

Senate Bill 1011
Section-by-Section Explanation
(As amended by the –A8 amendments)
May 29, 2007

Overall Summary

Senate Bill 1011 is intended to address deficiencies in the current growth management and urban growth boundary (UGB) expansion process in the Portland metropolitan area. Existing state law governing both UGB expansion and long-term planning tends to push urbanization onto lands that are not necessarily the most suitable for efficient, cost-effective urbanization, and does not provide long-term protection for the region's most important farm and forest land.

SB 1011 addresses these problems by establishing a system under which the region can designate lands outside its UGB on which urban expansion will and will not occur over a 40-50-year period. The bill has three main elements:

- Section 3 authorizes the establishment of rural reserves that will be off-limits to urban expansion during a 40-50-year planning period. These lands would be selected based upon their importance to the agriculture and forestry industries and to the protection of natural systems and landscape features.
- Section 6 provides a new pathway for the creation of urban reserves – areas that would be first in line for addition to the UGB – in the Portland metropolitan area. This new pathway would authorize the designation of urban reserves that, in conjunction with land already in the UGB, would provide 40-50 years of capacity for urban growth. Designation of these areas would be based upon a set of factors that emphasizes suitability for urban development.
- Because it is important that urban and rural reserves be addressed as part of an integrated planning process, Section 4 stipulates that they must be considered concurrently and may be designated only through agreements between Metro and counties.

Section 1

This section defines “rural reserve” and “urban reserve.” The definition of rural reserve contemplates three kinds of rural reserves: those intended to protect agriculture; those intended to protect forestry, and those intended to protect landscape features that can or should limit the expansion of urban development. It is understood, however, that a rural reserve could have more than one of these functions. The definition of “urban reserve” is taken from existing law and simply relocated.

Section 2

This section sets forth the findings of the Legislature about the benefits of long-range planning for growth.

Section 3

Subsection (1): authorizes counties and Metro to establish urban and rural reserves. An agreement among Metro and *all* counties a portion of which lies within the Metro UGB is not a prerequisite to an agreement between Metro and one county. The subsection cites the statutes that authorize intergovernmental agreements in general, leaving the parties to choose the appropriate type of agreement.

Subsection (2): provides that rural reserves must be outside any UGB. The subsection also prescribes a period of time during which a county may not re-designate rural reserves as urban reserves: the UGB planning period *plus* the urban reserve planning period. The urban reserve planning period will be determined in the intergovernmental agreement in accordance with subsection (4) of section 6 or section 10 (see below). But it must be at least 20 years, and no longer than 30 years, beyond the UGB planning period. Assuming passage of House Bill 2051 – which extends the time for Metro’s next UGB capacity analysis (currently due December, 2007) to December, 2009 – Metro will use the 20-year planning period of that next analysis (2009-2029) to determine the total period described by this subsection. This means the total period will be at least 40 years, and not more than 50 years, from 2009. This subsection also provides that land designated rural reserves cannot be included within any UGB for the same period (40-50 years).

Subsection (3): specifies factors that must be considered by counties establishing rural reserves for protection of agricultural land. These factors derive from the work done for the region by the Oregon Department of Agriculture entitled “Identification of Metro Region Agricultural Lands and Assessing Their Long-Term Commercial Viability.” The factors were written into the bill to provide more detailed guidance to LCDC, which requested the guidance to aid and speed the rulemaking required by subsection (4) of this section. The list of factors is not intended to be exclusive; LCDC remains free to require consideration of other factors in rulemaking.

Subsection (4): requires LCDC to adopt or revise a goal or a rule to establish a process and criteria for establishment of rural reserves consistent with the bill. The subsection requires LCDC to consult with the Oregon Department of Agriculture during its rulemaking. The deadline for the rulemaking – January 31, 2008 – is found in section 11 of the bill.

Section 4

Subsection (1): directs the counties and Metro to consider the establishment of rural and urban reserves simultaneously. The purpose is to ensure coordination of the planning of both types of reserves and consideration of the relationships between them.

Subsection (2): requires coordination and concurrency of the planning and designation of urban and rural reserves, including the adoption of county comprehensive plan provisions that designate and protect rural reserves, and county comprehensive plan provisions and Regional Framework Plan policies that designate and protect urban reserves. The subsection expressly prohibits the designation by Metro of urban reserves in a county until Metro and the county have signed an intergovernmental agreement that identifies the land that will be designated by the county as rural reserves under the agreement. Conversely, the subsection expressly prohibits the

designation by a county of rural reserves until Metro and the county have signed an intergovernmental agreement that identifies the land in the county, if any, that will be designated by Metro as urban reserves under the agreement. It is anticipated that the agreement between Metro and a county would, at the time of signing, include a map or maps of rural and urban reserves in the county, as agreed, and would set a schedule for adoption by each of implementation actions to occur as simultaneously as possible.

Subsection (3): provides that Metro and a county cannot agree to designate urban reserves in the county under this new process unless they also agree to designate rural reserves in that county.

Subsection (4): provides that the designation of rural or urban reserves under SB 1011 does not give rise to a Measure 37 claim so long as neither the county nor Metro imposes new restrictions on the use of private real property. Comprehensive plan amendments and Regional Framework Plan policies adopted pursuant to subsection (2) of this section do not, in and of themselves, constitute restrictions on the use of private real property. The subsection also protects existing rights and immunities provided by Oregon's "right to farm" law.

Section 5

This section makes only conforming amendments.

Section 6

This section amends the statute that currently authorizes local governments to establish "urban reserves."

Subsection (1): paragraph (b) makes clear that the authorization in this bill to establish urban reserves by intergovernmental agreement is an alternative to designation under existing statutes on urban reserves. The paragraph is intended to ensure that LCDC will adopt a new and independent rule to implement this bill. It is not intended to limit the authority of any local government to designate urban reserves pursuant to paragraph (a) of this subsection.

Subsection (2): makes conforming amendments to confirm that the bill establishes a new and independent method for designation of urban reserves by Metro and counties of the region.

Subsection (3): makes only conforming amendments.

Subsection (4): specifies that urban reserves designated pursuant to this bill must be for a period no less than 20 years, and no more than 30 years, beyond the UGB planning period. The UGB planning period of the most recent capacity analysis under ORS 197.296 at the time of designation would be used to determine the total planning period. This general provision, however, does not apply to any urban reserve designation prior to December 31, 2009. Section 10 requires a specific UGB planning period for urban reserves designated before this date.

Subsection (5): specifies factors that must be considered by local governments establishing urban reserves under the bill. These factors derive from the work done by local governments in the region entitled "Great Communities" (see the eight "Great Community

Characteristics” in “Great Communities: Executive Summary, January, 2007). The factors were written into the bill to provide more detailed guidance to LCDC, which requested the guidance to aid and speed the rulemaking required by subsection (6) of this section. The list of factors is not intended to be exclusive; LCDC remains free to require consideration of other factors in rulemaking. The objective of including these factors is to create an avenue for the designation of urban reserves that is based principally on the suitability of land for eventual urban development.

Subsection (6): requires LCDC to adopt a rule to establish a process and criteria for the new method of establishing urban reserves in the Metro area under the bill. The deadline for the rulemaking – January 31, 2008 – is found in section 11 of the bill.

Section 7

This section makes the designation of rural reserves a matter for periodic review. The reason is that state law already makes any designation by Metro of urban reserves a matter for periodic review. It is essential that the designation of urban reserves and rural reserves be closely coordinated and as close to simultaneous as possible. If Metro designation of urban reserves goes to LCDC, with appeal to the Court of Appeals, and county designation of rural reserves is appealed to LUBA – as would be the normal route without this section – it would be nearly impossible to ensure a coordinated result. This amendment would allow simultaneous review by LCDC of both the urban and the rural reserves.

Section 8

This section makes only conforming amendments.

Section 9

This section directs that any appeal of an LCDC order following review of the designation of urban and rural reserves by Metro and the counties would go to the Court of Appeals. The section also provides that the court will follow the same timelines for such appeals as the court currently follows when reviewing appeals of LUBA decisions. This is to prevent the appeals process from delaying the use by Metro of urban reserves in any UGB expansion needed after the 2009 UGB capacity analysis (required by passage of House Bill 2051).

Section 10

This section provides that any urban reserve designation prior to December 31, 2009 will use the UGB planning period of the *next* UGB capacity analysis required by ORS 197.299 when calculating the total planning period under the Act. Given passage of HB 2051, this means that the UGB planning period will be 2009 –2029 and the total planning period will be at least 20 years beyond 2029.

Section 11

This section sets a January 31, 2008, deadline for rulemaking on rural and urban reserves pursuant to the bill. The deadline is intended to ensure completion of LCDC rulemaking prior to completion of long-range planning by Metro and the local governments of the region, which is expected to result in agreements to establish rural reserves and urban reserves prior to Metro’s next UGB capacity analysis.

Section 12

An “emergency clause” makes the bill effective upon passage. This is necessary because of the January 31, 2008, deadline for completion of reserves rulemaking. The rulemaking deadline, in turn, is necessary in order to allow Metro to fulfill its responsibilities under ORS 197.299 and ORS 197.296, as amended by HB 2051.