

A-Engrossed
House Bill 2723

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by Representative CLEM; Representatives GILLIAM, READ (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.

Authorizes county or city to designate any urbanized area of county or city as urban agriculture incentive zone. Authorizes county or city to enter into agreement with owner of unimproved land within zone pursuant to which owner agrees to restrict use of land to small-scale urban agricultural production **for five consecutive years** in exchange for special assessment of land. **Allows subsequent five-year agreements. Requires filing of application with county assessor. Provides for disqualification from special assessment and clawback of tax benefits if certain gross income requirements are not met or land is no longer used for urban agricultural production.**

Provides that designation of urban agriculture incentive zone has no effect on buildable land inventories or urban growth boundary of county or city that designates zone. For purpose of inventory of supply of buildable lands within urban growth boundary and determination of housing capacity, requires local government to consider extent to which designation of urban agriculture incentive zones will affect future development.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to urban agriculture; creating new provisions; amending ORS 197.296, 308A.703 and
3 308A.718; and prescribing an effective date.

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

5 **SECTION 1. (1)(a) As used in this section, "agricultural production" means the employ-**
6 **ment of land for farm use as defined in ORS 308A.056.**

7 **(b) A city or county that designates an urban agriculture incentive zone under this sec-**
8 **tion may further define "agricultural production" and define "small-scale" for the purposes**
9 **of this section by ordinance, resolution or rule.**

10 **(2) A city or county may designate any urbanized area of the city or county as an urban**
11 **agriculture incentive zone.**

12 **(3)(a) A city or county may enter into an agreement with an owner of unimproved land**
13 **within an urban agriculture incentive zone pursuant to which the owner agrees to restrict**
14 **the use of the unimproved land to small-scale urban agricultural production for five consec-**
15 **utive years.**

16 **(b) During each of the five years of the agreement, the unimproved land shall be subject**
17 **to special assessment in the same manner as farmland is assessed under ORS 308A.107,**
18 **provided the gross income requirements specified under ORS 308A.071 (2)(a)(A) to (C) are**
19 **met for the year.**

20 **(c) The area of unimproved land subject to special assessment may be smaller than the**
21 **tax lot of which the area is a part and shall be limited to the area actually used for small-**
22 **scale urban agricultural production.**

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 (d) A city or county may enter into subsequent five-year agreements with an owner of
2 unimproved land granted special assessment under this section that begin after the fifth year
3 of any prior agreement entered into under this section.

4 (4)(a) An owner seeking to have unimproved land granted special assessment under this
5 section must file an application with the county assessor on or before April 1 preceding the
6 first property tax year for which the special assessment is sought.

7 (b) The application must be made on forms prepared by the Department of Revenue and
8 supplied by the county assessor and must include:

9 (A) A copy of the agreement entered into under subsection (3) of this section;

10 (B) A true copy of the deed, contract of sale, power of attorney or other appropriate in-
11 strument evidencing the applicant's ownership of the land or authority to file the application
12 on behalf of the owner;

13 (C) Any information necessary to determine that the owner and the unimproved land
14 qualify for the special assessment; and

15 (D) The affidavit or affirmation of the applicant that the statements contained in the
16 application are true.

17 (c) If the application does not meet all requirements under this section, the county
18 assessor shall reject the application and notify the owner of the rejection. Rejection of an
19 application under this paragraph is not reviewable, but an owner may submit an application
20 for the unimproved land for any subsequent property tax year.

21 (d) If the application meets all requirements under this section, the county assessor shall
22 approve the application and notify the owner of the approval and the land shall be subject
23 to special assessment under this section for each of the next following five property tax
24 years.

25 (e) The county assessor shall enter on the assessment and tax roll for the land the no-
26 tation "potential additional tax liability."

27 (5)(a) Unimproved land subject to special assessment under this section shall be disqual-
28 ified from special assessment if the county assessor discovers that, during the term of an
29 agreement entered into under subsection (3) of this section:

30 (A) For any property tax year, the gross income requirements specified under ORS
31 308A.071 (2)(a)(A) to (C) were not met; or

32 (B) The unimproved land is no longer used for urban agricultural production.

33 (b) Disqualification under this subsection becomes effective on the January 1 assessment
34 date of the assessment year in which the discovery is made if the notice of disqualification
35 required under ORS 308A.718 is mailed by the county assessor before August 15 of the prop-
36 erty tax year for which the disqualification is asserted.

37 (c) Following disqualification, an additional tax shall be added to the tax extended against
38 the land on the next assessment and tax roll, to be collected and distributed in the same
39 manner as other ad valorem property taxes. The additional tax shall be equal to the differ-
40 ence between the taxes assessed against the land and the taxes that would otherwise have
41 been assessed against the land for each of the property tax years for which the land was
42 subject to special assessment under this section before the disqualification.

43 (d) Additional taxes imposed under paragraph (c) of this subsection shall be deemed as-
44 sessed and imposed in the year to which the additional taxes relate.

45 (e) The amount determined to be due under this section may be paid to the tax collector

1 prior to the time of the next assessment and tax roll, pursuant to the provisions of ORS
2 311.370.

3 (f) For purposes of this subsection, unimproved land is not disqualified from special as-
4 sessment and may not be assessed additional taxes solely because the land is no longer used
5 for urban agricultural production outside the effective periods of agreements entered into
6 under subsection (3) of this section.

7 (6) The designation of an urban agriculture incentive zone under this section is solely for
8 purposes of the special assessment granted under this section and, except as provided in ORS
9 197.296 (4), has no effect on buildable land inventories or the urban growth boundary of the
10 city or county that designates the zone.

11 (7) The Department of Revenue may adopt rules necessary for administration of the ur-
12 ban agriculture incentive zone special assessment under this section.

13 **SECTION 2.** ORS 308A.703 is amended to read:

14 308A.703. (1) This section applies to land upon the land's disqualification from special assess-
15 ment under any of the following sections:

- 16 (a) Exclusive farm use zone farmland under ORS 308A.113;
- 17 (b) Nonexclusive farm use zone farmland under ORS 308A.116;
- 18 (c) Western Oregon designated forestland under ORS 321.359;
- 19 (d) Eastern Oregon designated forestland under ORS 321.842;
- 20 (e) Wildlife habitat special assessment under ORS 308A.430; *[or]*
- 21 (f) Conservation easement special assessment under ORS 308A.465; **or**

22 **(g) Urban agriculture incentive zone special assessment under section 1 of this 2015**
23 **Act.**

24 (2) Following a disqualification listed in subsection (1) of this section, an additional tax shall
25 be added to the tax extended against the land on the next assessment and tax roll, to be collected
26 and distributed in the same manner as other ad valorem property tax moneys. The additional tax
27 shall be equal to the difference between the taxes assessed against the land and the taxes that would
28 otherwise have been assessed against the land, for each of the number of years determined under
29 subsection (3) of this section.

30 (3) The number of years for which additional taxes shall be calculated shall equal the lesser of
31 the number of consecutive years the land had qualified for the special assessment program for which
32 disqualification has occurred or:

33 (a) Ten years, in the case of exclusive farm use zone farmland, but only if the land, immediately
34 following disqualification, remains outside an urban growth boundary;

35 (b) Ten years, in the case of wildlife habitat special assessment land within an exclusive farm
36 use zone, but only if the land, immediately following disqualification, remains outside an urban
37 growth boundary;

38 (c) Ten years, in the case of conservation easement special assessment land within an exclusive
39 farm use zone, but only if the land, immediately following disqualification, remains outside an urban
40 growth boundary; or

41 (d) Five years, in the case of:

- 42 (A) Nonexclusive farm use zone farmland;
- 43 (B) Western Oregon designated forestland;
- 44 (C) Eastern Oregon designated forestland;
- 45 (D) Exclusive farm use zone farmland that is not described in paragraph (a) of this subsection;

1 (E) Wildlife habitat special assessment land that is not described in paragraph (b) of this sub-
2 section; [or]

3 (F) Conservation easement special assessment land that is not described in paragraph (c) of this
4 subsection; **or**

5 **(G) Urban agriculture incentive zone special assessment land.**

6 (4)(a) Except as provided in paragraph (b) of this subsection, if disqualification under subsection
7 (1)(a) or (b) of this section occurs within five years after the end of a period of farm use special
8 assessment pursuant to a remediation plan as defined in ORS 308A.053, the number of years for
9 which the additional tax shall be calculated shall be the number of years determined under sub-
10 section (3) of this section plus the number of years during which farm use special assessment was
11 granted pursuant to the remediation plan.

12 (b) Additional tax may not be collected for the number of years during which farm use special
13 assessment was granted pursuant to the remediation plan if the plan:

14 (A) Is implemented in good faith; and

15 (B) Fails to render continued farm use practicable.

16 (5) The additional taxes described in this section shall be deemed assessed and imposed in the
17 year to which the additional taxes relate.

18 (6) If the disqualification of the land is the result of the sale or transfer of the land to an own-
19 ership making the land exempt from ad valorem property taxation, the lien for additional taxes shall
20 attach as of the day preceding the sale or transfer.

21 (7) The amount determined to be due under this section may be paid to the tax collector prior
22 to the time of the next general property tax roll, pursuant to the provisions of ORS 311.370.

23 **SECTION 3.** ORS 308A.718 is amended to read:

24 308A.718. (1) The county assessor shall send notice as provided in this section if land is dis-
25 qualified under any of the following special assessment programs:

26 (a) Farm use special assessment under ORS 308A.050 to 308A.128.

27 (b) Farm or forest homesite special assessment under ORS 308A.250 to 308A.259.

28 (c) Western Oregon designated forestland special assessment under ORS 321.257 to 321.390.

29 (d) Eastern Oregon designated forestland special assessment under ORS 321.805 to 321.855.

30 (e) Small tract forestland special assessment under ORS 321.700 to 321.754.

31 (f) Wildlife habitat special assessment under ORS 308A.403 to 308A.430.

32 (g) Conservation easement special assessment under ORS 308A.450 to 308A.465.

33 **(h) Urban agriculture incentive zone special assessment under section 1 of this 2015 Act.**

34 (2) Notwithstanding that a change in use described in this section is not a disqualification, the
35 assessor shall send notice as provided in this section when the highest and best use of land changes
36 from forestland to a different highest and best use.

37 (3) Within 30 days after the date that land is disqualified from special assessment, the assessor
38 shall notify the taxpayer in writing of the disqualification and shall state the reason for the dis-
39 qualification.

40 (4) Following receipt of the notification, the taxpayer may appeal the assessor's determination
41 to the Oregon Tax Court within the time and in the manner provided in ORS 305.404 to 305.560.

42 (5)(a) When any land has been granted special assessment under any of the special assessment
43 laws listed in subsection (1) of this section and the land is disqualified from such special assessment,
44 the county assessor shall furnish the owner with a written explanation summarizing:

45 (A) ORS 308A.706 (1)(d) (relating to change in special assessment);

1 (B) ORS 308A.727 (relating to change in use to open space use special assessment for certain
2 golf courses);

3 (C) The administrative act necessary under ORS 308A.724 to change the property to another
4 classification described in this paragraph; and

5 (D) The imposition of any penalties that would result from the disqualification if no requali-
6 fication or reclassification is made under one of the other special assessment laws listed in this
7 paragraph.

8 (b) The written explanation required by this subsection shall be given in conjunction either with
9 the notice of disqualification required under this section or with an order or notice of disqualifica-
10 tion otherwise provided by law.

11 (c)(A) If no notice of disqualification is required to be made by this section or other provision
12 of law, the written explanation required by this subsection shall be made by the county assessor.

13 (B) A written explanation made under this paragraph shall be made by the assessor within 30
14 days of the effective date of the disqualification.

15 (6) Subsections (1) to (5) of this section do not apply if the reason for the disqualification is:

16 (a) The result of a request for disqualification by the property owner; or

17 (b) Because the property is being acquired by a government or tax-exempt entity.

18 (7) Within 30 days after the date the notification required under subsection (3) of this section
19 is mailed, a taxpayer intending to implement a remediation plan as defined in ORS 308A.053 on the
20 disqualified land that is the subject of the notification must notify the assessor in writing of the
21 taxpayer's intention to seek certification for the remediation plan.

22 **SECTION 4.** ORS 197.296 is amended to read:

23 197.296. (1)(a) The provisions of this section apply to metropolitan service district regional
24 framework plans and local government comprehensive plans for lands within the urban growth
25 boundary of a city that is located outside of a metropolitan service district and has a population of
26 25,000 or more.

27 (b) The Land Conservation and Development Commission may establish a set of factors under
28 which additional cities are subject to the provisions of this section. In establishing the set of factors
29 required under this paragraph, the commission shall consider the size of the city, the rate of popu-
30 lation growth of the city or the proximity of the city to another city with a population of 25,000 or
31 more or to a metropolitan service district.

32 (2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of
33 the comprehensive plan or regional plan that concerns the urban growth boundary and requires the
34 application of a statewide planning goal relating to buildable lands for residential use, a local gov-
35 ernment shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable
36 lands within the urban growth boundary established pursuant to statewide planning goals to ac-
37 commodate estimated housing needs for 20 years. The 20-year period shall commence on the date
38 initially scheduled for completion of the periodic or legislative review.

39 (3) In performing the duties under subsection (2) of this section, a local government shall:

40 (a) Inventory the supply of buildable lands within the urban growth boundary and determine the
41 housing capacity of the buildable lands; and

42 (b) Conduct an analysis of housing need by type and density range, in accordance with ORS
43 197.303 and statewide planning goals and rules relating to housing, to determine the number of units
44 and amount of land needed for each needed housing type for the next 20 years.

45 (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable

1 lands” includes:

2 (A) Vacant lands planned or zoned for residential use;

3 (B) Partially vacant lands planned or zoned for residential use;

4 (C) Lands that may be used for a mix of residential and employment uses under the existing
5 planning or zoning; and

6 (D) Lands that may be used for residential infill or redevelopment.

7 (b) For the purpose of the inventory and determination of housing capacity described in sub-
8 section (3)(a) of this section, the local government must demonstrate consideration of:

9 (A) The extent [*that*] **to which** residential development is prohibited or restricted by local reg-
10 ulation and ordinance, state law and rule or federal statute and regulation;

11 (B) A written long term contract or easement for radio, telecommunications or electrical facili-
12 ties, if the written contract or easement is provided to the local government; [*and*]

13 (C) The presence of a single family dwelling or other structure on a lot or parcel[.]; **and**

14 **(D) The extent to which lands designated by a city or county as urban agriculture in-**
15 **centive zones will affect future development.**

16 (c) Except for land that may be used for residential infill or redevelopment, a local government
17 shall create a map or document that may be used to verify and identify specific lots or parcels that
18 have been determined to be buildable lands.

19 (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of
20 housing capacity and need pursuant to subsection (3) of this section must be based on data relating
21 to land within the urban growth boundary that has been collected since the last periodic review or
22 five years, whichever is greater. The data shall include:

23 (A) The number, density and average mix of housing types of urban residential development that
24 have actually occurred;

25 (B) Trends in density and average mix of housing types of urban residential development;

26 (C) Demographic and population trends;

27 (D) Economic trends and cycles; and

28 (E) The number, density and average mix of housing types that have occurred on the buildable
29 lands described in subsection (4)(a) of this section.

30 (b) A local government shall make the determination described in paragraph (a) of this sub-
31 section using a shorter time period than the time period described in paragraph (a) of this subsection
32 if the local government finds that the shorter time period will provide more accurate and reliable
33 data related to housing capacity and need. The shorter time period may not be less than three years.

34 (c) A local government shall use data from a wider geographic area or use a time period for
35 economic cycles and trends longer than the time period described in paragraph (a) of this subsection
36 if the analysis of a wider geographic area or the use of a longer time period will provide more ac-
37 curate, complete and reliable data relating to trends affecting housing need than an analysis per-
38 formed pursuant to paragraph (a) of this subsection. The local government must clearly describe the
39 geographic area, time frame and source of data used in a determination performed under this para-
40 graph.

41 (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than
42 the housing capacity determined pursuant to subsection (3)(a) of this section, the local government
43 shall take one or more of the following actions to accommodate the additional housing need:

44 (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate
45 housing needs for the next 20 years. As part of this process, the local government shall consider the

1 effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include
2 sufficient land reasonably necessary to accommodate the siting of new public school facilities. The
3 need and inclusion of lands for new public school facilities shall be a coordinated process between
4 the affected public school districts and the local government that has the authority to approve the
5 urban growth boundary;

6 (b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to in-
7 clude new measures that demonstrably increase the likelihood that residential development will oc-
8 cur at densities sufficient to accommodate housing needs for the next 20 years without expansion
9 of the urban growth boundary. A local government or metropolitan service district that takes this
10 action shall monitor and record the level of development activity and development density by hous-
11 ing type following the date of the adoption of the new measures; or

12 (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

13 (7) Using the analysis conducted under subsection (3)(b) of this section, the local government
14 shall determine the overall average density and overall mix of housing types at which residential
15 development of needed housing types must occur in order to meet housing needs over the next 20
16 years. If that density is greater than the actual density of development determined under subsection
17 (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined
18 under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall
19 adopt measures that demonstrably increase the likelihood that residential development will occur
20 at the housing types and density and at the mix of housing types required to meet housing needs
21 over the next 20 years.

22 (8)(a) A local government outside a metropolitan service district that takes any actions under
23 subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use
24 regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to
25 197.314.

26 (b) The local government shall determine the density and mix of housing types anticipated as a
27 result of actions taken under subsections (6) and (7) of this section and monitor and record the ac-
28 tual density and mix of housing types achieved. The local government shall compare actual and
29 anticipated density and mix. The local government shall submit its comparison to the commission
30 at the next periodic review or at the next legislative review of its urban growth boundary, which-
31 ever comes first.

32 (9) In establishing that actions and measures adopted under subsections (6) or (7) of this section
33 demonstrably increase the likelihood of higher density residential development, the local government
34 shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the
35 housing types identified under subsection (3) of this section and is zoned at density ranges that are
36 likely to be achieved by the housing market using the analysis in subsection (3) of this section.
37 Actions or measures, or both, may include but are not limited to:

38 (a) Increases in the permitted density on existing residential land;

39 (b) Financial incentives for higher density housing;

40 (c) Provisions permitting additional density beyond that generally allowed in the zoning district
41 in exchange for amenities and features provided by the developer;

42 (d) Removal or easing of approval standards or procedures;

43 (e) Minimum density ranges;

44 (f) Redevelopment and infill strategies;

45 (g) Authorization of housing types not previously allowed by the plan or regulations;

1 (h) Adoption of an average residential density standard; and

2 (i) Rezoning or redesignation of nonresidential land.

3 **SECTION 5. Section 1 of this 2015 Act and the amendments to ORS 308A.703 and 308A.718**
4 **by sections 2 and 3 of this 2015 Act apply to property tax years beginning on or after July**
5 **1, 2016.**

6 **SECTION 6. This 2015 Act takes effect on the 91st day after the date on which the 2015**
7 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

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