

HB 3414 -19 STAFF MEASURE SUMMARY

House Committee On Rules

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 5/9, 6/1, 6/8

WHAT THE MEASURE DOES:

Limits conditions under which local government may deny an application for a variance from land use regulations of a residential development within an urban growth boundary and on lands zoned for residential use. Allows denial if necessary for health, safety, or habitability issues, or if the variance request is related to density, height, or floor-area ratio of the development. Directs Department of Land Conservation and Development (DLCD) and Department of Consumer and Business Services (DCBS) to establish Housing Accountability and Production Office (Office) and describes the departments' respective rulemaking authority. Describes duties of Office in providing technical assistance for local jurisdictions and housing developers to reduce permitting and land use barriers to housing production and to investigate and respond to violations of housing laws as defined by Act. Allows Office to take enforcement actions upon a local government's continued violation of housing laws, including actions in conjunction with enforcement measures taken by DLCD or the Land Conservation Development Commission. Requires Office, through third-party contractor, to submit, on or before September 15, 2024, a report to interim committee of Legislative Assembly, identifying improvements to local government approval processes in support of increased housing production. Appropriates, for the biennium beginning July 1, 2023, \$1.1 million in General Fund moneys to DLCD and \$1.1 million to DCBS to carry out provisions of Act.

FISCAL: Fiscal impact issued

REVENUE: No revenue impact

ISSUES DISCUSSED:

- Provisions of amendments
- Balancing local government autonomy with housing production needs
- Clarifying authority between lead agencies (DLCD/DCBS)
- Funding mechanism needed to address local government technical assistance needs
- Potential impact of state wildfire risk maps on development to which measure applies
- Focusing adjustments to incentivize affordable housing production over market-rate

EFFECT OF AMENDMENT:

-19 Replaces the measure.

Adjustment for development application:

Requires a local government to grant an adjustment to specified development and design standards for an application for a building permit or quasi-judicial land use decision. Clarifies an adjustment, for purposes of Act, is a deviation from an existing land use regulation, but does not include deviation to building code requirements, or other specified federal or state land use or water quality requirements or regulations. Specifies eligible development must be on lands zoned for residential or mixed-use residential use, is within an urban growth boundary, and will yield net new housing units. Requires application for adjustment to meet one of four criteria: that it will enable development not otherwise feasible due to cost or delay; enable an increase in number of units; enable a reduction in sale or rental price per unit; or that units will be subject to a specified affordability covenant. Clarifies local government may not approve more than ten distinct adjustments as defined by the measure.

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Specifies timelines and process for adjustment application review, appeal and issuance of final decision; clarifies a land use decision may be appealed only by applicant or the Housing Accountability and Production Office. Allows local governments and the Land Use Board of Appeals to stay a decision or appeal of a land use decision on an application for an adjustment under provisions of this Act.

Directs Department of Land Conservation and Development (DLCD) and Department of Consumer and Business Services (DCBS) to establish the Housing Accountability and Production Office (Office) and describes duties of the Office in supporting implementation of local procedures and standards relating to approval of residential development projects. Directs Office to establish, by April 1, 2024, process for receiving and investigating allegations by residential developers of local governments' violations of housing laws. Describes notice requirements and options to remedy a suspected violation. Directs Office to prioritize technical assistance funding to local governments that agree to comply with housing laws.

Allows Office to take enforcement actions upon a local government's continued violation of housing laws, including actions in conjunction with enforcement measures taken by DLCD, Land Conservation Development Commission, or DCBS. Describes procedural and notice requirements for enforcement order requested by Office.

Allows applicants for the development of needed housing, and any local government that approved a quasi-judicial land use decision, to obtain attorney fees in prevailing appeals before the Land Use Board of Appeals, provided the notice of intent to appeal is filed on or after January 1, 2024.

Directs cities with a population of 10,000 or greater to include housing developed through adjustment approvals as part of annual housing capacity reporting to the Department of Land Conservation and Development (DLCD); requires DLCD to report on this data to Legislative Assembly on or before September 15 of each even-numbered year.

Directs Office, through an outside contractor, to provide report to the Legislative Assembly by September 15, 2024 identifying improvements in local development approval, land use, zoning and permitting process.

Urban growth boundary amendment:

Allows a city outside Metro to adopt an amendment to the city's urban growth boundary (UGB) for a site that is adjacent to the city's existing UGB, designated as an urban reserve, a nonresource land, or subject to an acknowledged exception to a statewide planning goal relating to farmland or forest land, provided the city has not previously adopted a UGB amendment under provisions of this Act. Defines an eligible site as a lot or parcel or contiguous lots or parcels with or without common ownership, in which the total acreage does not exceed 150 net residential acres for a city with a population 25,000 or greater, or does not exceed 75 net residential acres for a city with population less than 25,000. Clarifies adoption of UGB amendment for these cities does not require county approval.

Allows city within Metro to petition Metro to amend city's UGB for a site that does not exceed 600 total net residential acres and meets the same conditions for nonmetro sites as provided by Act. Requires Metro to approve petitions and adopt a UGB amendment for a site with no more than 600 total net residential acres. Requires Metro to review and select petitions for a site exceeding 600 total net residential acres which address needed affordable and market-rate housing for rent or ownership in the region.

Requires a city adopting or petitioning Metro for a UGB amendment to adopt a conceptual plan for the site that meets criteria related to housing diversity, specified density averages dependent on city size; designated open space and commercial uses; access to transportation and services; retention of designation for environmental

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protection for any such areas within the site; and provision of necessary urban services. Clarifies conceptual plan must include requirements regarding specified affordability restrictions for 30 percent of residential units, the prioritization of affordable unit construction, and equal access to common areas and amenities for residents of affordable and market rate units. Allows a city to impose greater affordability requirements for residential units if it significantly offsets specified development and predevelopment costs.

Requires a city, prior to the adoption of a conceptual plan, to provide specified opportunities for public participation, and consult with and provide opportunity for written comment from all lot owners within a site, the governing body of each county with land use jurisdiction over the site, and any special district or public or private utility.

Requires a city or Metro to submit a conceptual plan and adopted UGB amendment to the Department of Land Conservation and Development (DLCD) for review within specified timelines. Requires DLCD to approve submittal within 60 days of receipt if it substantially complies with provisions of the Act, and describes process if DLCD remands a submittal.

Directs cities for which a UGB was amended under provisions of the Act to report to DLCD on the status of the development within the site every two years until January 2, 2033 or until the city determines development as described by conceptual plan is complete. Repeals provisions of Act related to UGB amendment on January 2, 2033.

Allocations and effective date:

Appropriates, for the biennium beginning July 1, 2023, unspecified General Fund moneys to DLCD to perform the duties of the Office as described by Act. Appropriates \$10 Million to DLCD for educational materials, technical assistance and grants to local governments to update local implementation of land use laws and building code enforcement to align with state requirements and to implement voluntary compliance agreements.

Declares emergency, effective July 1, 2023.

BACKGROUND:

According to the Department of Land Conservation and Development (DLCD), Oregon needs to develop more than 550,000 new housing units across income levels to accommodate 20 years of population growth and to account for current underproduction and the lack of units for people experiencing homelessness. DLCD estimates that approximately 49 percent of this housing will require public subsidy. The department reported in its February 2021 Regional Housing Needs Analysis report that underproduction may be attributed to high land and construction costs, inadequate infrastructure, and limited local government capacity, among other factors. The Oregon Office of Economic Analysis has reported on the longer-term impacts of housing production, including slowing economic growth and potential increased displacement of Oregonians who cannot afford to rent or buy a home.

In 2021, the Legislative Assembly enacted Senate Bill 8, which restricted local governments from denying or limiting the approval of affordable housing applications, subject to certain zoning and property ownership conditions. The measure established density standards and conditions under which local governments must approve affordable housing applications.

House Bill 3414 limits the conditions under which a local government is allowed to deny an application for a land use variance on a residential development within the UGB and on land zoned for residential use. The measure

directs DLCD and the Department of Consumer and Business Services (DCBS) to jointly establish the Housing Accountability and Production Office to provide both technical assistance and take enforcement measures necessary to assist local jurisdictions in identifying and reducing permitting and land use barriers to housing production. It appropriates a total of \$2.2 million to DLCD and DCBS to establish and implement the Housing Accountability and Production Office.

PRELIMINARY