

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
SENATE BILL 432**

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

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

5 **“SECTION 1. Section 2 of this 2017 Act is added to and made a part**
6 **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**
9 **population of less than 50,000 that did not experience population**
10 **growth between the 2000 and 2010 federal decennial censuses.**

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

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

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

21 **“(2) Except as provided in subsections (6) and (7) of this section, a**

1 county with no population growth or a city within a county with no
2 population growth may adopt an exception to any statewide land use
3 planning goal under ORS 197.732 for the purpose of:

4 “(a) Creating opportunities for business development in urban or
5 rural areas;

6 “(b) Retaining and facilitating expansion of existing urban or rural
7 businesses; or

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

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

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

17 “(b) Identify the statewide land use planning goal to which the ex-
18 ception was adopted; and

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

20 “(4)(a) The commission shall review and approve a proposed excep-
21 tion described in subsection (2) of this section within 60 days of re-
22 ceiving a complete notice described in subsection (3) of this section.

23 “(b) If the commission determines that the notice is not complete,
24 the commission shall, within 60 days of receiving the notice, approve
25 the proposed exception on the condition that the approval takes effect
26 on the date the commission receives the information necessary to
27 complete the notice.

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

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

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

7 “(c) Establishing or implementing additional requirements or dis-
8 cretionary standards or criteria for the approval of a proposed excep-
9 tion adopted by a county with no population growth or a city within
10 a county with no population growth.

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

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

19 “(8)(a) A person that is adversely affected by the adoption of an
20 exception by a county with no population growth or a city within a
21 county with no population growth under this section may obtain ju-
22 dicial 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
24 appeal.

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

28 “(9)(a) If a county with no population growth or a city within a
29 county with no population growth adopts an exception to a statewide
30 land use planning goal under subsection (2) of this section, and the

1 county or the city subsequently experiences population growth of four
2 percent or more or of 1,000 or more residents, whichever is greater,
3 between two consecutive federal decennial censuses, the county or the
4 city:

5 “(A) May continue to operate under an exception adopted and ap-
6 proved under this section.

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

9 “(b) A county or a city described in paragraph (a) of this subsection
10 requalifies to adopt an exception under subsection (2) of this section
11 if the county or the city subsequently experiences no population
12 growth between two consecutive federal decennial censuses.

13 **“SECTION 3. The Oregon Business Development Department shall**
14 **closely monitor the adoption of exceptions to statewide land use plan-**
15 **ning goals under section 2 of this 2017 Act. The department shall sub-**
16 **mit a report on the implementation and effects of section 2 of this 2017**
17 **Act to an appropriate interim committee of the Legislative Assembly**
18 **no later than October 1, 2020.**

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

20 “197.610. (1) Before a local government adopts a change, including addi-
21 tions and deletions, to an acknowledged comprehensive plan or a land use
22 regulation, the local government shall submit the proposed change to the
23 Director of the Department of Land Conservation and Development. The
24 Land Conservation and Development Commission shall specify, by rule, the
25 deadline for submitting proposed changes, but in all cases the proposed
26 change must be submitted at least 20 days before the local government holds
27 the first evidentiary hearing on adoption of the proposed change. The com-
28 mission may not require a local government to submit the proposed change
29 more than 35 days before the first evidentiary hearing.

30 “(2) If a local government determines that emergency circumstances be-

1 yond the control of the local government require expedited review, the local
2 government shall submit the proposed changes as soon as practicable, but
3 may submit the proposed changes after the applicable deadline.

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

6 “(a) The text of the proposed change to the comprehensive plan or land
7 use regulation implementing the plan;

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

10 “(c) A brief narrative summary of the proposed change and any supple-
11 mental information that the local government believes may be useful to in-
12 form the director or members of the public of the effect of the proposed
13 change;

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

15 “(e) The form of notice or a draft of the notice to be provided under ORS
16 197.763, if applicable; and

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

20 “(4) The director shall cause notice of the proposed change to the ac-
21 knowledged comprehensive plan or the land use regulation to be provided to:

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

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

29 “(5) [*When a local government determines that the land use statutes, state-*
30 *wide land use planning goals and administrative rules of the commission that*

1 *implement either the statutes or the goals do not apply to a proposed change*
2 *to the acknowledged comprehensive plan and the land use regulations, Sub-*
3 *mission of the proposed change under this section is not required.] A local*
4 **government is not required to submit the proposed change to an ac-**
5 **knowledged comprehensive plan or land use regulation under this**
6 **section if:**

7 **“(a) The local government determines that the land use statutes,**
8 **statewide land use planning goals and administrative rules of the**
9 **commission that implement either the statutes or the goals do not**
10 **apply to a proposed change to the acknowledged comprehensive plan**
11 **and the land use regulations; or**

12 **“(b) The proposed change is the result of an exception to a state-**
13 **wide land use planning goal adopted by a city or a county under sec-**
14 **tion 2 of this 2017 Act.**

15 **“(6) If, after submitting the materials described in subsection (3) of this**
16 **section, the proposed change is altered to such an extent that the materials**
17 **submitted no longer reasonably describe the proposed change, the local gov-**
18 **ernment must notify the Department of Land Conservation and Development**
19 **of the alterations to the proposed change and provide a summary of the al-**
20 **terations along with any alterations to the proposed text or map to the di-**
21 **rector at least 10 days before the final evidentiary hearing on the proposal.**
22 **The director shall cause notice of the alterations to be given in the manner**
23 **described in subsection (4) of this section. Circumstances requiring**
24 **resubmission of a proposed change may include, but are not limited to, a**
25 **change in the principal uses allowed under the proposed change or a signif-**
26 **icant change in the location at which the principal uses would be allowed,**
27 **limited or prohibited.**

28 **“(7) When the director determines that a proposed change to an ac-**
29 **knowledged comprehensive plan or a land use regulation may not be in**
30 **compliance with land use statutes or the statewide land use planning goals,**

1 including administrative rules implementing either the statutes or the goals,
2 the department shall notify the local government of the concerns at least 15
3 days before the final evidentiary hearing, unless there is only one hearing
4 or the proposed change has been modified to the extent that resubmission is
5 required under subsection (6) of this section.

6 “(8) Notwithstanding subsection (7) of this section, the department may
7 provide advisory recommendations to the local government concerning the
8 proposed change to the acknowledged comprehensive plan or land use regu-
9 lation.

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

11 **“197.650. (1) Except as provided in subsection (2) of this section:**

12 **“(a)** A Land Conservation and Development Commission final order is-
13 sued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to
14 197.658, 197.659, 215.780 or 215.788 to 215.794 may be appealed to the Court
15 of Appeals by persons who participated in proceedings, if any, that led to
16 issuance of the final order being appealed.

17 **“[(2)] (b)** Jurisdiction for judicial review of a final order [*of the commis-*
18 *sion issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.651,*
19 *197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794] **described in para-**
20 **graph (a) of this subsection** is conferred upon the Court of Appeals.*

21 **“(2)(a) In a final order issued by the commission pursuant to ORS**
22 **197.180, 197.251, 197.626, 197.628 to 197.651, 197.652 to 197.658, 197.659,**
23 **215.780 or 215.788 to 215.794, the portion of the final order that is an**
24 **exception to a statewide land use planning goal adopted under section**
25 **2 of this 2017 Act may not be appealed to the Court of Appeals.**

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

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

30 **“197.732. (1) As used in this section:**

1 “(a) ‘Compatible’ is not intended as an absolute term meaning no inter-
2 ference or adverse impacts of any type with adjacent uses.

3 “(b) ‘Exception’ means a comprehensive plan provision, including an
4 amendment to an acknowledged comprehensive plan, that:

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

7 “(B) Does not comply with some or all goal requirements applicable to the
8 subject properties or 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 ex-
12 tent that it is no longer available for uses allowed by the applicable goal;

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

17 “(c) The following standards are met:

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

20 “(B) Areas that do not require a new exception cannot reasonably ac-
21 commodate the use;

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

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

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

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

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

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

6 “(c) Which uses allowed by the applicable goal must be found impracti-
7 cable under subsection (2) of this section.

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

11 “(5) Each notice of a public hearing on a proposed exception shall spe-
12 cifically note that a goal exception is proposed and shall summarize the is-
13 sues in an understandable manner.

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

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

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

22 “(c) The board or commission shall adopt a clear statement of reasons
23 that sets forth the basis for the determination that the standards of sub-
24 section (2) of this section have or have not been met.

25 “(7) The commission shall by rule establish the standards required to
26 justify an exception to the definition of ‘needed housing’ authorized by ORS
27 197.303.

28 “(8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1)
29 (1981 Replacement Part) on or before August 9, 1983, continues to be valid
30 and is not subject to this section.

1 **“(9) Subsections (3) to (8) of this section do not apply to an excep-**
2 **tion adopted by a city or a county under section 2 of this 2017 Act.**

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

4 “197.736. The Land Conservation and Development Commission shall
5 amend goals, in accordance with ORS 197.240 and 197.245, and amend and
6 adopt rules and guidelines, as necessary, to implement the provisions of this
7 section and ORS 197.340 and 197.732 **and section 2 of this 2017 Act.**

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

9 “34.020. **(1) Except as provided in subsection (3) of this section,** [*Ex-*
10 *cept for a proceeding resulting in a land use decision or limited land use de-*
11 *cision as defined in ORS 197.015, for which review is provided in ORS 197.830*
12 *to 197.845, or an expedited land division as described in ORS 197.360, for*
13 *which review is provided in ORS 197.375 (8),*] any party to any process or
14 proceeding before or by any inferior court, officer, or tribunal may have the
15 decision or determination thereof reviewed for errors, as provided in ORS
16 34.010 to 34.100, and not otherwise.

17 **“(2) Upon a review, the court may review any intermediate order involv-**
18 **ing the merits and necessarily affecting the decision or determination sought**
19 **to be reviewed.**

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

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

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

28 **“SECTION 9. (1) The Business and Housing Opportunities Fund is**
29 **established in the State Treasury, separate and distinct from the**
30 **General Fund. Interest earned by the Business and Housing Opportu-**

1 **nities Fund shall be credited to the fund.**

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

4 **“(a) Moneys deposited pursuant to this section;**

5 **“(b) Amounts donated to the fund;**

6 **“(c) Amounts appropriated or otherwise transferred to the fund by**
7 **the Legislative Assembly;**

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

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

10 **“(3) Moneys in the fund are continuously appropriated to the**
11 **Oregon Business Development Department for the purposes described**
12 **in section 3 of this 2017 Act.**

13 **“(4) The department may establish accounts and subaccounts**
14 **within the fund when the department determines that accounts or**
15 **subaccounts are necessary or desirable, and may credit any interest**
16 **or income derived from moneys in the fund to any account or subac-**
17 **count in the fund.**

18 **“(5) The department may use moneys in the fund to pay the staffing**
19 **expenses of the department and the administrative costs associated**
20 **with the fund and with making grants, loans and other distributions**
21 **of moneys from the fund.**

22 **“SECTION 10. In addition to and not in lieu of any other appropri-**
23 **ation, there is appropriated to the Oregon Business Development De-**
24 **partment, for the biennium beginning July 1, 2017, out of the General**
25 **Fund, the amount of \$___, to be deposited in the Business and Hous-**
26 **ing Opportunities Fund established in section 9 of this 2017 Act.**

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

30