

HOUSE AMENDMENTS TO HOUSE BILL 3144

By COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

April 15

1 On page 1 of the printed bill, line 2, delete “and” and after “ORS” delete the rest of the line
2 and line 3 and insert “455.148 and 455.150; and declaring an emergency.”.

3 Delete lines 5 through 27 and delete pages 2 through 13 and insert:

4 **“SECTION 1. (1) Notwithstanding ORS 455.148, 455.150 and 455.153, the Director of the**
5 **Department of Consumer and Business Services may enter into an agreement with one or**
6 **more municipalities for the Department of Consumer and Business Services to uniformly**
7 **administer and enforce all or a portion of a building inspection program within a geographic**
8 **area. The geographic area may be a municipality, a region comprising parts of more than**
9 **one municipality or a region comprising multiple municipalities. The geographic area need**
10 **not correspond to the jurisdictional boundaries of municipalities. The agreement may provide**
11 **for the department to perform administration and enforcement for a specified period or for**
12 **carrying out one or more particular projects.**

13 **“(2) The terms of an agreement under this section may specify whether the department**
14 **is to utilize department resources or combine resources with one or more of the municipi-**
15 **palities to carry out an agreement. An agreement may combine department and local gov-**
16 **ernment resources in any manner that the parties believe will provide for the efficient and**
17 **uniform administration of the building inspection program within the geographic area, in-**
18 **cluding but not limited to full, divided, mutual or joint performance of any of the adminis-**
19 **trative or enforcement functions by any of the parties to the agreement. A decision by the**
20 **director regarding whether to enter into an agreement under this section, and the content**
21 **of any agreement that the director enters into under this section, is not subject to review**
22 **by the Attorney General or the Oregon Department of Administrative Services and is subject**
23 **to challenge or appeal under ORS chapter 183 only for failure to comply with an express re-**
24 **quirement created under this section or section 2, 4, 5 or 6 of this 2013 Act.**

25 **“(3) An agreement under this section is not an abandonment of a building inspection**
26 **program for purposes of ORS 455.148 or 455.150.**

27 **“SECTION 2. (1) An agreement under section 1 of this 2013 Act may provide for the**
28 **parties to the agreement to share any fee revenue generated by the administration and**
29 **enforcement of the agreement and to expend the fee revenue anywhere within the geographic**
30 **area covered by the agreement.**

31 **“(2) Notwithstanding ORS 455.210, if an agreement under section 1 of this 2013 Act pro-**
32 **vides for the Department of Consumer and Business Services to administer and enforce a**
33 **building inspection program for which one or more municipalities have adopted a fee or**
34 **hourly rate, subject to subsection (3)(a) of this section the department may charge the**
35 **municipally adopted fee or hourly rate when providing the building inspection program ser-**

1 vices within a municipality.

2 “(3) Fees described in subsection (2) of this section that are charged by the department:

3 “(a) Are subject to any surcharges described under ORS 455.210, 455.220 or 455.447; and

4 “(b) Notwithstanding ORS 455.210, are not subject to Oregon Department of Administra-
5 tive Services approval.

6 “**SECTION 3.** The Legislative Assembly finds and declares that:

7 “(1) It is in the best interests of this state that construction-related development activ-
8 ities proceed in a manner that is as quick and efficient as practicable;

9 “(2) Ensuring that construction-related development activities proceed quickly and effi-
10 ciently requires a flexible and responsive system for state building code administration and
11 enforcement; and

12 “(3) Having a flexible and responsive system for state building code administration and
13 enforcement requires that sufficient staff and resources be available to assist the Director
14 of the Department of Consumer and Business Services as needed.

15 “**SECTION 4.** (1) Subject to ORS 293.235 to 293.245, 293.250, 293.260 to 293.280, 293.285 and
16 293.293 and any rules adopted under ORS 293.235 to 293.245, 293.250, 293.260 to 293.280, 293.285
17 and 293.293, and notwithstanding ORS chapter 240, 276, 282, 283, 291 or 292 or other provisions
18 of ORS chapter 293 or the rules adopted under ORS chapter 240, 276, 282, 283, 291 or 292,
19 except as provided under this section the Director of the Department of Consumer and
20 Business Services may take any action the director considers reasonable to ensure that
21 sufficient staff and other resources are available for the administration and enforcement of
22 the state building code. Subject to subsections (2) to (4) of this section, actions that the di-
23 rector may take under this section include, but are not limited to:

24 “(a) Utilizing municipal personnel, or hiring former municipal personnel, to carry out the
25 administrative and enforcement duties of the Department of Consumer and Business Ser-
26 vices under an agreement described in section 1 of this 2013 Act;

27 “(b) Employing additional Department of Consumer and Business Services staff for car-
28 rying out the administrative and enforcement duties of the department under an agreement
29 described in section 1 of this 2013 Act; and

30 “(c) Expending available resources to carry out department responsibilities to provide
31 sufficient staff and other resources under an agreement described in section 1 of this 2013
32 Act.

33 “(2) The utilization of municipal personnel or hiring of former municipal personnel under
34 subsection (1)(a) of this section is subject to any applicable collective bargaining agreements
35 and may not be used to displace any state employee. Municipal personnel whom the depart-
36 ment utilizes under subsection (1)(a) of this section retain their status as municipal person-
37 nel for purposes of ORS 30.260 to 30.300 while carrying out the administrative and
38 enforcement duties of the department under an agreement.

39 “(3) The employment of additional staff under subsection (1)(b) of this section is subject
40 to any limitations established by the Legislative Assembly on the number of total personnel
41 approved for the department. To the extent practicable, the director shall give preference to
42 the use of available state employees to fulfill additional staffing requirements.

43 “(4) The employment of additional staff under subsection (1)(b) of this section and the
44 expenditure of available resources under subsection (1)(c) of this section must be predicated
45 upon the availability of adequate revenue, which may include but need not be limited to re-

1 venue derived from municipal sources through an agreement described under section 1 of
2 this 2013 Act. The use of existing revenue and available resources to carry out an agreement
3 under section 1 of this 2013 Act is not an addition to or amendment of the legislatively
4 adopted budget for the department.

5 “(5) Notwithstanding ORS 455.230, the director may use moneys deposited in the Con-
6 sumer and Business Services Fund from fees collected under this section for the purpose of
7 paying the department’s costs of carrying out the administrative and enforcement duties of
8 the department within any administrative region established by the director or a geographic
9 region established by an agreement under section 1 of this 2013 Act or for the purpose of
10 assisting a local government to carry out an agreement under section 1 of this 2013 Act.

11 “SECTION 5. (1) If the Department of Consumer and Business Services assumes the ad-
12 ministration and enforcement of a building inspection program that has been surrendered
13 or abandoned by a municipality, and immediately prior to the surrender or abandonment the
14 municipality was charging a fee adopted under ORS 455.210 (3) that was different from the
15 fee authorized under ORS 455.210 (1) for the same services, the department may charge the
16 fee adopted by the municipality for the services that the department provides under the
17 program.

18 “(2) Fees described in subsection (1) of this section that are charged by the department:

19 “(a) Are subject to any surcharges described under ORS 455.210, 455.220 or 455.447; and

20 “(b) Notwithstanding ORS 455.210, are not subject to Oregon Department of Administra-
21 tive Services approval.

22 “SECTION 6. Notwithstanding any surcharge use described in ORS 455.220 (4), the Di-
23 rector of the Department of Consumer and Business Services may use moneys from sur-
24 charges imposed under ORS 455.210 (4) for the purpose of paying the Department of
25 Consumer and Business Services’ costs of carrying out the administration and enforcement
26 of the state building code within an administrative region established by the director or a
27 geographic region established by an agreement that the director enters into under section 1
28 of this 2013 Act.

29 “SECTION 7. The Director of the Department of Consumer and Business Services:

30 “(1) May adopt rules, establish policies and procedures and take other actions the direc-
31 tor considers reasonable or expedient for carrying out agreements under section 1 of this
32 2013 Act or under ORS 455.148 (13) or 455.150 (13) and any duties, functions and powers of the
33 director or the Department of Consumer and Business Services under sections 1, 2 and 4 to
34 6 of this 2013 Act or 455.148 (13) or 455.150 (13);

35 “(2) Shall consult at least annually with appropriate advisory boards regarding any
36 agreements under section 1 of this 2013 Act or actions taken by the director under section
37 1, 2, 4, 5 or 6 of this 2013 Act or ORS 455.148 (13) or 455.150 (13); and

38 “(3) Shall report biennially to the Legislative Assembly as provided under ORS 192.230 to
39 192.250 regarding any department activities under section 1, 2, 4, 5 or 6 of this 2013 Act or
40 ORS 455.148 (13) or 455.150 (13). The report shall include, but not be limited to, information
41 regarding any projected need for an increase in department resources required for carrying
42 out the administration and enforcement of building inspection programs under sections 1, 2
43 and 4 to 6 of this 2013 Act or under ORS 455.148 (13) or 455.150 (13).

44 “SECTION 8. ORS 455.148 is amended to read:

45 “455.148. (1)(a) A municipality that assumes the administration and enforcement of a building

1 inspection program shall administer and enforce the program for all of the following:

2 “(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of
3 this subsection.

4 “(B) Manufactured structure installation requirements under ORS 446.155, 446.185 (1) and
5 446.230.

6 “(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446.

7 “(D) Park and camp programs regulated under ORS 455.680.

8 “(E) Tourist facilities regulated under ORS 446.310 to 446.350.

9 “(F) Manufactured dwelling alterations regulated under ORS 446.155.

10 “(G) Manufactured structure accessory buildings and structures under ORS 446.253.

11 “(H) Boilers and pressure vessels described in rules adopted under ORS 480.525 (5).

12 “(b) A building inspection program of a municipality may not include:

13 “(A) Boiler and pressure vessel programs under ORS 480.510 to 480.670 except those described
14 in rules adopted under ORS 480.525 (5);

15 “(B) Elevator programs under ORS 460.005 to 460.175;

16 “(C) Amusement ride regulation under ORS 460.310 to 460.370;

17 “(D) Prefabricated structure regulation under ORS chapter 455;

18 “(E) Manufacture of manufactured structures programs under ORS 446.155 to 446.285, including
19 the administration and enforcement of federal manufactured dwelling construction and safety stan-
20 dards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety
21 Standards Act of 1974;

22 “(F) Licensing and certification, or the adoption of statewide codes and standards, under ORS
23 chapter 446, 447, 455, 479 or 693; or

24 “(G) Review of plans and specifications as provided in ORS 455.685.

25 “(2) A municipality that administers a building inspection program as allowed under this section
26 shall do so for periods of four years. The Department of Consumer and Business Services shall adopt
27 rules to adjust time periods for administration of a building inspection program to allow for vari-
28 ations in the needs of the department and participants.

29 “(3) When a municipality administers a building inspection program, the governing body of the
30 municipality shall, unless other means are already provided, appoint a person to administer and
31 enforce the building inspection program, who shall be known as the building official. A building of-
32 ficial shall, in the municipality for which appointed, attend to all aspects of code enforcement, in-
33 cluding the issuance of all building permits. Two or more municipalities may combine in the
34 appointment of a single building official for the purpose of administering a building inspection pro-
35 gram within their communities.

36 “(4)(a) By January 1 of the year preceding the expiration of the four-year period described in
37 subsection (2) of this section, the governing body of the municipality shall notify the Director of the
38 Department of Consumer and Business Services and, if the municipality is not a county, notify the
39 county whether the municipality will continue to administer and enforce the building inspection
40 program after expiration of the four-year period.

41 “(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the di-
42 rector and the municipality and, if the municipality is not a county, the county may by agreement
43 extend that date to no later than March 1.

44 “(5) If a city does not notify the director, or notifies the director that it will not administer the
45 building inspection program, the county or counties in which the city is located shall administer and

1 enforce the county program within the city in the same manner as the program is administered and
2 enforced outside the city, except as provided by subsection (6) of this section.

3 “(6) If a county does not notify the director, or notifies the director that it will not administer
4 and enforce a building inspection program, the director shall contract with a municipality or other
5 person or use such state employees or state agencies as are necessary to administer and enforce a
6 building inspection program, and permit or other fees arising therefrom shall be paid into the Con-
7 sumer and Business Services Fund created by ORS 705.145 and credited to the account responsible
8 for paying the expenses thereof. A state employee may not be displaced as a result of using contract
9 personnel.

10 “(7) The governing body of a municipality may commence responsibility for the administration
11 and enforcement of a building inspection program beginning July 1 of any year by notifying the di-
12 rector no later than January 1 of the same year and obtaining the director’s approval of an as-
13 sumption plan as described in subsection (11)(c) of this section.

14 “(8) The department shall adopt rules to require the governing body of each municipality as-
15 suming or continuing a building inspection program under this section to submit a written plan with
16 the notice required under subsection (4) or (7) of this section. If the department is the governing
17 body, the department shall have a plan on file. The plan must specify how cooperation with the State
18 Fire Marshal or a designee of the State Fire Marshal will be achieved and how a uniform fire code
19 will be considered in the review process of the design and construction phases of buildings or
20 structures.

21 “(9) A municipality that administers and enforces a building inspection program pursuant to this
22 section shall recognize and accept the performances of state building code activities by businesses
23 and persons authorized under ORS 455.457 to perform the activities as if the activities were per-
24 formed by the municipality. A municipality is not required to accept an inspection, a plan or a plan
25 review that does not meet the requirements of the state building code.

26 “(10) The department or a municipality that accepts an inspection or plan review as required
27 by this section by a person licensed under ORS 455.457 has no responsibility or liability for the ac-
28 tivities of the licensee.

29 “(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate
30 building inspection programs that municipalities assume on or after January 1, 2002. Regulation
31 under this subsection shall include but not be limited to:

32 “(a) Creating building inspection program application and amendment requirements and proce-
33 dures;

34 “(b) Granting or denying applications for building inspection program authority and amend-
35 ments;

36 “(c) Requiring a municipality assuming a building inspection program to submit with the notice
37 given under subsection (7) of this section an assumption plan that includes, at a minimum:

38 “(A) A description of the intended availability of program services, including proposed service
39 agreements for carrying out the program during at least the first two years;

40 “(B) Demonstration of the ability and intent to provide building inspection program services for
41 at least two years;

42 “(C) An estimate of proposed permit revenue and program operating expenses;

43 “(D) Proposed staffing levels; and

44 “(E) Proposed service levels;

45 “(d) Reviewing procedures and program operations of municipalities;

1 “(e) Creating standards for efficient, effective, timely and acceptable building inspection pro-
2 grams;

3 “(f) Creating standards for justifying increases in building inspection program fees adopted by
4 a municipality;

5 “(g) Creating standards for determining whether a county or department building inspection
6 program is economically impaired in its ability to reasonably continue providing the program
7 throughout a county, if another municipality is allowed to provide a building inspection program
8 within the same county; and

9 “(h) Enforcing the requirements of this section.

10 “(12) The department may assume administration **and enforcement** of a building inspection
11 program:

12 “(a) During the pendency of activities under ORS 455.770;

13 “(b) If a municipality abandons or is no longer able to administer the building inspection pro-
14 gram; and

15 “(c) If a municipality fails to substantially comply with any provision of this section or of ORS
16 455.465, 455.467 and 455.469.

17 “**(13) If the department assumes the administration and enforcement of a building in-
18 spection program under this section, in addition to any other power granted to the director,
19 the director may:**

20 “**(a) Enter into agreements with local governments under section 1 of this 2013 Act re-
21 garding the administration and enforcement of the assumed building inspection program;**

22 “**(b) Take action as described in section 4 of this 2013 Act to ensure that sufficient staff
23 and other resources are available for the administration and enforcement of the assumed
24 building inspection program; and**

25 “**(c) Charge fees described in section 5 of this 2013 Act for department services provided
26 in administering and enforcing the assumed building inspection program.**

27 “[13] **(14)** A municipality that abandons or otherwise ceases to administer **and enforce** a
28 building inspection program that the municipality assumed under this section may not resume the
29 administration or enforcement of the program for at least two years. The municipality may resume
30 the administration and enforcement of the abandoned program only on July 1 of an odd-numbered
31 year. Prior to resuming the administration and enforcement of the program, the municipality must
32 follow the notification procedure set forth in subsection (7) of this section.

33 “**SECTION 9.** ORS 455.150 is amended to read:

34 “455.150. (1) Except as provided in subsection [(14)] **(15)** of this section, a municipality that as-
35 sumes the administration and enforcement of a building inspection program prior to January 1, 2002,
36 may administer and enforce all or part of a building inspection program. A building inspection pro-
37 gram:

38 “(a) Is a program that includes the following:

39 “(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of
40 this subsection.

41 “(B) Manufactured structure installation requirements under ORS 446.155, 446.185 (1) and
42 446.230.

43 “(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446.

44 “(D) Park and camp programs regulated under ORS 455.680.

45 “(E) Tourist facilities regulated under ORS 446.310 to 446.350.

1 “(F) Manufactured dwelling alterations regulated under ORS 446.155.
2 “(G) Manufactured structure accessory buildings and structures under ORS 446.253.
3 “(H) Boilers and pressure vessels described in rules adopted under ORS 480.525 (5).
4 “(b) Is not a program that includes:
5 “(A) Boiler and pressure vessel programs under ORS 480.510 to 480.670 except those described
6 in rules adopted under ORS 480.525 (5);
7 “(B) Elevator programs under ORS 460.005 to 460.175;
8 “(C) Amusement ride regulation under ORS 460.310 to 460.370;
9 “(D) Prefabricated structure regulation under ORS chapter 455;
10 “(E) Manufacture of manufactured structures programs under ORS 446.155 to 446.285, including
11 the administration and enforcement of federal manufactured dwelling construction and safety stan-
12 dards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety
13 Standards Act of 1974;
14 “(F) Licensing and certification, or the adoption of statewide codes and standards, under ORS
15 chapter 446, 447, 455, 479 or 693; and
16 “(G) Review of plans and specifications as provided in ORS 455.685.
17 “(2) A municipality that administers a building inspection program as allowed under this section
18 shall do so for periods of four years. The Department of Consumer and Business Services shall adopt
19 rules to adjust time periods for administration of a building inspection program to allow for vari-
20 ations in the needs of the department and participants.
21 “(3) When a municipality administers a building inspection program, the governing body of the
22 municipality shall, unless other means are already provided, appoint a person to administer and
23 enforce the building inspection program or parts thereof, who shall be known as the building official.
24 A building official shall, in the municipality for which appointed, attend to all aspects of code
25 enforcement, including the issuance of all building permits. Two or more municipalities may combine
26 in the appointment of a single building official for the purpose of administering a building inspection
27 program within their communities.
28 “(4)(a) By January 1 of the year preceding the expiration of the four-year period described in
29 subsection (2) of this section, the governing body of the municipality shall notify the Director of the
30 Department of Consumer and Business Services and, if not a county, notify the county whether the
31 municipality will continue to administer the building inspection program, or parts thereof, after ex-
32 piration of the four-year period. If parts of a building inspection program are to be administered and
33 enforced by a municipality, the parts shall correspond to a classification designated by the director
34 as reasonable divisions of work.
35 “(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the di-
36 rector and the municipality and, if the municipality is not a county, the county may by agreement
37 extend that date to no later than March 1.
38 “(5) If a city does not notify the director, or notifies the director that it will not administer
39 certain specialty codes or parts thereof under the building inspection program, the county or coun-
40 ties in which the city is located shall administer and enforce those codes or parts thereof within the
41 city in the same manner as it administers and enforces them outside the city, except as provided
42 by subsection (6) of this section.
43 “(6) If a county does not notify the director, or notifies the director that it will not administer
44 and enforce certain specialty codes or parts thereof under the building inspection program, the di-
45 rector shall contract with a municipality or other person or use such state employees or state

1 agencies as are necessary to administer and enforce those codes or parts thereof, and permit or
2 other fees arising therefrom shall be paid into the Consumer and Business Services Fund created
3 by ORS 705.145 and credited to the account responsible for paying such expenses. A state employee
4 may not be displaced as a result of using contract personnel.

5 “(7) If a municipality administering a building inspection program under this section seeks to
6 administer additional parts of a program, the municipality must comply with ORS 455.148, including
7 the requirement that the municipality administer and enforce all aspects of the building inspection
8 program. Thereafter, the municipality is subject to ORS 455.148 and ceases to be subject to this
9 section.

10 “(8) The department shall adopt rules to require the governing body of each municipality to
11 submit a written plan with the notice required under subsection (4) of this section. If the department
12 is the governing body, the department shall have a plan on file. The plan shall specify how cooper-
13 ation with the State Fire Marshal or a designee of the State Fire Marshal will be achieved and how
14 a uniform fire code will be considered in the review process of the design and construction phases
15 of buildings or structures.

16 “(9) A municipality that administers a code for which persons or businesses are authorized un-
17 der ORS 455.457 to perform activities shall recognize and accept those activities as if performed by
18 the municipality. A municipality is not required to accept an inspection, a plan or a plan review that
19 does not meet the requirements of the state building code.

20 “(10) The department or a municipality that accepts an inspection or plan review as required
21 by this section by a person licensed under ORS 455.457 has no responsibility or liability for the ac-
22 tivities of the licensee.

23 “(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate
24 building inspection programs of municipalities assumed prior to January 1, 2002. Regulation under
25 this subsection shall include but not be limited to:

26 “(a) Creating building inspection program application and amendment requirements and proce-
27 dures;

28 “(b) Granting or denying applications for building inspection program authority and amend-
29 ments;

30 “(c) Reviewing procedures and program operations of municipalities;

31 “(d) Creating standards for efficient, effective, timely and acceptable building inspection pro-
32 grams;

33 “(e) Creating standards for justifying increases in building inspection program fees adopted by
34 a municipality;

35 “(f) Creating standards for determining whether a county or department building inspection
36 program is economically impaired in its ability to reasonably continue providing the program or part
37 of the program throughout a county, if another municipality is allowed to provide a building in-
38 spection program or part of a program within the same county; and

39 “(g) Enforcing the requirements of this section.

40 “(12) The department may assume administration **and enforcement** of a building inspection
41 program:

42 “(a) During the pendency of activities under ORS 455.770;

43 “(b) If a municipality abandons any part of the building inspection program or is no longer able
44 to administer the building inspection program; and

45 “(c) If a municipality fails to substantially comply with any provision of this section or of ORS

1 455.465, 455.467 and 455.469.

2 **“(13) If the department assumes the administration and enforcement of a building in-**
3 **spection program under this section, in addition to any other power granted to the director,**
4 **the director may:**

5 **“(a) Enter into agreements with local governments under section 1 of this 2013 Act re-**
6 **garding the administration and enforcement of the assumed building inspection program;**

7 **“(b) Take action as described in section 4 of this 2013 Act to ensure that sufficient staff**
8 **and other resources are available for the administration and enforcement of the assumed**
9 **building inspection program; and**

10 **“(c) Charge fees described in section 5 of this 2013 Act for department services provided**
11 **in administering and enforcing the assumed building inspection program.**

12 **“[(13)] (14) If a municipality abandons or otherwise ceases to administer all or part of a building**
13 **inspection program described in this section, the municipality may not resume the administration**
14 **and enforcement of the abandoned program or part of a program for at least two years. The**
15 **municipality may resume the administration and enforcement of the abandoned program or part of**
16 **a program only on July 1 of an odd-numbered year. To resume the administration and enforcement**
17 **of the abandoned program or part of a program, the municipality must comply with ORS 455.148,**
18 **including the requirement that the municipality administer and enforce all aspects of the building**
19 **inspection program. Thereafter, the municipality is subject to ORS 455.148 and ceases to be subject**
20 **to this section.**

21 **“[(14)] (15) A municipality that administers and enforces a building inspection program under**
22 **this section shall include in the program the inspection of boilers and pressure vessels described in**
23 **subsection (1)(a)(H) of this section.**

24 **“SECTION 10. This 2013 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
26 **on its passage.”.**