

House Bill 3414

Sponsored by Representatives RAYFIELD, DEXTER (at the request of Governor Tina Kotek)

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 **as introduced**.

Limits conditions under which local governments may deny variance for housing development within urban growth boundary.

Requires Department of Land Conservation and Development and Department of Consumer and Business Services to jointly establish and administer Housing Accountability and Production Office. Requires office to assist local governments and housing developers with housing laws relating to land use and land divisions. Authorizes office to take certain actions to enforce housing laws.

Requires office to commission report on developing efficiencies in housing production and to deliver report to interim committee of Legislative Assembly, on or before September 15, 2024.

Appropriates continuously moneys from Consumer and Business Services Fund received from administration of building codes for use by office.

Appropriates moneys from General Fund for use by office.

A BILL FOR AN ACT

1
2 Relating to local implementation of housing laws; creating new provisions; and amending ORS
3 197.320, 197.335, 455.230 and 455.770.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 197.**

6 **SECTION 2. (1) Within an urban growth boundary, a local government may not deny an**
7 **application for a variance from land use regulations for the construction of a residential**
8 **development on lands zoned for residential uses, unless:**

9 (a) **The denial is necessary to address a health, safety or habitability issue;**

10 (b) **The variance request relates to the density, height or floor-to-area ratio of the de-**
11 **velopment.**

12 (2) **A local government that denies a request for a variance under subsection (1)(a) of this**
13 **section shall adopt findings supported by substantial evidence in the record demonstrating**
14 **the necessity of the denial.**

15 **SECTION 3. (1) The Department of Land Conservation and Development and the De-**
16 **partment of Consumer and Business Services shall enter into an interagency agreement to**
17 **establish and administer the Housing Accountability and Production Office. Each department**
18 **is authorized to take any action that may be taken by the office under this section or section**
19 **4 of this 2023 Act.**

20 (2) **The Housing Accountability and Production Office shall:**

21 (a) **Provide technical assistance to local jurisdictions to comply with housing laws and to**
22 **reduce permitting and land use barriers to housing production;**

23 (b) **Serve as a resource for housing developers experiencing permitting and land use**
24 **barriers related to housing production, including by responding to requests for technical as-**
25 **sistance regarding housing laws; and**

26 (c) **Investigate and respond to complaints of violations of housing law under section 4 of**

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 this 2023 Act.

2 (3) The Land Conservation and Development Commission and the Department of Con-
 3 sumer and Business Services may jointly or separately adopt, amend or repeal rules for:

4 (a) Carrying out the responsibilities of the departments and the office under this section
 5 and section 4 of this 2023 Act; and

6 (b) Establishing model codes, procedures and practices by which local governments may
 7 comply with any housing law.

8 (4) The office shall prioritize assisting jurisdictions voluntarily undertaking changes to
 9 come into compliance with housing laws.

10 (5) As used in this section and section 4 of this 2023 Act, “housing law” means ORS 92.010
 11 to 92.192, 92.830 to 92.845, 197.286 to 197.314, 197.360 to 197.380, 197.475 to 197.490, 197.505 to
 12 197.540, 197.660 to 197.670, 197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148,
 13 455.150, 455.152, 455.153, 455.154, 455.155, 455.156, 455.157, 455.158, 455.165, 455.170, 455.175,
 14 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465, 455.467 and
 15 455.610 and section 2 of this 2023 Act and administrative rules implementing those laws, to
 16 the extent that the law or rule creates a mandatory duty on a local government or its agent
 17 and the application of the law or rule relates to residential development or pertains to a
 18 permit for a residential use or division of land for residential purposes.

19 **SECTION 4.** (1) The Housing Accountability and Production Office established under
 20 section 3 of this 2023 Act shall establish a form or format through which the office receives
 21 allegations of local governments’ violations of housing laws.

22 (2) The office may investigate suspected or alleged violations of housing laws.

23 (3) If the office has a reasonable basis to conclude that a violation has been committed,
 24 the office shall deliver written warning notice to the local government specifying the vio-
 25 lation, and any authority under this section that the office intends to invoke if the violation
 26 continues or is not remedied.

27 (4) No earlier than 60 days after a warning notice is delivered under subsection (3) of this
 28 section, the office may:

29 (a) Request an enforcement order under ORS 197.320 (14) without first complying with
 30 ORS 197.319 (1) and (2). Notwithstanding ORS 183.635 (2) and 197.328 (1), a request under this
 31 paragraph must be assigned to an administrative law judge appointed under ORS 183.635
 32 unless the Land Conservation and Development Commission has previously appointed a
 33 hearing officer or a pool of hearing officers to review petitions filed under this section.

34 (b) Seek a court order against a local government as described under ORS 455.160 (3)
 35 without being adversely affected or serving the demand as described in ORS 455.160 (2).

36 (c) Notwithstanding ORS 197.090 (2)(b) to (e), participate in and seek review of a matter
 37 under ORS 197.090 (2)(a) that pertains to housing laws without the notice or consent of the
 38 commission. No less than once every two years, the office shall report to the commission
 39 on the matters in which the office participated under this paragraph.

40 (d) Apply to any circuit court for an order compelling compliance with any housing law.
 41 If the court finds that the defendant is not complying with a housing law, the court may
 42 grant an injunction requiring compliance.

43 (5) The actions authorized under this section are in addition to and may be exercised in
 44 conjunction with any other investigative or enforcement authority that may be exercised by
 45 the Department of Land Conservation and Development, the Land Conservation and Devel-

1 **opment Commission or the Department of Consumer and Business Services.**

2 **SECTION 5. On or before September 15, 2024, the Housing Accountability and Production**
 3 **Office established under section 3 of this 2023 Act shall:**

4 (1) **Contract with an organization possessing relevant expertise to produce a report**
 5 **identifying improvements in the local building plan approval, land use, zoning and permitting**
 6 **processes, including but not limited to plan approval timelines, process efficiency, local best**
 7 **practices and other ways to accelerate and improve the efficiency of the development process**
 8 **for construction, with a focus on increasing housing production; and**

9 (2) **Provide the report under subsection (1) of this section to an appropriate interim**
 10 **committee of the Legislative Assembly in the manner provided in ORS 192.245.**

11 **SECTION 6.** ORS 197.320 is amended to read:

12 197.320. The Land Conservation and Development Commission shall issue an order requiring a
 13 local government, state agency or special district to take action necessary to bring its compre-
 14 hensive plan, land use regulation, limited land use decisions or other land use decisions or actions into
 15 compliance with the goals, acknowledged comprehensive plan provisions, land use regulations or
 16 housing production strategy if the commission has good cause to believe:

17 (1) A comprehensive plan or land use regulation adopted by a local government not on a com-
 18 pliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for
 19 such compliance[;].

20 (2) A plan, program, rule or regulation affecting land use adopted by a state agency or special
 21 district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such
 22 compliance[;].

23 (3) A local government is not making satisfactory progress toward performance of its compliance
 24 schedule[;].

25 (4) A state agency is not making satisfactory progress in carrying out its coordination agree-
 26 ment or the requirements of ORS 197.180[;].

27 (5) A local government has no comprehensive plan or land use regulation and is not on a com-
 28 pliance schedule directed to developing the plan or regulation[;].

29 (6) A local government has engaged in a pattern or practice of decision making that violates
 30 an acknowledged comprehensive plan or land use regulation. In making its determination under this
 31 subsection, the commission shall determine whether there is evidence in the record to support the
 32 decisions made. The commission shall not judge the issue solely upon adequacy of the findings in
 33 support of the decisions[;].

34 (7) A local government has failed to comply with a commission order entered under ORS
 35 197.644[;].

36 (8) A special district has engaged in a pattern or practice of decision-making that violates an
 37 acknowledged comprehensive plan or cooperative agreement adopted pursuant to ORS 197.020[;].

38 (9) A special district is not making satisfactory progress toward performance of its obligations
 39 under ORS chapters 195 and 197[;].

40 (10) A local government's approval standards, special conditions on approval of specific devel-
 41 opment proposals or procedures for approval do not comply with ORS 197.307 (4) or (6)[;].

42 (11) A local government is not making satisfactory progress toward meeting its obligations un-
 43 der ORS 195.065[;].

44 (12) A local government within the jurisdiction of a metropolitan service district has failed to
 45 make changes to the comprehensive plan or land use regulations to comply with the regional

1 framework plan of the district or has engaged in a pattern or practice of decision-making that vio-
 2 lates a requirement of the regional framework plan[; *or*].

3 (13) A city is not making satisfactory progress in taking actions listed in its housing production
 4 strategy under ORS 197.290.

5 **(14) A local government is not complying with a housing law, as defined in section 3 of**
 6 **this 2023 Act, except for a housing law that pertains to building codes or the administration**
 7 **of building codes.**

8 **SECTION 7.** ORS 197.335 is amended to read:

9 197.335. (1) An order issued under ORS 197.328 and the copy of the order mailed to the local
 10 government, state agency or special district shall set forth:

11 (a) The nature of the noncompliance, including, but not limited to, the contents of the compre-
 12 hensive plan or land use regulation, if any, of a local government that do not comply with the goals
 13 or the contents of a plan, program or regulation affecting land use adopted by a state agency or
 14 special district that do not comply with the goals. In the case of a pattern or practice of decision-
 15 making which violates the goals, comprehensive plan or land use regulations, the order shall specify
 16 the decision-making which constitutes the pattern or practice, including specific provisions the Land
 17 Conservation and Development Commission believes are being misapplied;

18 (b) The specific lands, if any, within a local government for which the existing plan or land use
 19 regulation, if any, does not comply with the goals; and

20 (c) The corrective action decided upon by the commission, including the specific requirements,
 21 with which the local government, state agency or special district must comply. In the case of a
 22 pattern or practice of decision-making that violates an acknowledged comprehensive plan or land
 23 use regulation, the commission may require revisions to the comprehensive plan, land use regu-
 24 lations or local procedures which the commission believes are necessary to correct the pattern or
 25 practice. Notwithstanding the provisions of this section, except as provided in subsection (3)(c) of
 26 this section, an enforcement order does not affect:

27 (A) Land use applications filed with a local government prior to the date of adoption of the
 28 enforcement order unless specifically identified by the order;

29 (B) Land use approvals issued by a local government prior to the date of adoption of the
 30 enforcement order; or

31 (C) The time limit for exercising land use approvals issued by a local government prior to the
 32 date of adoption of the enforcement order.

33 (2) Judicial review of a final order of the commission shall be governed by the provisions of ORS
 34 chapter 183 applicable to contested cases except as otherwise stated in this section. The
 35 commission's final order shall include a clear statement of findings which set forth the basis for the
 36 order. Where a petition to review the order has been filed in the Court of Appeals, the commission
 37 shall transmit to the court the entire administrative record of the proceeding under review.
 38 Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate
 39 court, before it may stay an order of the commission, shall give due consideration to the public in-
 40 terest in the continued enforcement of the commission's order and may consider testimony or affi-
 41 davits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order.
 42 The court shall reverse, modify or remand the order only if it finds:

43 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be
 44 cause for reversal, modification or remand unless the court shall find that substantial rights of any
 45 party were prejudiced thereby;

1 (b) The order to be unconstitutional;

2 (c) The order is invalid because it exceeds the statutory authority of the agency; or

3 (d) The order is not supported by substantial evidence in the whole record.

4 (3)(a) If the commission finds that in the interim period during which a local government, state
 5 agency or special district would be bringing itself into compliance with the commission's order un-
 6 der ORS 197.320 or subsection (2) of this section it would be contrary to the public interest in the
 7 conservation or sound development of land to allow the continuation of some or all categories of
 8 land use decisions or limited land use decisions, it shall, as part of its order, limit, prohibit or re-
 9 quire the approval by the local government of applications for subdivisions, partitions, building
 10 permits, limited land use decisions or land use decisions until the plan, land use regulation or sub-
 11 sequent land use decisions and limited land use decisions are brought into compliance. The com-
 12 mission may issue an order that requires review of local decisions by a hearings officer or the
 13 Department of Land Conservation and Development before the local decision becomes final.

14 (b) Any requirement under this subsection may be imposed only if the commission finds that the
 15 activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and
 16 that the requirement is necessary to correct the violation.

17 (c) The limitations on enforcement orders under subsection (1)(c)(B) of this section shall not be
 18 interpreted to affect the commission's authority to limit, prohibit or require application of specified
 19 criteria to subsequent land use decisions involving land use approvals issued by a local government
 20 prior to the date of adoption of the enforcement order.

21 (4) As part of its order under ORS 197.320 or subsection (2) of this section, the commission may
 22 withhold grant funds from the local government to which the order is directed. As part of an order
 23 issued under this section, the commission may notify the officer responsible for disbursing state-
 24 shared revenues to withhold that portion of state-shared revenues to which the local government is
 25 entitled under ORS 221.770, 323.455, 366.762 and 366.800 and ORS chapter 471 which represents the
 26 amount of state planning grant moneys previously provided the local government by the commission.
 27 The officer responsible for disbursing state-shared revenues shall withhold state-shared revenues as
 28 outlined in this section and shall release funds to the local government or department when notified
 29 to so do by the commission or its designee. The commission may retain a portion of the withheld
 30 revenues to cover costs of providing services incurred under the order, including use of a hearings
 31 officer or staff resources to monitor land use decisions and limited land use decisions or conduct
 32 hearings. The remainder of the funds withheld under this provision shall be released to the local
 33 government upon completion of requirements of the commission order.

34 (5)(a) As part of its order under this section, the commission may notify the officer responsible
 35 for disbursing funds from any grant or loan made by a state agency to withhold such funds from a
 36 special district to which the order is directed. The officer responsible for disbursing funds shall
 37 withhold funds as outlined in this section and shall release funds to the special district or depart-
 38 ment when notified to do so by the commission.

39 (b) The commission may retain a portion of the funds withheld to cover costs of providing ser-
 40 vices incurred under the order, including use of a hearings officer or staff resources to monitor land
 41 use decisions and limited land use decisions or conduct hearings. The remainder of the funds with-
 42 held under this provision shall be released to the special district upon completion of the require-
 43 ments of the commission order.

44 **(6) As part of its order under this section, upon finding a local government has failed to**
 45 **comply as described in ORS 197.320 (14), the commission may require the local government**

1 **to adopt models that have been developed by the Housing Accountability and Production Of-**
 2 **ice under section 3 (3)(b) of this 2023 Act that are suitable to address the basis for the order.**

3 [(6)] (7) The commission may institute actions or proceedings for legal or equitable remedies in
 4 the Circuit Court for Marion County or in the circuit court for the county to which the
 5 commission's order is directed or within which all or a portion of the applicable city is located to
 6 enforce compliance with the provisions of any order issued under this section or to restrain vio-
 7 lations thereof. Such actions or proceedings may be instituted without the necessity of prior agency
 8 notice, hearing and order on an alleged violation.

9 **SECTION 8.** ORS 455.770 is amended to read:

10 455.770. (1) In addition to any other authority and power granted to the Director of the De-
 11 partment of Consumer and Business Services under ORS 446.003 to 446.200, 446.225 to 446.285,
 12 446.395 to 446.420, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and [*this chapter and*] ORS
 13 chapters 447, **455**, 460 and 693 **and sections 3 and 4 of this 2023 Act**, with respect to munici-
 14 palities, building officials and inspectors, if the director has reason to believe that there is a failure
 15 to enforce or a violation of any provision of the state building code or ORS 446.003 to 446.200,
 16 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 [*or this*
 17 *chapter*] or ORS chapter 447, **455**, 460 or 693 or any rule adopted under those statutes, the director
 18 may:

19 (a) Examine building code activities of the municipality;

20 (b) Take sworn testimony; and

21 (c) With the authorization of the Office of the Attorney General, subpoena persons and records
 22 to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise
 23 subject to public inspection under ORS 192.311 to 192.478.

24 (2) The investigative authority authorized in subsection (1) of this section covers the violation
 25 or omission by a municipality related to enforcement of codes or administrative rules, certification
 26 of inspectors or financial transactions dealing with permit fees and surcharges under any of the
 27 following circumstances when:

28 (a) The duties are clearly established by law, rule or agreement;

29 (b) The duty involves procedures for which the means and methods are clearly established by
 30 law, rule or agreement; or

31 (c) The duty is described by clear performance standards.

32 (3) Prior to starting an investigation under subsection (1) of this section, the director shall notify
 33 the municipality in writing setting forth the allegation and the rules or statutes pertaining to the
 34 allegation and give the municipality 30 days to respond to the allegation. If the municipality does
 35 not satisfy the director's concerns, the director may then commence an investigation.

36 (4) If the Department of Consumer and Business Services or the director directs corrective
 37 action, the following shall be done:

38 (a) The corrective action shall be in writing and served on the building official and the chief
 39 executive officers of all municipalities affected;

40 (b) The corrective action shall identify the facts and law relied upon for the required action; and

41 (c) A reasonable time shall be provided to the municipality for compliance.

42 (5) The director may revoke any authority of the municipality to administer any part of the state
 43 building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,
 44 479.995 or 480.510 to 480.670 [*or this chapter*] or ORS chapter 447, **455**, 460 or 693 or any rule
 45 adopted under those statutes if the director determines after a hearing conducted under ORS 183.413

1 to 183.497 that:

2 (a) All of the requirements of this section and ORS 455.775 and 455.895 were met; and

3 (b) The municipality did not comply with the corrective action required.

4 **SECTION 9.** ORS 455.230 is amended to read:

5 455.230. (1) Except as otherwise provided by law, all moneys appropriated or credited to the
6 Consumer and Business Services Fund and received under this chapter, ORS 447.010 to 447.156,
7 447.992, 460.005 to 460.175, 460.310 to 460.370, 479.510 to 479.945, 479.995, 480.510 to 480.670 and ORS
8 chapter 693 hereby are appropriated continuously for and shall be used by the director for the
9 purpose of carrying out the duties and responsibilities imposed upon the department under this
10 chapter, ORS 446.566 to 446.646, 446.661 to 446.756, 447.010 to 447.156, 447.992, 460.005 to 460.175,
11 460.310 to 460.370, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and ORS chapter 693 **and**
12 **sections 3 and 4 of this 2023 Act.**

13 (2) Except as otherwise provided by law, all moneys appropriated or credited to the Consumer
14 and Business Services Fund and received under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395
15 to 446.420, 446.566 to 446.646, 446.661 to 446.756 and 455.220 (1) hereby are appropriated contin-
16 uously for and shall be used by the director for the purpose of carrying out the duties and respon-
17 sibilities imposed upon the department under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to
18 446.420, 446.566 to 446.646 and 446.661 to 446.756, and education and training programs pertaining
19 thereto.

20 **SECTION 10. In addition to and not in lieu of any other appropriation, there is appro-**
21 **riated for the biennium beginning July 1, 2023, out of the General Fund:**

22 (1) **To the Department of Land Conservation and Development, the amount of \$1,100,000,**
23 **to perform the duties of the department under sections 3 to 5 of this 2023 Act; and**

24 (2) **To the Department of Consumer and Business Services, the amount of \$1,100,000, to**
25 **perform the duties of the department under sections 3 to 5 of this 2023 Act.**

26