

## SENATE AMENDMENTS TO SENATE BILL 432

By COMMITTEE ON RULES

June 29

1 On page 1 of the printed bill, line 3, after the second semicolon delete the rest of the line and  
2 insert “amending ORS 34.020, 197.610, 197.650, 197.732 and 197.736; and declaring an emergency.”.

3 Delete lines 5 through 31 and delete pages 2 and 3 and insert:

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

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

6 **“(a) ‘County with no population growth’ means a county with a population of less than**  
7 **50,000 that did not experience population growth between the 2000 and 2010 federal decennial**  
8 **censuses.**

9 **“(b) ‘High-value farmland’ means a lot or parcel in an exclusive farm use zone that is:**

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

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

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

19 **“(a) Creating opportunities for business development in urban or rural areas;**

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

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

22 **“(3) A county with no population growth or a city within a county with no population**  
23 **growth that adopts an exception under this section shall submit written notice to the Land**  
24 **Conservation and Development Commission within 30 days after the exception is adopted.**  
25 **The notice must:**

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

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

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

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

34 **“(b) If the commission determines that the notice is not complete, the commission shall,**  
35 **within 60 days of receiving the notice, approve the proposed exception on the condition that**

1 the approval takes effect on the date the commission receives the information necessary to  
2 complete the notice.

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

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

8 “(b) Limiting the purposes for which a county with no population growth or a city within  
9 a county with no population growth may adopt an exception.

10 “(c) Establishing or implementing additional requirements or discretionary standards or  
11 criteria for the approval of a proposed exception adopted by a county with no population  
12 growth or a city within a county with no population growth.

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

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

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

24 “(b) A person is adversely affected under paragraph (a) of this subsection if the adoption  
25 of the exception impinges on the person’s use or enjoyment of land owned by the person.

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

31 “(A) May continue to operate under an exception adopted and approved under this sec-  
32 tion.

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

34 “(b) A county or a city described in paragraph (a) of this subsection requalifies to adopt  
35 an exception under subsection (2) of this section if the county or the city subsequently ex-  
36periences no population growth between two consecutive federal decennial censuses.

37 “**SECTION 3.** The Oregon Business Development Department shall closely monitor the  
38 adoption of exceptions to statewide land use planning goals under section 2 of this 2017 Act.  
39 The department shall submit a report on the implementation and effects of section 2 of this  
40 2017 Act to an appropriate interim committee of the Legislative Assembly no later than Oc-  
41 tober 1, 2020.

42 “**SECTION 4.** ORS 197.610 is amended to read:

43 “197.610. (1) Before a local government adopts a change, including additions and deletions, to  
44 an acknowledged comprehensive plan or a land use regulation, the local government shall submit  
45 the proposed change to the Director of the Department of Land Conservation and Development. The

1 Land Conservation and Development Commission shall specify, by rule, the deadline for submitting  
2 proposed changes, but in all cases the proposed change must be submitted at least 20 days before  
3 the local government holds the first evidentiary hearing on adoption of the proposed change. The  
4 commission may not require a local government to submit the proposed change more than 35 days  
5 before the first evidentiary hearing.

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

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

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

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

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

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

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

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

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

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

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

29 “(5) *[When a local government determines that the land use statutes, statewide land use planning*  
30 *goals and administrative rules of the commission that implement either the statutes or the goals do not*  
31 *apply to a proposed change to the acknowledged comprehensive plan and the land use regulations,*  
32 *Submission of the proposed change under this section is not required.]* **A local government is not**  
33 **required to submit the proposed change to an acknowledged comprehensive plan or land use**  
34 **regulation under this section if:**

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

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

41 “(6) If, after submitting the materials described in subsection (3) of this section, the proposed  
42 change is altered to such an extent that the materials submitted no longer reasonably describe the  
43 proposed change, the local government must notify the Department of Land Conservation and De-  
44 velopment of the alterations to the proposed change and provide a summary of the alterations along  
45 with any alterations to the proposed text or map to the director at least 10 days before the final

1 evidentiary hearing on the proposal. The director shall cause notice of the alterations to be given  
2 in the manner described in subsection (4) of this section. Circumstances requiring resubmission of  
3 a proposed change may include, but are not limited to, a change in the principal uses allowed under  
4 the proposed change or a significant change in the location at which the principal uses would be  
5 allowed, limited or prohibited.

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

12 “(8) Notwithstanding subsection (7) of this section, the department may provide advisory rec-  
13 ommendations to the local government concerning the proposed change to the acknowledged com-  
14 prehensive plan or land use regulation.

15 “**SECTION 5.** ORS 197.650 is amended to read:

16 “197.650. (1) **Except as provided in subsection (2) of this section:**

17 “(a) A Land Conservation and Development Commission final order issued pursuant to ORS  
18 197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794  
19 may be appealed to the Court of Appeals by persons who participated in proceedings, if any, that  
20 led to issuance of the final order being appealed.

21 “[2] (b) Jurisdiction for judicial review of a final order [*of the commission issued pursuant to*  
22 *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*  
23 *215.794*] **described in paragraph (a) of this subsection** is conferred upon the Court of Appeals.

24 “(2)(a) **In a final order issued by the commission pursuant to ORS 197.180, 197.251, 197.626,**  
25 **197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794, the portion of the**  
26 **final order that is an exception to a statewide land use planning goal adopted under section**  
27 **2 of this 2017 Act may not be appealed to the Court of Appeals.**

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

30 “**SECTION 6.** ORS 197.732 is amended to read:

31 “197.732. (1) As used in this section:

32 “(a) ‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts  
33 of any type with adjacent uses.

34 “(b) ‘Exception’ means a comprehensive plan provision, including an amendment to an acknowl-  
35 edged comprehensive plan, that:

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

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

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

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

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

44 “(b) The land subject to the exception is irrevocably committed as described by Land Conser-  
45 vation and Development Commission rule to uses not allowed by the applicable goal because existing

1 adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;  
2 [or]

3 “(c) The following standards are met:

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

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

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

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

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

13 “(3) The commission shall adopt rules establishing:

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

16 “(b) Under what circumstances particular reasons may or may not be used to justify an excep-  
17 tion under subsection (2)(c)(A) of this section; and

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

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

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

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

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

29 “(b) The board upon petition, or the commission, shall determine whether the local government’s  
30 findings and reasons demonstrate that the standards of subsection (2) of this section have or have  
31 not been met; and

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

34 “(7) The commission shall by rule establish the standards required to justify an exception to the  
35 definition of ‘needed housing’ authorized by ORS 197.303.

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

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

40 **“SECTION 7.** ORS 197.736 is amended to read:

41 “197.736. The Land Conservation and Development Commission shall amend goals, in accordance  
42 with ORS 197.240 and 197.245, and amend and adopt rules and guidelines, as necessary, to implement  
43 the provisions of this section and ORS 197.340 and 197.732 **and section 2 of this 2017 Act.**

44 **“SECTION 8.** ORS 34.020 is amended to read:

45 “34.020. (1) **Except as provided in subsection (3) of this section,** [*Except for a proceeding re-*

1 *sulting in a land use decision or limited land use decision as defined in ORS 197.015, for which review*  
2 *is provided in ORS 197.830 to 197.845, or an expedited land division as described in ORS 197.360, for*  
3 *which review is provided in ORS 197.375 (8),] any party to any process or proceeding before or by*  
4 *any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for*  
5 *errors, as provided in ORS 34.010 to 34.100, and not otherwise.*

6 “(2) Upon a review, the court may review any intermediate order involving the merits and  
7 necessarily affecting the decision or determination sought to be reviewed.

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

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

12 “(b) An expedited land division as described in ORS 197.360, for which review is provided  
13 in ORS 197.375 (8).

14 “SECTION 9. (1) The Business and Housing Opportunities Fund is established in the State  
15 Treasury, separate and distinct from the General Fund. Interest earned by the Business and  
16 Housing Opportunities Fund shall be credited to the fund.

17 “(2) Moneys in the Business and Housing Opportunities Fund shall consist of:

18 “(a) Moneys deposited pursuant to this section;

19 “(b) Amounts donated to the fund;

20 “(c) Amounts appropriated or otherwise transferred to the fund by the Legislative As-  
21 ssembly;

22 “(d) Investment earnings received on moneys in the fund; and

23 “(e) Other amounts deposited in the fund from any source.

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

26 “(4) The department may establish accounts and subaccounts within the fund when the  
27 department determines that accounts or subaccounts are necessary or desirable, and may  
28 credit any interest or income derived from moneys in the fund to any account or subaccount  
29 in the fund.

30 “(5) The department may use moneys in the fund to pay the staffing expenses of the de-  
31 partment and the administrative costs associated with the fund and with making grants,  
32 loans and other distributions of moneys from the fund.

33 “SECTION 10. In addition to and not in lieu of any other appropriation, there is appro-  
34 priated to the Oregon Business Development Department, for the biennium beginning July  
35 1, 2017, out of the General Fund, the amount of \$\_\_\_\_, to be deposited in the Business and  
36 Housing Opportunities Fund established in section 9 of this 2017 Act.

37 “SECTION 11. This 2017 Act being necessary for the immediate preservation of the public  
38 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect  
39 on its passage.”.