

A-Engrossed
House Bill 2328

Ordered by the House April 4
Including House Amendments dated April 4

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Representative Phil Barnhart for Northwest Propane Gas Association)

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.

Prohibits local government from denying use of liquid petroleum gas container or receptacle that complies with State Fire Marshal's regulations [*if use is accessory to authorized or authorizable land use unless local government prohibits liquid petroleum gas container or receptacle in specific zone or local government has exemption from regulation of liquid petroleum gas containers and receptacles by State Fire Marshal*]. **Provides exceptions.**

A BILL FOR AN ACT

1
2 Relating to standards for storage of liquid petroleum; creating new provisions; and amending ORS
3 197.015 and 476.060.

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

5 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 480.410 to**
6 **480.460.**

7 **SECTION 2. (1) The regulation of liquid petroleum gas containers or receptacles by the**
8 **State Fire Marshal pursuant to ORS 480.410 to 480.460 is not a program affecting land use**
9 **under ORS 197.180.**

10 **(2) A local government may not regulate the siting, installation, maintenance or removal**
11 **of a liquid petroleum gas container or receptacle regulated by the State Fire Marshal pur-**
12 **suant to ORS 480.410 to 480.460, except as provided in subsection (3) of this section or ORS**
13 **480.450 (7).**

14 **(3) A local government may:**

15 **(a) Regulate the siting and installation of a liquid petroleum gas container or receptacle**
16 **with a capacity of more than 1,200 gallons or a group of containers and receptacles with an**
17 **aggregate capacity of more than 4,000 gallons to protect the public health and safety.**

18 **(b) Regulate the siting and installation of liquid petroleum gas containers or receptacles**
19 **in a flood plain regulated by local ordinance.**

20 **(c) Regulate the siting and installation of liquid petroleum gas containers or receptacles**
21 **that are not accessory to an authorized or authorizable land use.**

22 **(d) Prohibit the siting and installation of liquid petroleum gas containers or receptacles**
23 **of specified types or sizes in specific zones within an urban growth boundary to protect the**
24 **public health and safety.**

25 **(e) Regulate, through the local government's assistant to the State Fire Marshal as de-**
26 **scribed in ORS 476.060, the placement of liquid petroleum gas containers or receptacles for**

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 **the purpose of fire prevention.**

2 **SECTION 3.** ORS 197.015 is amended to read:

3 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

4 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
5 land use regulations, land use regulation or plan or regulation amendment complies with the goals
6 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
7 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
8 work plan comply with the statewide planning goals.

9 (2) "Board" means the Land Use Board of Appeals.

10 (3) "Commission" means the Land Conservation and Development Commission.

11 (4) "Committee" means the Joint Legislative Committee on Land Use.

12 (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement
13 of the governing body of a local government that interrelates all functional and natural systems and
14 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
15 portation systems, educational facilities, recreational facilities, and natural resources and air and
16 water quality management programs. "Comprehensive" means all-inclusive, both in terms of the
17 geographic area covered and functional and natural activities and systems occurring in the area
18 covered by the plan. "General nature" means a summary of policies and proposals in broad catego-
19 ries and does not necessarily indicate specific locations of any area, activity or use. A plan is "co-
20 ordinated" when the needs of all levels of governments, semipublic and private agencies and the
21 citizens of Oregon have been considered and accommodated as much as possible. "Land" includes
22 water, both surface and subsurface, and the air.

23 (6) "Department" means the Department of Land Conservation and Development.

24 (7) "Director" means the Director of the Department of Land Conservation and Development.

25 (8) "Goals" means the mandatory statewide planning standards adopted by the commission pur-
26 suant to ORS chapters 195, 196 and 197.

27 (9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation,
28 adoption and implementation of comprehensive plans in compliance with goals and to aid state
29 agencies and special districts in the preparation, adoption and implementation of plans, programs
30 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state
31 agencies, cities, counties and special districts to a single approach.

32 (10) "Land use decision":

33 (a) Includes:

34 (A) A final decision or determination made by a local government or special district that con-
35 cerns the adoption, amendment or application of:

36 (i) The goals;

37 (ii) A comprehensive plan provision;

38 (iii) A land use regulation; or

39 (iv) A new land use regulation;

40 (B) A final decision or determination of a state agency other than the commission with respect
41 to which the agency is required to apply the goals; or

42 (C) A decision of a county planning commission made under ORS 433.763;

43 (b) Does not include a decision of a local government:

44 (A) [Which] **That** is made under land use standards [which] **that** do not require interpretation
45 or the exercise of policy or legal judgment;

1 (B) [Which] **That** approves or denies a building permit issued under clear and objective land use
2 standards;

3 (C) [Which] **That** is a limited land use decision;

4 (D) [Which] **That** determines final engineering design, construction, operation, maintenance, re-
5 pair or preservation of a transportation facility [which] **that** is otherwise authorized by and con-
6 sistent with the comprehensive plan and land use regulations; [or]

7 (E) [Which] **That** is an expedited land division as described in ORS 197.360; or

8 **(F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or**
9 **removal of a liquid petroleum gas container or receptacle regulated exclusively by the State**
10 **Fire Marshal under ORS 480.410 to 480.460;**

11 (c) Does not include a decision by a school district to close a school;

12 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or
13 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120
14 hours in any three-month period; and

15 (e) Does not include:

16 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;

17 or

18 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
19 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

20 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-
21 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
22 implementing a comprehensive plan.

23 (12) "Limited land use decision" is a final decision or determination made by a local government
24 pertaining to a site within an urban growth boundary which concerns:

25 (a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.

26 (b) The approval or denial of an application based on discretionary standards designed to regu-
27 late the physical characteristics of a use permitted outright, including but not limited to site review
28 and design review.

29 (13) "Local government" means any city, county or metropolitan service district formed under
30 ORS chapter 268 or an association of local governments performing land use planning functions
31 under ORS 195.025.

32 (14) "Metro" means a metropolitan service district organized under ORS chapter 268.

33 (15) "Metro planning goals and objectives" means the land use goals and objectives that a met-
34 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
35 stitute a comprehensive plan.

36 (16) "Metro regional framework plan" means the regional framework plan required by the 1992
37 Metro Charter or its separate components. Neither the regional framework plan nor its individual
38 components constitute a comprehensive plan.

39 (17) "New land use regulation" means a land use regulation other than an amendment to an
40 acknowledged land use regulation adopted by a local government that already has a comprehensive
41 plan and land regulations acknowledged under ORS 197.251.

42 (18) "Person" means any individual, partnership, corporation, association, governmental subdivi-
43 sion or agency or public or private organization of any kind. The Land Conservation and Devel-
44 opment Commission or its designee is considered a person for purposes of appeal under ORS
45 chapters 195 and 197.

1 (19) "Special district" means any unit of local government, other than a city, county, metropol-
2 itan service district formed under ORS chapter 268 or an association of local governments per-
3 forming land use planning functions under ORS 195.025 authorized and regulated by statute and
4 includes but is not limited to: Water control districts, domestic water associations and water coop-
5 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,
6 school districts, hospital districts, mass transit districts and sanitary districts.

7 (20) "Voluntary association of local governments" means a regional planning agency in this
8 state officially designated by the Governor pursuant to the federal Office of Management and Budget
9 Circular A-95 as a regional clearinghouse.

10 (21) "Wetlands" means those areas that are inundated or saturated by surface or ground water
11 at a frequency and duration that are sufficient to support, and that under normal circumstances do
12 support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

13 **SECTION 4.** ORS 476.060 is amended to read:

14 476.060. (1) All fire marshals in those governmental subdivisions having such officers, and where
15 no such officer exists, the chief of the fire department of every city or rural fire protection district
16 in which a fire department is established, the marshal or chief of police, officer of any city in which
17 no fire department exists, and constables, if any, shall be, by virtue of the offices held by them, as-
18 sistants to the State Fire Marshal without additional recompense, subject to the duties and obli-
19 gations imposed by law, and shall be subject to the direction of the State Fire Marshal in the
20 execution of the provisions of this section and ORS 476.070, 476.090, 476.150 and 476.210 **and section**
21 **2 of this 2005 Act.**

22 (2) In addition to other duties under subsection (1) of this section, an individual designated as
23 an assistant to the State Fire Marshal shall aid in the administration and enforcement of ORS
24 480.200 to 480.290 and 480.990 (6) upon the request of the State Fire Marshal.