructure, through the fence access and related issues of concern regarding operations**  
7 **of the Aurora State Airport and the implementation of any master plan or airport layout**  
8 **plan recommendations, projects or programs.**

9 (2) The council shall review and include within its intergovernmental agreement decisions  
10 on or a methodology for approving decisions on:

11 (a) Surface transportation issues on local city and county and state roads pertaining to  
12 safety and traffic congestion for business and employee access to the Aurora State Airport,  
13 including the provision of public transit services to the airport;

14 (b) Environmental assessments of current airport pollution levels, including storm and  
15 surface water, ground water, air and noise, that provide a scientific baseline of information;

16 (c) Planning for the potential annexation by the City of Aurora of the airport for the  
17 purpose of providing municipal governance and public urban infrastructure services to sup-  
18 port operations at the airport;

19 (d) Obtaining Land Conservation and Development Commission certification of the  
20 Oregon Department of Aviation's state agency coordination program under ORS 197.180 (4)  
21 to (7); and

22 (e) The implementation of all relevant components of the Oregon Department of  
23 Aviation's state agency coordination program pertaining to the approval, adoption and im-  
24 plementation of an Aurora State Airport master plan or airport layout plan project or other  
25 program for the airport.

26 (3) The council consists of up to nine members, appointed as follows:

27 (a) One member appointed by the Director of the Oregon Department of Aviation to  
28 represent the Oregon Department of Aviation;

29 (b) One member appointed by the Director of Agriculture to represent the State De-

30 **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 **partment of Agriculture;**

2 **(c) One member appointed by the Director of the Department of Environmental Quality**  
 3 **to represent the Department of Environmental Quality;**

4 **(d) One member appointed by the Director of the Department of Land Conservation and**  
 5 **Development to represent the Department of Land Conservation and Development;**

6 **(e) One member appointed by the Director of Transportation to represent the Depart-**  
 7 **ment of Transportation;**

8 **(f) One member appointed by the governing body of Clackamas County, if the county**  
 9 **chooses to participate, representing Clackamas County;**

10 **(g) One member appointed by the governing body of Marion County, if the county chooses**  
 11 **to participate, representing Marion County;**

12 **(h) One member appointed by the governing body of the City of Aurora, if the city**  
 13 **chooses to participate, representing the City of Aurora; and**

14 **(i) One member appointed by the governing body of the City of Wilsonville, if the city**  
 15 **chooses to participate, representing the City of Wilsonville.**

16 **(4) Each member shall serve for a term of four years, but the member serves at the**  
 17 **pleasure of the appointing authority. A member may be reappointed. Before the expiration**  
 18 **of the term of a member, the appointing authority shall appoint a successor or reappoint the**  
 19 **member. If there is a vacancy for any cause, the appointing authority shall make an ap-**  
 20 **pointment to become immediately effective for the unexpired term.**

21 **(5) The council shall elect a chairperson who represents a local government and a vice**  
 22 **chairperson who represents a state agency to serve for one-year terms.**

23 **(6) The members shall serve on the council as volunteers and are not entitled to re-**  
 24 **imbursement for expenses.**

25 **(7) The Oregon Department of Aviation shall staff the council, assist with the develop-**  
 26 **ment of meeting agendas, record and publish council meeting minutes, assist with drafting**  
 27 **the intergovernmental agreement of the council and shall otherwise support the work of the**  
 28 **council.**

29 **(8) Except as provided under subsection (9)(b) of this section, the council is not a**  
 30 **decision-making body.**

31 **(9) Until an intergovernmental agreement described in this section has been executed by**  
 32 **each participating appointing authority under subsection (3) of this section or until the**  
 33 **council membership unanimously agrees that the work of the council has been completed:**

34 **(a) The council shall meet monthly or at the call of the chairperson or a majority of the**  
 35 **council membership.**

36 **(b) The Oregon Department of Aviation may not approve any new operations, expansions**  
 37 **or runway lengthening of the Aurora State Airport and may not implement any master plan**  
 38 **or airport layout plan recommendations, project or programs without an agreement by the**  
 39 **unanimous consent of the council.**

40 **(10) Meetings of the council shall be open to the public and shall provide the opportunity**  
 41 **for public written and oral testimony on matters before the council.**

42 **(11) A local government under subsection (3)(f) to (i) of this section that does not choose**  
 43 **to participate or that appoints a member who does not participate in the council may not**  
 44 **challenge any provision of an intergovernmental agreement executed under this section or**  
 45 **object to any decision made under the agreement.**

1        **SECTION 2.** Section 3 of this 2023 Act is added to and made a part of ORS chapter 197.

2        **SECTION 3.** A public body, as defined in ORS 174.109, may not make a land use decision  
 3 that would allow an expansion of the runway or allow new or expanded facilities of the  
 4 Aurora State Airport unless the expansion is consistent with an intergovernmental agree-  
 5 ment entered into under section 1 of this 2023 Act.

6        **SECTION 4.** Sections 1 and 3 of this 2023 Act are repealed on January 2, 2037.

7        **SECTION 5.** ORS 836.608 is amended to read:

8        836.608. (1) The continued operation and vitality of airports registered, licensed or otherwise  
 9 recognized by the Department of Transportation on December 31, 1994, is a matter of state concern.

10        (2) A local government shall recognize in its planning documents the location of private-use  
 11 airports and privately owned public-use airports not listed under ORS 836.610 (3) if the airport was  
 12 the base for three or more aircraft, as shown in the records of the Department of Transportation,  
 13 on December 31, 1994. Local planning documents shall establish a boundary showing areas in air-  
 14 port ownership, or subject to long-term lease, that are developed or committed to airport uses de-  
 15 scribed in ORS 836.616 (2). Areas committed to airport uses shall include those areas identified by  
 16 the airport owner that the local government determines can be reasonably expected to be devoted  
 17 to airport uses allowed under ORS 836.616 (2).

18        (3)(a) A local government shall not impose limitations on the continued operation of uses de-  
 19 scribed in ORS 836.616 (2) that existed at any time during 1996 at an airport described in subsection  
 20 (2) of this section. A local government shall allow for the growth of uses described in ORS 836.616  
 21 (2) that existed at any time during 1996 at an airport described in subsection (2) of this section. A  
 22 local government shall not impose additional limitations on a use approved by the local government  
 23 prior to January 1, 1997, for an airport described in subsection (2) of this section. Notwithstanding  
 24 subsection (4) of this section, the construction of additional hangars or tie-downs by the owner of  
 25 an airport described in subsection (2) of this section, basing additional aircraft and increases in  
 26 flight activity shall be permitted at an airport described in subsection (2) of this section.

27        (b) A local government may authorize the establishment of a new use described in ORS 836.616  
 28 (2) at an airport described in subsection (2) of this section following a public hearing on the use.  
 29 The hearing shall be for the purpose of establishing compliance with adopted clear and objective  
 30 standards relating to the compatibility and adequacy of public facilities and services as provided  
 31 under subsection (5) of this section. Standards and requirements as adopted by the local government  
 32 shall further the policy of ORS 836.600 to the maximum extent practicable.

33        (4) Growth of an existing use on an airport as described in subsection (3)(a) of this section that  
 34 requires a building permit shall be allowed as an administrative decision without public hearing  
 35 unless the growth:

36        (a) Cannot be supported by existing public facilities and services and transportation systems  
 37 authorized by applicable statewide land use planning goals;

38        (b) Forces a significant change or significantly increases the costs of conducting existing uses  
 39 on surrounding lands; or

40        (c) Exceeds the standards of ORS 215.296 (1) if the airport is adjacent to land zoned for exclusive  
 41 farm use.

42        (5) A local government shall authorize a new use described in subsection (3)(b) of this section  
 43 provided the use:

44        (a) Is or will be supported by adequate types and levels of public facilities and services and  
 45 transportation systems authorized by applicable statewide land use planning goals[;]. **For airport**

1 **and through the fence properties totaling 150 acres or more, “adequate public facilities”**  
 2 **means public potable and firefighting water service, public sanitary sewer and public**  
 3 **stormwater utilities.**

4 (b) Does not seriously interfere with existing land uses in areas surrounding the airport[; *and*].

5 (c) [*The local government reviews the use under*] **Satisfies** the standards described in ORS  
 6 215.296 if the airport is adjacent to land zoned for exclusive farm use.

7 (6) An applicant for a new use under subsection (5) of this section may demonstrate that the  
 8 standards for approval will be satisfied through the imposition of conditions. Any conditions imposed  
 9 shall be clear and objective.

10 (7) A local government may adopt standards and requirements for the establishment of new  
 11 airports, the expansion of existing airports and the regulation of uses and activities at airports  
 12 serving as the base for two or fewer aircraft on December 31, 1994, as shown in the records of the  
 13 Department of Transportation. The standards and requirements shall comply with applicable state-  
 14 wide land use planning laws.

15 (8) The Land Conservation and Development Commission shall adopt rules regulating the height  
 16 of structures to protect approach corridors at airports described in subsection (2) of this section and  
 17 at publicly owned airports that are the base for two or fewer aircraft.

18 **SECTION 6.** ORS 836.642 is amended to read:

19 836.642. (1) The Oregon Department of Aviation shall establish a pilot program at up to six rural  
 20 airports to encourage development of through the fence operations designed to promote economic  
 21 development by creating family wage jobs, by increasing local tax bases and by increasing financial  
 22 support for rural airports. To the extent practicable, the airport sponsor of a pilot site shall use  
 23 public-private partnerships that incorporate:

24 (a) Innovative and creative technologies for increasing airport usability and safety;

25 (b) Innovative and creative performance of aviation services to make the services more com-  
 26 petitive and useful for the public;

27 (c) Development of the pilot site as a setting for customary and usual aviation-related activities  
 28 to develop and thrive, in concert with the goals of the Oregon Business Development Department;  
 29 and

30 (d) Shared responsibility for:

31 (A) Establishing and meeting the fiscal needs of the pilot site;

32 (B) Maintaining safety of operations; and

33 (C) Maintaining positive community relations and compatibility with existing uses.

34 (2) The pilot program shall operate at:

35 (a) The Aurora State Airport; and

36 (b) Not more than five additional rural airports that volunteer to participate and are selected  
 37 by the Oregon Department of Aviation with the concurrence of the county in which each rural air-  
 38 port is located.

39 (3) The Oregon Department of Aviation, by rule, shall provide standards and guidelines for  
 40 through the fence operations that:

41 (a) Ensure that the operations provide financial support to the pilot sites in compliance with  
 42 Federal Aviation Administration regulations;

43 (b) Require submission, review, approval and, as appropriate, revision of a facility site plan for  
 44 each through the fence operation so that the real property covered by the site plan can be incor-  
 45 porated into the airport boundary and coordinated with the other aspects of the airport master plan;

1 (c) Ensure that the operations are conducted according to a written contract between the com-  
2 mercial or industrial user of property within the airport boundary and the airport sponsor;

3 (d) Ensure that pilot sites continue to operate in a safe manner and to fulfill their roles in  
4 Oregon's emergency response system;

5 (e) Preserve investments in pilot sites and the level of service provided by pilot sites;

6 (f) Facilitate orderly management of pilot sites;

7 (g) Provide equitable and uniform treatment of airport tenants and users at pilot sites;

8 (h) Advance economic development through qualified customary and usual aviation-related ac-  
9 tivities within the airport boundaries of pilot sites;

10 (i) Encourage well-ordered economic development within the airport boundaries of the pilot  
11 sites;

12 (j) Facilitate and foster good relations with the communities surrounding the pilot sites;

13 (k) Enable conformity with approved airport master plans;

14 (L) Make pilot sites available for public use on reasonable terms; [*and*]

15 (m) Assist pilot sites in developing financial self-sufficiency through the use of innovative fund-  
16 ing and economic development programs[.]; **and**

17 **(n) Limit through the fence aviation, commercial and industrial uses to 50 acres per pilot**  
18 **site.**

19 (4) The Department of Land Conservation and Development, the county and a city, if any, within  
20 whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation  
21 to ensure that the applicable comprehensive plans and land use regulations, including airport zoning  
22 classifications pursuant to ORS 836.600 to 836.630, facilitate through the fence operations and sup-  
23 port the development or expansion of the pilot site consistent with applicable statewide land use  
24 planning requirements.

25 (5) The Oregon Business Development Department shall assist the pilot sites to:

26 (a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and

27 (b) Develop innovative short-term and long-term funding opportunities.

28 (6) To the extent practicable, the airport sponsors shall utilize innovative airport infrastructure  
29 and operations funding to support the pilot sites including, but not limited to:

30 (a) Airport districts as provided in ORS chapter 838;

31 (b) Economic development programs administered by the Oregon Business Development Depart-  
32 ment;

33 (c) Tax increment financing to provide funding for airport-related infrastructure;

34 (d) United States Department of Agriculture Rural Development grants or low-interest loans;  
35 and

36 (e) Programs, including funding for short line railroads under ORS 367.067, designed to facilitate  
37 development of intermodal transportation projects.

38 **SECTION 7.** ORS 197.732 is amended to read:

39 197.732. (1) As used in this section:

40 (a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts  
41 of any type with adjacent uses.

42 (b) "Exception" means a comprehensive plan provision, including an amendment to an acknowl-  
43 edged comprehensive plan, that:

44 (A) Is applicable to specific properties or situations and does not establish a planning or zoning  
45 policy of general applicability;

1 (B) Does not comply with some or all goal requirements applicable to the subject properties or  
 2 situations; and

3 (C) Complies with standards under subsection (2) of this section.

4 (2) A local government may adopt an exception to a goal if:

5 (a) The land subject to the exception is physically developed to the extent that it is no longer  
 6 available for uses allowed by the applicable goal;

7 (b) The land subject to the exception is irrevocably committed as described by Land Conserva-  
 8 tion and Development Commission rule to uses not allowed by the applicable goal because existing  
 9 adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;  
 10 or

11 (c) The following standards are met:

12 (A) Reasons justify why the state policy embodied in the applicable goals should not apply;

13 (B) Areas that do not require a new exception cannot reasonably accommodate the use;

14 (C) The long term environmental, economic, social and energy consequences resulting from the  
 15 use at the proposed site with measures designed to reduce adverse impacts are not significantly  
 16 more adverse than would typically result from the same proposal being located in areas requiring  
 17 a goal exception other than the proposed site; and

18 (D) The proposed uses are compatible with other adjacent uses or will be so rendered through  
 19 measures designed to reduce adverse impacts.

20 (3) The commission shall adopt rules establishing:

21 (a) That an exception may be adopted to allow a use authorized by a statewide planning goal  
 22 that cannot comply with the approval standards for that type of use[.];

23 (b) Under what circumstances particular reasons may or may not be used to justify an exception  
 24 under subsection (2)(c)(A) of this section[; and].

25 (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2)  
 26 of this section.

27 **(d) That the presence of a transportation facility, as defined in ORS 197.798, may not**  
 28 **justify an exception under subsection (2)(c)(A) of this section.**

29 (4) A local government approving or denying a proposed exception shall set forth findings of fact  
 30 and a statement of reasons that demonstrate that the standards of subsection (2) of this section have  
 31 or have not been met.

32 (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal  
 33 exception is proposed and shall summarize the issues in an understandable manner.

34 (6) Upon review of a decision approving or denying an exception:

35 (a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for  
 36 which there is substantial evidence in the record of the local government proceedings resulting in  
 37 approval or denial of the exception;

38 (b) The board upon petition, or the commission, shall determine whether the local government's  
 39 findings and reasons demonstrate that the standards of subsection (2) of this section have or have  
 40 not been met; and

41 (c) The board or commission shall adopt a clear statement of reasons that sets forth the basis  
 42 for the determination that the standards of subsection (2) of this section have or have not been met.

43 (7) The commission shall by rule establish the standards required to justify an exception to the  
 44 definition of "needed housing" authorized by ORS 197.303.

45 (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement

1 Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

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