

Senate Bill 998

Sponsored by Senator JAMA

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**.

Authorizes cities to include modifications to system development charges in housing productions strategy. Allows Land Conservation and Development Commission to require modifications to charges in compliance order for unsatisfactory progress in implementing strategy. Authorizes local government to exempt affordable housing from system development charges. Becomes operative January 1, 2024.

Requires Department of Land Conservation and Development to report to interim committee of Legislative Assembly on recommended legislative changes to adopt consolidated infrastructure funding on or before December 15, 2023.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to infrastructure; creating new provisions; amending ORS 197.290, 197.335 and 223.301; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 197.290 is amended to read:

6 197.290. (1) A city with a population greater than 10,000 shall develop and adopt a housing
7 production strategy under this section no later than one year after the city's deadline for completing
8 a housing capacity analysis under ORS 197.296 (2)(a) or (10)(b) or 197.297.

9 (2) A housing production strategy must include a list of specific actions, including the adoption
10 of measures and policies, that the city shall undertake to promote development within the city to
11 address a housing need identified under ORS 197.296 (6)(b) or (10)(b) or 197.297. Actions under this
12 subsection may include:

13 (a) The reduction of financial and regulatory impediments to developing needed housing, in-
14 cluding removing or easing approval standards or procedures for needed housing at higher densities
15 or that is affordable;

16 (b) The creation of financial and regulatory incentives for development of needed housing, in-
17 cluding creating incentives for needed housing at higher densities or that is affordable; *[and]*

18 (c) The development of a plan to access resources available at local, regional, state and national
19 levels to increase the availability and affordability of needed housing[.]; **and**

20 **(d) Modifications to system development charges, including waivers, deferrals, reductions**
21 **and scaling to unit size.**

22 (3) In creating a housing production strategy, a city shall review and consider:

23 (a) Socioeconomic and demographic characteristics of households living in existing needed
24 housing;

25 (b) Market conditions affecting the provision of needed housing;

26 (c) Measures already adopted by the city to promote the development of needed housing;

27 (d) Existing and expected barriers to the development of needed housing; and

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 (e) For each action the city includes in its housing production strategy:

2 (A) The schedule for its adoption;

3 (B) The schedule for its implementation;

4 (C) Its expected magnitude of impact on the development of needed housing; and

5 (D) The time frame over which it is expected to impact needed housing.

6 (4) The housing production strategy must include within its index a copy of the city's most re-
7 cently completed survey under ORS 456.586 (2).

8 (5) The adoption of a housing production strategy is not a land use decision and is not subject
9 to appeal or review except as provided in ORS 197.291.

10 (6) A city with a population of 10,000 or less may develop a housing production strategy as
11 provided in this section.

12 **SECTION 2.** ORS 197.335 is amended to read:

13 197.335. (1) An order issued under ORS 197.328 and the copy of the order mailed to the local
14 government, state agency or special district shall set forth:

15 (a) The nature of the noncompliance, including, but not limited to, the contents of the compre-
16 hensive plan or land use regulation, if any, of a local government that do not comply with the goals
17 or the contents of a plan, program or regulation affecting land use adopted by a state agency or
18 special district that do not comply with the goals. In the case of a pattern or practice of decision-
19 making which violates the goals, comprehensive plan or land use regulations, the order shall specify
20 the decision-making which constitutes the pattern or practice, including specific provisions the Land
21 Conservation and Development Commission believes are being misapplied;

22 (b) The specific lands, if any, within a local government for which the existing plan or land use
23 regulation, if any, does not comply with the goals; and

24 (c) The corrective action decided upon by the commission, including the specific requirements,
25 with which the local government, state agency or special district must comply. In the case of a
26 pattern or practice of decision-making that violates an acknowledged comprehensive plan or land
27 use regulation, the commission may require revisions to the comprehensive plan, land use regu-
28 lations or local procedures which the commission believes are necessary to correct the pattern or
29 practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of
30 this section, an enforcement order does not affect:

31 (A) Land use applications filed with a local government prior to the date of adoption of the
32 enforcement order unless specifically identified by the order;

33 (B) Land use approvals issued by a local government prior to the date of adoption of the
34 enforcement order; or

35 (C) The time limit for exercising land use approvals issued by a local government prior to the
36 date of adoption of the enforcement order.

37 (2) Judicial review of a final order of the commission shall be governed by the provisions of ORS
38 chapter 183 applicable to contested cases except as otherwise stated in this section. The
39 commission's final order shall include a clear statement of findings which set forth the basis for the
40 order. Where a petition to review the order has been filed in the Court of Appeals, the commission
41 shall transmit to the court the entire administrative record of the proceeding under review.
42 Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate
43 court, before it may stay an order of the commission, shall give due consideration to the public in-
44 terest in the continued enforcement of the commission's order and may consider testimony or affi-
45 davits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order.

1 The court shall reverse, modify or remand the order only if it finds:

2 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be
3 cause for reversal, modification or remand unless the court shall find that substantial rights of any
4 party were prejudiced thereby;

5 (b) The order to be unconstitutional;

6 (c) The order is invalid because it exceeds the statutory authority of the agency; or

7 (d) The order is not supported by substantial evidence in the whole record.

8 (3)(a) If the commission finds that in the interim period during which a local government, state
9 agency or special district would be bringing itself into compliance with the commission's order un-
10 der ORS 197.320 or subsection (2) of this section it would be contrary to the public interest in the
11 conservation or sound development of land to allow the continuation of some or all categories of
12 land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or re-
13 quire the approval by the local government of applications for subdivisions, partitions, building
14 permits, limited land use decisions or land use decisions until the plan, land use regulation or sub-
15 sequent land use decisions and limited land use decisions are brought into compliance. The com-
16 mission may issue an order that requires review of local decisions by a hearings officer or the
17 Department of Land Conservation and Development before the local decision becomes final.

18 (b) Any requirement under this subsection may be imposed only if the commission finds that the
19 activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and
20 that the requirement is necessary to correct the violation.

21 (c) The limitations on enforcement orders under subsection (1)(c)(B) of this section shall not be
22 interpreted to affect the commission's authority to limit, prohibit or require application of specified
23 criteria to subsequent land use decisions involving land use approvals issued by a local government
24 prior to the date of adoption of the enforcement order.

25 (4) As part of its order under ORS 197.320 or subsection (2) of this section, the commission may
26 withhold grant funds from the local government to which the order is directed. As part of an order
27 issued under this section, the commission may notify the officer responsible for disbursing state-
28 shared revenues to withhold that portion of state-shared revenues to which the local government is
29 entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the
30 amount of state planning grant moneys previously provided the local government by the commission.
31 The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as
32 outlined in this section and shall release funds to the local government or department when notified
33 to so do by the commission or its designee. The commission may retain a portion of the withheld
34 revenues to cover costs of providing services incurred under the order, including use of a hearings
35 officer or staff resources to monitor land use decisions and limited land use decisions or conduct
36 hearings. The remainder of the funds withheld under this provision shall be released to the local
37 government upon completion of requirements of the commission order.

38 (5)(a) As part of its order under this section, the commission may notify the officer responsible
39 for disbursing funds from any grant or loan made by a state agency to withhold such funds from a
40 special district to which the order is directed. The officer responsible for disbursing funds shall
41 withhold funds as outlined in this section and shall release funds to the special district or depart-
42 ment when notified to do so by the commission.

43 (b) The commission may retain a portion of the funds withheld to cover costs of providing ser-
44 vices incurred under the order, including use of a hearings officer or staff resources to monitor land
45 use decisions and limited land use decisions or conduct hearings. The remainder of the funds with-

1 held under this provision shall be released to the special district upon completion of the require-
 2 ments of the commission order.

3 **(6) As part of its order under this section, upon finding that a city failed to comply with**
 4 **ORS 197.320 (13), the commission may require a city to adopt specified changes to the city’s**
 5 **calculations or collections of system development charges that would promote development**
 6 **to address a housing need identified under ORS 197.296 (6)(b) or (10)(b) or 197.297.**

7 [(6)] (7) The commission may institute actions or proceedings for legal or equitable remedies in
 8 the Circuit Court for Marion County or in the circuit court for the county to which the
 9 commission’s order is directed or within which all or a portion of the applicable city is located to
 10 enforce compliance with the provisions of any order issued under this section or to restrain vio-
 11 lations thereof. Such actions or proceedings may be instituted without the necessity of prior agency
 12 notice, hearing and order on an alleged violation.

13 **SECTION 3.** ORS 223.301 is amended to read:

14 223.301. (1) As used in this section, “employer” means any person who contracts to pay
 15 remuneration for, and secures the right to direct and control the services of, any person.

16 (2) A local government may not establish or impose a system development charge that requires
 17 an employer to pay a reimbursement fee or an improvement fee based on:

18 (a) The number of individuals hired by the employer after a specified date; or

19 (b) A methodology that assumes that costs are necessarily incurred for capital improvements
 20 when an employer hires an additional employee.

21 (3) A methodology set forth in an ordinance or resolution that establishes an improvement fee
 22 or a reimbursement fee shall not include or incorporate any method or system under which the
 23 payment of the fee or the amount of the fee is determined by the number of employees of an em-
 24 ployer without regard to new construction, new development or new use of an existing structure by
 25 the employer.

26 (4) A local government may not impose a system development charge for increased use of a
 27 transportation facility that results from the production of marijuana on a property located in an
 28 exclusive farm use zone.

29 **(5) A local government may elect to exempt from a system development charge property**
 30 **that consists of housing that will be sold or rented for occupancy to households earning an-**
 31 **nually not more than 60 percent of the area median income at a price or rent that is af-**
 32 **fordable to such households.**

33 **SECTION 4.** The amendments to ORS 197.290, 197.335 and 223.301 by sections 1 to 3 of this
 34 **2023 Act become operative on January 1, 2024.**

35 **SECTION 5.** On or before December 15, 2023, the Department of Land Conservation and
 36 **Development shall provide a report to an appropriate interim committee of the Legislative**
 37 **Assembly in the manner provided in ORS 192.245 on recommendations for legislative changes**
 38 **to consolidate available state infrastructure funding to serve housing to be efficiently applied**
 39 **for through a single portal by local governments and housing developers.**

40 **SECTION 6.** This 2023 Act being necessary for the immediate preservation of the public
 41 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
 42 **on its passage.**