

A-Engrossed
Senate Bill 432

Ordered by the Senate June 29
Including Senate Amendments dated June 29

Sponsored by Senator FERRIOLI (Pre-session 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.

[Allows rural county with no population growth, and certain local governments in county, to adopt comprehensive land use plan without complying with statewide land use planning goals.]

Allows county with no population growth, and city within county with no population growth, to adopt exception to any statewide land use planning goal for certain purposes, with exceptions.

Requires Land Conservation and Development Commission to review and approve proposed exception within 60 days of receiving notice from county or city.

Permits person adversely affected by adoption of exception to obtain judicial review of exception.

Directs Oregon Business Development Department to monitor adoption of exceptions by counties with no population growth and cities within counties with no population growth. Requires department to submit report to interim committee of Legislative Assembly no later than October 1, 2020.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to land use planning that does not comply with goals in rural counties with no population
3 growth; creating new provisions; amending ORS 34.020, 197.610, 197.650, 197.732 and 197.736; and
4 declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 197.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "County with no population growth" means a county with a population of less than
9 50,000 that did not experience population growth between the 2000 and 2010 federal decennial
10 censuses.

11 (b) "High-value farmland" means a lot or parcel in an exclusive farm use zone that is:

12 (A) Composed predominantly of Class I, Class II, prime or unique soil, as determined by
13 the United States Department of Agriculture Natural Resources Conservation Service; or

14 (B) Used for the commercial production of seed crops, berries, fruits or nuts intended for
15 human consumption, as demonstrated by the most recent aerial photography taken prior to
16 December 31, 2016, by the United States Department of Agriculture Aerial Photography Field
17 Office.

18 (2) Except as provided in subsections (6) and (7) of this section, a county with no popu-
19 lation growth or a city within a county with no population growth may adopt an exception
20 to any statewide land use planning goal under ORS 197.732 for the purpose of:

21 (a) Creating opportunities for business development in urban or rural areas;

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 **(b) Retaining and facilitating expansion of existing urban or rural businesses; or**

2 **(c) Providing increased urban or rural housing opportunities.**

3 **(3) A county with no population growth or a city within a county with no population**
4 **growth that adopts an exception under this section shall submit written notice to the Land**
5 **Conservation and Development Commission within 30 days after the exception is adopted.**

6 **The notice must:**

7 **(a) State that the county or the city has adopted an exception to a statewide land use**
8 **planning goal under ORS 197.732 for a purpose described in subsection (2) of this section;**

9 **(b) Identify the statewide land use planning goal to which the exception was adopted; and**

10 **(c) Identify the land to which the exception applies.**

11 **(4)(a) The commission shall review and approve a proposed exception described in sub-**
12 **section (2) of this section within 60 days of receiving a complete notice described in sub-**
13 **section (3) of this section.**

14 **(b) If the commission determines that the notice is not complete, the commission shall,**
15 **within 60 days of receiving the notice, approve the proposed exception on the condition that**
16 **the approval takes effect on the date the commission receives the information necessary to**
17 **complete the notice.**

18 **(5) The commission may adopt or enforce rules necessary to fulfill the requirements of**
19 **this section, provided the rules do not have the effect, either in themselves or cumulatively,**
20 **of:**

21 **(a) Limiting the statewide land use planning goals to which a county with no population**
22 **growth or a city within a county with no population growth may adopt an exception.**

23 **(b) Limiting the purposes for which a county with no population growth or a city within**
24 **a county with no population growth may adopt an exception.**

25 **(c) Establishing or implementing additional requirements or discretionary standards or**
26 **criteria for the approval of a proposed exception adopted by a county with no population**
27 **growth or a city within a county with no population growth.**

28 **(6) A county with no population growth or a city within a county with no population**
29 **growth may not adopt an exception to a statewide land use planning goal relating to natural**
30 **resources adopted for the purpose of implementing the Oregon Sage-Grouse Action Plan and**
31 **Executive Order adopted on September 16, 2015.**

32 **(7) A county with no population growth or a city within a county with no population**
33 **growth may not adopt an exception under this section if the land subject to the exception is**
34 **high-value farmland.**

35 **(8)(a) A person that is adversely affected by the adoption of an exception by a county**
36 **with no population growth or a city within a county with no population growth under this**
37 **section may obtain judicial review of the exception under ORS 34.010 to 34.100. A judicial**
38 **review described in this subsection is final and not subject to further appeal.**

39 **(b) A person is adversely affected under paragraph (a) of this subsection if the adoption**
40 **of the exception impinges on the person's use or enjoyment of land owned by the person.**

41 **(9)(a) If a county with no population growth or a city within a county with no population**
42 **growth adopts an exception to a statewide land use planning goal under subsection (2) of this**
43 **section, and the county or the city subsequently experiences population growth of four per-**
44 **cent or more or of 1,000 or more residents, whichever is greater, between two consecutive**
45 **federal decennial censuses, the county or the city:**

1 (A) May continue to operate under an exception adopted and approved under this section.

2 (B) No longer qualifies to adopt an exception under subsection (2) of this section.

3 (b) A county or a city described in paragraph (a) of this subsection requalifies to adopt
4 an exception under subsection (2) of this section if the county or the city subsequently ex-
5periences no population growth between two consecutive federal decennial censuses.

6 **SECTION 3.** The Oregon Business Development Department shall closely monitor the
7 adoption of exceptions to statewide land use planning goals under section 2 of this 2017 Act.
8 The department shall submit a report on the implementation and effects of section 2 of this
9 2017 Act to an appropriate interim committee of the Legislative Assembly no later than Oc-
10tober 1, 2020.

11 **SECTION 4.** ORS 197.610 is amended to read:

12 197.610. (1) Before a local government adopts a change, including additions and deletions, to an
13 acknowledged comprehensive plan or a land use regulation, the local government shall submit the
14 proposed change to the Director of the Department of Land Conservation and Development. The
15 Land Conservation and Development Commission shall specify, by rule, the deadline for submitting
16 proposed changes, but in all cases the proposed change must be submitted at least 20 days before
17 the local government holds the first evidentiary hearing on adoption of the proposed change. The
18 commission may not require a local government to submit the proposed change more than 35 days
19 before the first evidentiary hearing.

20 (2) If a local government determines that emergency circumstances beyond the control of the
21 local government require expedited review, the local government shall submit the proposed changes
22 as soon as practicable, but may submit the proposed changes after the applicable deadline.

23 (3) Submission of the proposed change must include all of the following materials:

24 (a) The text of the proposed change to the comprehensive plan or land use regulation imple-
25menting the plan;

26 (b) If a comprehensive plan map or zoning map is created or altered by the proposed change, a
27 copy of the map that is created or altered;

28 (c) A brief narrative summary of the proposed change and any supplemental information that the
29 local government believes may be useful to inform the director or members of the public of the effect
30 of the proposed change;

31 (d) The date set for the first evidentiary hearing;

32 (e) The form of notice or a draft of the notice to be provided under ORS 197.763, if applicable;
33 and

34 (f) Any staff report on the proposed change or information describing when the staff report will
35 be available, and how a copy of the staff report can be obtained.

36 (4) The director shall cause notice of the proposed change to the acknowledged comprehensive
37 plan or the land use regulation to be provided to:

38 (a) Persons that have requested notice of changes to the acknowledged comprehensive plan of
39 the particular local government, using electronic mail, electronic bulletin board, electronic mailing
40 list server or similar electronic method; and

41 (b) Persons that are generally interested in changes to acknowledged comprehensive plans, by
42 posting notices periodically on a public website using the Internet or a similar electronic method.

43 (5) *[When a local government determines that the land use statutes, statewide land use planning*
44 *goals and administrative rules of the commission that implement either the statutes or the goals do not*
45 *apply to a proposed change to the acknowledged comprehensive plan and the land use regulations,*

1 *Submission of the proposed change under this section is not required.*] **A local government is not**
2 **required to submit the proposed change to an acknowledged comprehensive plan or land use**
3 **regulation under this section if:**

4 (a) **The local government determines that the land use statutes, statewide land use**
5 **planning goals and administrative rules of the commission that implement either the stat-**
6 **utes or the goals do not apply to a proposed change to the acknowledged comprehensive plan**
7 **and the land use regulations; or**

8 (b) **The proposed change is the result of an exception to a statewide land use planning**
9 **goal adopted by a city or a county under section 2 of this 2017 Act.**

10 (6) If, after submitting the materials described in subsection (3) of this section, the proposed
11 change is altered to such an extent that the materials submitted no longer reasonably describe the
12 proposed change, the local government must notify the Department of Land Conservation and De-
13 velopment of the alterations to the proposed change and provide a summary of the alterations along
14 with any alterations to the proposed text or map to the director at least 10 days before the final
15 evidentiary hearing on the proposal. The director shall cause notice of the alterations to be given
16 in the manner described in subsection (4) of this section. Circumstances requiring resubmission of
17 a proposed change may include, but are not limited to, a change in the principal uses allowed under
18 the proposed change or a significant change in the location at which the principal uses would be
19 allowed, limited or prohibited.

20 (7) When the director determines that a proposed change to an acknowledged comprehensive
21 plan or a land use regulation may not be in compliance with land use statutes or the statewide land
22 use planning goals, including administrative rules implementing either the statutes or the goals, the
23 department shall notify the local government of the concerns at least 15 days before the final
24 evidentiary hearing, unless there is only one hearing or the proposed change has been modified to
25 the extent that resubmission is required under subsection (6) of this section.

26 (8) Notwithstanding subsection (7) of this section, the department may provide advisory recom-
27 mendations to the local government concerning the proposed change to the acknowledged compre-
28 hensive plan or land use regulation.

29 **SECTION 5.** ORS 197.650 is amended to read:

30 197.650. (1) **Except as provided in subsection (2) of this section:**

31 (a) A Land Conservation and Development Commission final order issued pursuant to ORS
32 197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794
33 may be appealed to the Court of Appeals by persons who participated in proceedings, if any, that
34 led to issuance of the final order being appealed.

35 [(2)] (b) Jurisdiction for judicial review of a final order [*of the commission issued pursuant to*
36 *ORS 197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to*
37 *215.794*] **described in paragraph (a) of this subsection** is conferred upon the Court of Appeals.

38 (2)(a) **In a final order issued by the commission pursuant to ORS 197.180, 197.251, 197.626,**
39 **197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794, the portion of the**
40 **final order that is an exception to a statewide land use planning goal adopted under section**
41 **2 of this 2017 Act may not be appealed to the Court of Appeals.**

42 (b) **This section does not confer jurisdiction for judicial review of any portion of a final**
43 **order described in paragraph (a) of this subsection on the Court of Appeals.**

44 **SECTION 6.** ORS 197.732 is amended to read:

45 197.732. (1) As used in this section:

1 (a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts
2 of any type with adjacent uses.

3 (b) "Exception" means a comprehensive plan provision, including an amendment to an acknowl-
4 edged comprehensive plan, that:

5 (A) Is applicable to specific properties or situations and does not establish a planning or zoning
6 policy of general applicability;

7 (B) Does not comply with some or all goal requirements applicable to the subject properties or
8 situations; and

9 (C) Complies with standards under subsection (2) of this section.

10 (2) A local government may adopt an exception to a goal if:

11 (a) The land subject to the exception is physically developed to the extent that it is no longer
12 available for uses allowed by the applicable goal;

13 (b) The land subject to the exception is irrevocably committed as described by Land Conserva-
14 tion and Development Commission rule to uses not allowed by the applicable goal because existing
15 adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;
16 [or]

17 (c) The following standards are met:

18 (A) Reasons justify why the state policy embodied in the applicable goals should not apply;

19 (B) Areas that do not require a new exception cannot reasonably accommodate the use;

20 (C) The long term environmental, economic, social and energy consequences resulting from the
21 use at the proposed site with measures designed to reduce adverse impacts are not significantly
22 more adverse than would typically result from the same proposal being located in areas requiring
23 a goal exception other than the proposed site; and

24 (D) The proposed uses are compatible with other adjacent uses or will be so rendered through
25 measures designed to reduce adverse impacts[.]; **or**

26 **(d) The requirements of section 2 of this 2017 Act are met.**

27 (3) The commission shall adopt rules establishing:

28 (a) That an exception may be adopted to allow a use authorized by a statewide planning goal
29 that cannot comply with the approval standards for that type of use;

30 (b) Under what circumstances particular reasons may or may not be used to justify an exception
31 under subsection (2)(c)(A) of this section; and

32 (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2)
33 of this section.

34 (4) A local government approving or denying a proposed exception shall set forth findings of fact
35 and a statement of reasons that demonstrate that the standards of subsection (2) of this section have
36 or have not been met.

37 (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal
38 exception is proposed and shall summarize the issues in an understandable manner.

39 (6) Upon review of a decision approving or denying an exception:

40 (a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for
41 which there is substantial evidence in the record of the local government proceedings resulting in
42 approval or denial of the exception;

43 (b) The board upon petition, or the commission, shall determine whether the local government's
44 findings and reasons demonstrate that the standards of subsection (2) of this section have or have
45 not been met; and

1 (c) The board or commission shall adopt a clear statement of reasons that sets forth the basis
2 for the determination that the standards of subsection (2) of this section have or have not been met.

3 (7) The commission shall by rule establish the standards required to justify an exception to the
4 definition of “needed housing” authorized by ORS 197.303.

5 (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement
6 Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

7 **(9) Subsections (3) to (8) of this section do not apply to an exception adopted by a city
8 or a county under section 2 of this 2017 Act.**

9 **SECTION 7.** ORS 197.736 is amended to read:

10 197.736. The Land Conservation and Development Commission shall amend goals, in accordance
11 with ORS 197.240 and 197.245, and amend and adopt rules and guidelines, as necessary, to implement
12 the provisions of this section and ORS 197.340 and 197.732 **and section 2 of this 2017 Act.**

13 **SECTION 8.** ORS 34.020 is amended to read:

14 34.020. (1) **Except as provided in subsection (3) of this section,** [*Except for a proceeding re-*
15 *sulting in a land use decision or limited land use decision as defined in ORS 197.015, for which review*
16 *is provided in ORS 197.830 to 197.845, or an expedited land division as described in ORS 197.360, for*
17 *which review is provided in ORS 197.375 (8),] any party to any process or proceeding before or by
18 any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for
19 errors, as provided in ORS 34.010 to 34.100, and not otherwise.*

20 (2) Upon a review, the court may review any intermediate order involving the merits and nec-
21 essarily affecting the decision or determination sought to be reviewed.

22 **(3) A writ of review provided in ORS 34.010 to 34.100 is not available for:**

23 **(a) Except as provided in section 2 of this 2017 Act, a proceeding resulting in a land use
24 decision or limited land use decision as defined in ORS 197.015, for which review is provided
25 in ORS 197.830 to 197.845; or**

26 **(b) An expedited land division as described in ORS 197.360, for which review is provided
27 in ORS 197.375 (8).**

28 **SECTION 9.** (1) **The Business and Housing Opportunities Fund is established in the State
29 Treasury, separate and distinct from the General Fund. Interest earned by the Business and
30 Housing Opportunities Fund shall be credited to the fund.**

31 **(2) Moneys in the Business and Housing Opportunities Fund shall consist of:**

32 **(a) Moneys deposited pursuant to this section;**

33 **(b) Amounts donated to the fund;**

34 **(c) Amounts appropriated or otherwise transferred to the fund by the Legislative As-
35 ssembly;**

36 **(d) Investment earnings received on moneys in the fund; and**

37 **(e) Other amounts deposited in the fund from any source.**

38 **(3) Moneys in the fund are continuously appropriated to the Oregon Business Develop-
39 ment Department for the purposes described in section 3 of this 2017 Act.**

40 **(4) The department may establish accounts and subaccounts within the fund when the
41 department determines that accounts or subaccounts are necessary or desirable, and may
42 credit any interest or income derived from moneys in the fund to any account or subaccount
43 in the fund.**

44 **(5) The department may use moneys in the fund to pay the staffing expenses of the de-
45 partment and the administrative costs associated with the fund and with making grants,**

1 loans and other distributions of moneys from the fund.

2 **SECTION 10.** In addition to and not in lieu of any other appropriation, there is appro-
3 priated to the Oregon Business Development Department, for the biennium beginning July
4 1, 2017, out of the General Fund, the amount of \$___, to be deposited in the Business and
5 Housing Opportunities Fund established in section 9 of this 2017 Act.

6 **SECTION 11.** This 2017 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
8 on its passage.

9
