

Senate Bill 963

Sponsored by Senator SMITH DB

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**.

Requires additional cities to develop urban reserves.

Allows approval of certain development within urban reserves not designated by Metro and expansion of urban growth boundary to include development.

A BILL FOR AN ACT

1
2 Relating to urban reserves; creating new provisions; and amending ORS 195.141, 195.143, 195.145,
3 197.651 and 268.390.

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

5 **SECTION 1.** ORS 195.145 is amended to read:

6 195.145. (1) To ensure that the supply of land available for urbanization is maintained:

7 (a) *[Local governments may]* **Each city outside of Metro with a population of more than**
8 **10,000 in a county with a population of more than 20,000 shall, with the county,** cooperatively
9 designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to
10 197.625 and 197.626.

11 **(b) A city and county not subject to paragraph (a) of this subsection may designate urban**
12 **reserves under the process and criteria adopted pursuant to paragraph (a) of this subsection.**

13 *[(b)] (c) Alternatively, [a metropolitan service district established under ORS chapter 268] Metro*
14 *and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or*
15 *197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this*
16 *paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this*
17 *subsection.*

18 *(2)[(a)] The Land Conservation and Development Commission may require a local government*
19 *to designate an urban reserve pursuant to subsection [(1)(a)] (1)(b) of this section during its periodic*
20 *review in accordance with the conditions for periodic review under ORS 197.628.*

21 *[(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local govern-*
22 *ment to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic*
23 *review if:]*

24 *[(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metro-*
25 *politan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and]*

26 *[(B) The local government has been required to designate an urban reserve by rule prior to No-*
27 *vember 4, 1993.]*

28 (3) In carrying out subsections (1) and (2) of this section:

29 (a) Within an urban reserve, neither the commission nor any local government shall prohibit the
30 siting on a legal parcel of a single family dwelling that would otherwise have been allowed under
31 law existing prior to designation as an urban reserve.

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 (b) The commission shall provide to local governments a list of options, rather than prescribing
 2 a single planning technique, to ensure the efficient transition from rural to urban use in urban re-
 3 serves.

4 (4) Urban reserves designated by [*a metropolitan service district*] **Metro** and a county pursuant
 5 to subsection [(1)(b)] (1)(c) of this section must be planned to accommodate population and employ-
 6 ment growth for at least 20 years, and not more than 30 years, after the 20-year period for which
 7 the district has demonstrated a buildable land supply in the most recent inventory, determination
 8 and analysis performed under ORS 197.296.

9 (5) A district and a county shall base the designation of urban reserves under subsection
 10 [(1)(b)] (1)(c) of this section upon consideration of factors including, but not limited to, whether land
 11 proposed for designation as urban reserves, alone or in conjunction with land inside the urban
 12 growth boundary:

13 (a) Can be developed at urban densities in a way that makes efficient use of existing and future
 14 public infrastructure investments;

15 (b) Includes sufficient development capacity to support a healthy urban economy;

16 (c) Can be served by public schools and other urban-level public facilities and services efficiently
 17 and cost-effectively by appropriate and financially capable service providers;

18 (d) Can be designed to be walkable and served by a well-connected system of streets by appro-
 19 priate service providers;

20 (e) Can be designed to preserve and enhance natural ecological systems; and

21 (f) Includes sufficient land suitable for a range of housing types.

22 (6) A county may take an exception under ORS 197.732 to a statewide land use planning goal
 23 to allow the establishment of a transportation facility in an area designated as urban reserve under
 24 subsection [(1)(b)] (1)(c) of this section.

25 (7) The commission shall adopt by goal or by rule a process and criteria for designating urban
 26 reserves pursuant to subsection [(1)(b)] (1)(c) of this section.

27 **SECTION 2. Section 3 of this 2023 Act is added to and made a part of ORS chapter 197.286**
 28 **to 197.314.**

29 **SECTION 3. (1) A local government with jurisdiction over urban reserves designated un-**
 30 **der ORS 195.145 (1)(a) or (b) may approve a land use application for:**

31 **(a) The subdivision of 10 or more lots for residential development;**

32 **(b) The development of a multifamily dwelling with 10 or more units; or**

33 **(c) The development of a commercial or industrial use that will result in 10 or more jobs**
 34 **that will pay salaries greater than the area median income.**

35 **(2) During or after the approval of an application under subsection (1) of this section, and**
 36 **notwithstanding ORS 197.286 to 197.314 or 197A.310 or any statewide planning goal, a city**
 37 **may amend its urban growth boundary to include the lands to be developed or subdivided.**

38 **SECTION 4. ORS 195.141 is amended to read:**

39 195.141. (1) A county and a metropolitan service district established under ORS chapter 268 may
 40 enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652
 41 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS
 42 195.145 [(1)(b)] (1)(c).

43 (2) Land designated as a rural reserve:

44 (a) Must be outside an urban growth boundary.

45 (b) May not be designated as an urban reserve during the urban reserve planning period de-

1 scribed in ORS 195.145 (4).

2 (c) May not be included within an urban growth boundary during the period of time described
3 in paragraph (b) of this subsection.

4 (3) When designating a rural reserve under this section to provide long-term protection to the
5 agricultural industry, a county and a metropolitan service district shall base the designation on
6 consideration of factors including, but not limited to, whether land proposed for designation as a
7 rural reserve:

8 (a) Is situated in an area that is otherwise potentially subject to urbanization during the period
9 described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary
10 and to properties with fair market values that significantly exceed agricultural values;

11 (b) Is capable of sustaining long-term agricultural operations;

12 (c) Has suitable soils and available water where needed to sustain long-term agricultural oper-
13 ations; and

14 (d) Is suitable to sustain long-term agricultural operations, taking into account:

15 (A) The existence of a large block of agricultural or other resource land with a concentration
16 or cluster of farms;

17 (B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses
18 and the existence of buffers between agricultural operations and nonfarm uses;

19 (C) The agricultural land use pattern, including parcelization, tenure and ownership patterns;
20 and

21 (D) The sufficiency of agricultural infrastructure in the area.

22 (4) The Land Conservation and Development Commission shall, after consultation with the State
23 Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural
24 reserves pursuant to this section.

25 **SECTION 5.** ORS 195.143 is amended to read:

26 195.143. (1) A county and a metropolitan service district must consider simultaneously the des-
27 ignation and establishment of:

28 (a) Rural reserves pursuant to ORS 195.141; and

29 (b) Urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c).

30 (2) An agreement between a county and a metropolitan service district to establish rural re-
31 serves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c) must
32 provide for a coordinated and concurrent process for adoption by the county of comprehensive plan
33 provisions and by the district of regional framework plan provisions to implement the agreement.
34 A district may not designate urban reserves pursuant to ORS 195.145 [(1)(b)] (1)(c) in a county until
35 the county and the district have entered into an agreement pursuant to ORS 195.145 [(1)(b)] (1)(c)
36 that identifies the land to be designated by the district in the district's regional framework plan as
37 urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county
38 and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to
39 be designated as rural reserves by the county in the county's comprehensive plan.

40 (3) A county and a metropolitan service district may not enter into an intergovernmental
41 agreement to designate urban reserves in the county pursuant to ORS 195.145 [(1)(b)] (1)(c) unless
42 the county and the district also agree to designate rural reserves in the county.

43 (4) Designation and protection of rural reserves pursuant to ORS 195.141 or urban reserves
44 pursuant to ORS 195.145 [(1)(b)] (1)(c):

45 (a) Is not a basis for a claim for compensation under ORS 195.305 unless the designation and

1 protection of rural reserves or urban reserves imposes a new restriction on the use of private real
2 property.

3 (b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.

4 **SECTION 6.** ORS 197.651 is amended to read:

5 197.651. (1) Judicial review of a final order of the Land Conservation and Development Com-
6 mission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 [(1)(b)]
7 (1)(c) or rural reserves under ORS 195.141 is as provided in subsections (3) to (12) of this section.

8 (2) Judicial review of any other final order of the commission under ORS 197.626 or of a final
9 order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659,
10 215.780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.

11 (3) A proceeding for judicial review under this section may be instituted by filing a petition in
12 the Court of Appeals. The petition must be filed within 21 days after the date the commission de-
13 livered or mailed the order upon which the petition is based.

14 (4) The filing of the petition, as set forth in subsection (3) of this section, and service of a peti-
15 tion on the persons who submitted oral or written testimony in the proceeding before the commis-
16 sion are jurisdictional and may not be waived or extended.

17 (5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies
18 of the petition must be served by registered or certified mail upon the commission and the persons
19 who submitted oral or written testimony in the proceeding before the commission.

20 (6) Within 21 days after service of the petition, the commission shall transmit to the Court of
21 Appeals the original or a certified copy of the entire record of the proceeding under review. How-
22 ever, by stipulation of the parties to the review proceeding, the record may be shortened. The Court
23 of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the addi-
24 tional costs. The Court of Appeals may require or permit subsequent corrections or additions to the
25 record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost
26 of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the
27 costs to a party that files a frivolous petition for judicial review.

28 (7) Petitions and briefs must be filed within time periods and in a manner established by the
29 Court of Appeals by rule.

30 (8) The Court of Appeals shall:

31 (a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court
32 of Appeals determines that the ends of justice served by holding oral argument on a later day out-
33 weigh the best interests of the public and the parties. However, the Court of Appeals may not hold
34 oral argument more than 49 days after the date of transmittal of the record because of general
35 congestion of the court calendar or lack of diligent preparation or attention to the case by a member
36 of the court or a party.

37 (b) Set forth in writing and provide to the parties a determination to hear oral argument more
38 than 49 days from the date the record is transmitted, together with the reasons for the determi-
39 nation. The Court of Appeals shall schedule oral argument as soon as is practicable.

40 (c) Consider, in making a determination under paragraph (b) of this subsection:

41 (A) Whether the case is so unusual or complex, due to the number of parties or the existence
42 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
43 the case and for the Court of Appeals to prepare for oral argument; and

44 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
45 riage of justice.

1 (9) The court:

2 (a) Shall limit judicial review of an order reviewed under this section to the record.

3 (b) May not substitute its judgment for that of the Land Conservation and Development Com-
4 mission as to an issue of fact.

5 (10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section.
6 The Court of Appeals shall reverse or remand the order only if the court finds the order is:

7 (a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal
8 or remand unless the Court of Appeals determines that substantial rights of the petitioner were
9 prejudiced.

10 (b) Unconstitutional.

11 (c) Not supported by substantial evidence in the whole record as to facts found by the commis-
12 sion.

13 (11) The Court of Appeals shall issue a final order on the petition for judicial review with the
14 greatest possible expediency.

15 (12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court,
16 the commission shall respond to the court's appellate judgment within 30 days.

17 **SECTION 7.** ORS 268.390 is amended to read:

18 268.390. (1) A district may define and apply a planning procedure that identifies and designates
19 areas and activities having significant impact upon the orderly and responsible development of the
20 metropolitan area, including, but not limited to, impact on:

21 (a) Air quality;

22 (b) Water quality; and

23 (c) Transportation.

24 (2) A district may prepare and adopt functional plans for those areas designated under sub-
25 section (1) of this section to control metropolitan area impact on air and water quality, transporta-
26 tion and other aspects of metropolitan area development the district may identify.

27 (3)(a) A district shall adopt an urban growth boundary for the district in compliance with ap-
28 plicable goals adopted under ORS chapters 195, 196 and 197. When a district includes land desig-
29 nated as urban reserve under ORS 195.145 [(1)(b)] (1)(c) within an urban growth boundary pursuant
30 to ORS 197.298 (1), the district is not required to consider the capability classification system or the
31 cubic foot site class of the land as described in ORS 197.298 (2).

32 (b) Notwithstanding the procedural requirements for boundary changes under ORS 268.354, when
33 the district adopts an urban growth boundary, the urban growth boundary becomes the boundary
34 of the district.

35 (4) A district may review the comprehensive plans adopted by the cities and counties within the
36 district that affect areas designated by the district under subsection (1) of this section or the urban
37 growth boundary adopted under subsection (3) of this section and recommend or require cities and
38 counties, as it considers necessary, to make changes in any plan to ensure that the plan and any
39 actions taken under the plan substantially comply with the district's functional plans adopted under
40 subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this
41 section.

42 (5) Pursuant to a regional framework plan, a district may adopt implementing ordinances that:

43 (a) Require local comprehensive plans and implementing regulations to substantially comply
44 with the regional framework plan within two years after compliance acknowledgment.

45 (b) Require adjudication and determination by the district of the consistency of local compre-

1 hensive plans with the regional framework plan.

2 (c) Require each city and county within the jurisdiction of the district and making land use de-
3 cisions concerning lands within the land use jurisdiction of the district to make those decisions
4 consistent with the regional framework plan. The obligation to apply the regional framework plan
5 to land use decisions shall not begin until one year after the regional framework plan is acknowl-
6 edged as complying with the statewide land use planning goals adopted under ORS chapters 195, 196
7 and 197.

8 (d) Require changes in local land use standards and procedures if the district determines that
9 changes are necessary to remedy a pattern or practice of decision-making inconsistent with the re-
10 gional framework plan.

11 (6) A process established by the district to enforce the requirements of this section must provide:

12 (a) Notice of noncompliance to the city or county.

13 (b) Opportunity for the city or county to be heard.

14 (c) Entry of an order by the district explaining its findings, conclusions and enforcement reme-
15 dies, if any.

16 (7) Enforcement remedies ordered under subsection (6) of this section may include, but are not
17 limited to:

18 (a) Direct application of specified requirements of functional plans to land use decisions by the
19 city or county;

20 (b) Withholding by the district of discretionary funds from the city or county; and

21 (c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding mon-
22 eys pursuant to an enforcement order resulting from the enforcement action.

23 (8) An order issued under subsection (6) of this section:

24 (a) Must provide for relief from enforcement remedies upon action by the city or county that
25 brings the comprehensive plan and implementing regulations into substantial compliance with the
26 requirement.

27 (b) Is subject to review under ORS 197.830 to 197.845 as a land use decision.

28 (9) The regional framework plan, ordinances that implement the regional framework plan and
29 any determination by the district of consistency with the regional framework plan are subject to
30 review under ORS 197.274.

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