

HB 3414-4
(LC 4079)
3/31/23 (RLM/ps)

Requested by Representative RAYFIELD (at the request of Governor Tina Kotek)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3414**

1 On page 1 of the printed bill, line 3, delete “455.230 and 455.770” and in-
2 sert “197.843 and 455.770; and declaring an emergency”.

3 Delete lines 6 through 14 and insert:

4 **“SECTION 2. (1) Within an urban growth boundary, a local gov-**
5 **ernment may not deny an application for a variance to modify a land**
6 **use regulation, including regulations relating to siting and design, that**
7 **is included in a land use application for the construction of a resi-**
8 **dential development on lands zoned to allow for residential uses, un-**
9 **less:**

10 **“(a) The denial is necessary to address:**

11 **“(A) A health, safety or habitability issue;**

12 **“(B) Accessibility requirements under the Americans with Disabili-**
13 **ties Act of 1990, 42 U.S.C. 12101 et seq.;**

14 **“(C) Mandatory affordability requirements;**

15 **“(D) Requirements for internal or external fire ingress or egress;**

16 **“(E) Implementation of land use regulations required to comply**
17 **with a protective measure adopted pursuant to statewide planning goal**
18 **relating to natural disasters and hazards;**

19 **“(F) Erosion control and grading requirements;**

20 **“(G) Prohibitions or limitations related to signage;**

21 **“(H) Requirements for siting water, sewer, stormwater and elec-**

1 **trical facilities and management devices;**

2 **“(I) Ground floor requirements for commercial buildings;**

3 **“(J) Implementation of land use regulations that protect surface**
4 **and ground water resources;**

5 **“(K) Implementation of land use regulations to protect the habitat**
6 **of threatened, endangered and sensitive wildlife species and species of**
7 **concern;**

8 **“(L) Implementation of land use regulations that protect water-**
9 **dependent coastal shorelands;**

10 **“(M) Implementation of land use regulations that protect public**
11 **access to and along rivers, estuaries and coastal shorelands or to the**
12 **ocean; and**

13 **“(N) Implementation of land use regulations that prohibit residen-**
14 **tial developments on beaches, active foredunes, on other foredunes**
15 **that are conditionally stable and that are subject to ocean undercut-**
16 **ting or wave overtopping, and on interdune areas that are subject to**
17 **ocean flooding.**

18 **“(b) The application for a variance relates to the minimum or**
19 **maximum density, height or floor-to-area ratio or to a primary or**
20 **conditional use classification type of the development.**

21 **“(2) A local government that denies an application for a variance**
22 **under subsection (1)(a) of this section shall adopt findings supported**
23 **by substantial evidence in the record demonstrating the necessity of**
24 **the denial.**

25 **“(3) Within 30 days after receiving an application for a variance as**
26 **described in subsection (1) of this section, a local government shall**
27 **notify the applicant if the application is incomplete and shall specify**
28 **the missing information. If the applicant has been notified of the**
29 **missing information, the application is considered complete when the**
30 **applicant has submitted:**

1 “(a) All of the missing information;

2 “(b) Some of the missing information and written notice that no
3 other information will be submitted; or

4 “(c) Written notice that none of the missing information will be
5 submitted.

6 “(4) Within 30 days of receiving a complete application, the local
7 government shall inform the applicant whether any variance requested
8 by the application satisfies the criteria under subsection (1) of this
9 section. If a determination is made that the application does not sat-
10 isfy the criteria under subsection (1) of this section, the local govern-
11 ment shall allow an applicant to submit additional evidence for
12 evaluation under this subsection.

13 “(5) Within 120 days after receiving a complete land use application
14 with an application for a variance under this section, the local gov-
15 ernment shall issue a final decision approving or denying the applica-
16 tion for development in writing.

17 “(6) Notwithstanding ORS 197.830, a final decision made under this
18 section may be appealed only by the applicant.”.

19 In line 18, after “action” insert “pursuant to that department’s statutory
20 and rulemaking authority”.

21 On page 2, delete lines 4 and 5 and insert:

22 “(a) Carrying out the respective responsibilities of the departments under
23 this section and section 4 of this 2023 Act; and”.

24 In line 21, after the period insert “Alleged violations may be self-reported
25 by local governments or reported by applicants, potential applicants or any
26 other persons at any time, including upon the adoption of an unlawful ordi-
27 nance, upon the application of an unlawful policy whether or not pursuant
28 to an ordinance, upon discovery of a potential or imminent violation, or
29 following an unlawful decision or practice, whether or not the decision is
30 appealed or the practice affected the outcome.”.

1 In line 22, delete “may” and insert “shall”.

2 In line 26, after the period insert “The notice may include an invitation
3 to address the suspected violation through mediation, the execution of a
4 voluntary compliance agreement or the adoption of suitable models developed
5 by the office under section 3 (3)(b) of this 2023 Act.”.

6 On page 7, delete lines 4 through 25 and insert:

7 **“SECTION 9.** ORS 197.843 is amended to read:

8 “197.843. (1) The Land Use Board of Appeals shall award attorney fees to
9 [*an applicant*] **a person** whose application is only for the development of
10 [*affordable housing, as defined in ORS 197.308, or publicly supported housing,*
11 *as defined in ORS 456.250*] **needed housing, as defined in ORS 197.303**, if
12 the board affirms a quasi-judicial land use decision approving the application
13 or reverses a quasi-judicial land use decision denying the application.

14 “(2) A [*party who was*] **person** awarded attorney fees under this section
15 or ORS 197.850 shall repay the fees plus any interest from the time of the
16 judgment if the property upon which the fees are based is developed for a
17 use other than [*affordable*] **the proposed** housing.

18 “(3) As used in this section[:],

19 “[*(a) ‘Applicant’ includes:*]

20 “[*(A) An applicant with a funding reservation agreement with a public*
21 *funder for the purpose of developing publicly supported housing;*]

22 “[*(B) A housing authority, as defined in ORS 456.005;*]

23 “[*(C) A qualified housing sponsor, as defined in ORS 456.548;*]

24 “[*(D) A religious nonprofit corporation;*]

25 “[*(E) A public benefit nonprofit corporation whose primary purpose is the*
26 *development of affordable housing; and*]

27 “[*(F) A local government that approved the application of an applicant de-*
28 *scribed in this paragraph.*]

29 “[*(b)*] ‘attorney fees’ includes prelitigation legal expenses, including pre-
30 paring the application and supporting the application in local land use

1 hearings or proceedings.

2 **“SECTION 10. The amendments to ORS 197.843 by section 9 of this**
3 **2023 Act apply to decisions for which a notice of intent to appeal under**
4 **ORS 197.830 is filed on or after January 1, 2024.**

5 **“SECTION 11. (1) Sections 2 and 3 of this 2023 Act and the amend-**
6 **ments to ORS 197.320, 197.335, 197.843 and 455.770 by sections 6 to 9 of**
7 **this 2023 Act become operative on January 1, 2024.**

8 **“(2) Section 4 of this 2023 Act becomes operative on April 1, 2024.**

9 **“(3) The Department of Land Conservation and Development and**
10 **the Department of Consumer and Business Services may take any**
11 **action before the operative dates specified in subsections (1) and (2)**
12 **of this section that is necessary for the departments to exercise, on**
13 **and after the operative dates specified in subsections (1) and (2) of this**
14 **section, all of the duties, functions and powers conferred on the de-**
15 **partments by sections 2 to 4 of this 2023 Act and the amendments to**
16 **ORS 197.320, 197.335, 197.843 and 455.770 by sections 6 to 9 of this 2023**
17 **Act.**

18 **“SECTION 12. In addition to and not in lieu of any other appropri-**
19 **ation, there is appropriated to the Department of Land Conservation**
20 **and Development, for the biennium beginning July 1, 2023, out of the**
21 **General Fund:**

22 **“(1) The amount of \$2,200,000 to perform the duties of the Housing**
23 **Accountability and Production Office under sections 2 to 4 of this 2023**
24 **Act.**

25 **“(2) The amount of \$10,000,000 to provide:**

26 **“(a) On or before February 1, 2024, technical assistance and grants**
27 **to local governments that proactively acknowledge local housing laws**
28 **that need to be updated in order to comply with state requirements;**
29 **and**

30 **“(b) On and after April 1, 2024, technical assistance and grants to**

1 assist local governments with the implementation of voluntary com-
2 pliance agreements as described in section 4 (3) of this 2023 Act.

3 **SECTION 13.** This 2023 Act being necessary for the immediate
4 preservation of the public peace, health and safety, an emergency is
5 declared to exist, and this 2023 Act takes effect July 1, 2023.”

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