

HB 3414-6
(LC 4079)
5/4/23 (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 26 and delete page 2.

4 On page 3, delete line 1 and insert:

5 **“SECTION 2. (1) Within an urban growth boundary, a local gov-**
6 **ernment may not deny an application for a variance, modification or**
7 **adjustment to modify a land use regulation, including regulations re-**
8 **lating to siting and design, that is included in a building permit or**
9 **land use application for the construction of a new residential devel-**
10 **opment on lands zoned to allow for residential uses, unless:**

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

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

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

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

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

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

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

21 **“(G) Prohibitions or limitations related to signage, houseboats or**

1 detached accessory structures with no residential use;

2 “(H) Requirements for siting water, sewer, stormwater and elec-
3 trical facilities and management devices;

4 “(I) Ground floor requirements for commercial uses in mixed-use
5 buildings;

6 “(J) Maximum parking requirements;

7 “(K) Implementation of land use regulations adopted to comply with
8 federal law, state law or a statewide land use planning goal to protect:

9 “(i) Riparian areas, estuarine resources or surface and ground water
10 resources;

11 “(ii) Habitat of threatened, endangered or sensitive wildlife species
12 and species of concern;

13 “(iii) Water dependent or related coastal shorelands; and

14 “(iv) Public access to and along rivers, estuaries and coastal
15 shorelands or beaches and dunes; and

16 “(L) Implementation of land use regulations that prohibit residen-
17 tial developments on beaches, active foredunes, on other foredunes
18 that are conditionally stable and that are subject to ocean undercut-
19 ting or wave overtopping, and on interdune areas that are subject to
20 ocean flooding;

21 “(b) The variance, modification or adjustment relates to the mini-
22 mum or maximum dwelling unit density, height or floor area ratio or
23 to a primary or conditional use classification type of the development;
24 or

25 “(c) The variance, modification or adjustment requires an adjust-
26 ment of more than 10 percent for minimum or maximum lot size re-
27 quirements or building lot coverage requirements.

28 “(2) An application for a variance, modification or adjustment un-
29 der this section applies only to the specific permit or application and
30 does not amend any land use regulation.

1 **“(3) A local government that denies an application for a variance,**
2 **modification or adjustment shall:**

3 **“(a) Adopt findings supported by substantial evidence in the record**
4 **demonstrating the necessity of a denial under subsection (1)(a)(A) of**
5 **this section; or**

6 **“(b) Explain in writing how the denial relates to an exception**
7 **identified in subsection (1)(a)(B) to (L) of this section.**

8 **“(4) An application for relief under this section must be resolved**
9 **along with the development application under the timelines imposed**
10 **by ORS 197.311, 215.416 or 227.175.**

11 **“(5) Within 30 days of receiving a complete application, the local**
12 **government shall inform the applicant whether any variance, modifi-**
13 **cation or adjustment requested by the application satisfies the criteria**
14 **under subsection (1) of this section. If a determination is made that**
15 **the application does not satisfy the criteria under subsection (1) of this**
16 **section, the local government shall allow an applicant 30 days to sub-**
17 **mit additional evidence for evaluation under this subsection.**

18 **“(6) Notwithstanding ORS 197.830, a final decision on an application**
19 **for a variance, modification or adjustment made under this section**
20 **may be appealed only by the applicant.**

21 **“SECTION 2a. Section 2 of this 2023 Act is repealed on January 2,**
22 **2033.**

23 **“SECTION 3. (1) The Department of Land Conservation and Devel-**
24 **opment and the Department of Consumer and Business Services shall**
25 **enter into an interagency agreement to establish and administer the**
26 **Housing Accountability and Production Office. Each department is**
27 **authorized to take any action pursuant to that department’s statutory**
28 **authority that may be taken by the office under this section or section**
29 **4 of this 2023 Act.**

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

1 **“(a) Provide technical assistance to local jurisdictions to:**
2 **“(A) Comply with housing laws;**
3 **“(B) Reduce permitting and land use barriers to housing production;**
4 **and**
5 **“(C) Support reliable and effective implementation of local proce-**
6 **dures and standards relating to the approval of residential develop-**
7 **ment projects;**
8 **“(b) Serve as a resource for housing developers experiencing per-**
9 **mitting and land use barriers related to housing production, including**
10 **by responding to requests for technical assistance regarding compli-**
11 **ance with housing laws; and**
12 **“(c) Investigate and respond to complaints of violations of housing**
13 **laws under section 4 of this 2023 Act.**
14 **“(3) The Land Conservation and Development Commission and the**
15 **Department of Consumer and Business Services may jointly or sepa-**
16 **rately adopt, amend or repeal rules for:**
17 **“(a) Carrying out the respective responsibilities of the departments**
18 **under this section and section 4 of this 2023 Act; and**
19 **“(b) Establishing model codes, procedures and practices by which**
20 **local governments may comply with any housing law.**
21 **“(4) The office shall prioritize assisting jurisdictions voluntarily**
22 **undertaking changes to come into compliance with housing laws.**
23 **“(5) As used in this section and section 4 of this 2023 Act, ‘housing**
24 **law’ means ORS 92.010 to 92.192, 92.830 to 92.845, 197.286 to 197.314,**
25 **197.360 to 197.380, 197.475 to 197.490, 197.505 to 197.540, 197.660 to 197.670,**
26 **197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150,**
27 **455.152, 455.153, 455.154, 455.155, 455.156, 455.157, 455.158, 455.165, 455.170,**
28 **455.175, 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208, 455.210,**
29 **455.220, 455.465, 455.467 and 455.610 and section 2 of this 2023 Act and**
30 **administrative rules implementing those laws, to the extent that the**

1 law or rule creates a mandatory duty on a local government or its
2 agent and the application of the law or rule relates to residential de-
3 velopment or pertains to a permit for a residential use or division of
4 land for residential purposes.

5 **“SECTION 4. (1) The Housing Accountability and Production Office**
6 **established under section 3 of this 2023 Act shall establish a form or**
7 **format through which the office receives allegations of local**
8 **governments’ violations of housing laws. Alleged violations may be**
9 **self-reported by local governments or reported by applicants, potential**
10 **applicants or any other persons at any time, including upon the**
11 **adoption of an unlawful ordinance, upon the application of an unlaw-**
12 **ful policy whether or not pursuant to an ordinance, upon discovery**
13 **of a potential or imminent violation, or following an unlawful decision**
14 **or practice, whether or not the decision is appealed or the practice**
15 **affected the outcome.**

16 **“(2) The office shall investigate suspected or credibly alleged vio-**
17 **lations of housing laws.**

18 **“(3) If the office has a reasonable basis to conclude that a violation**
19 **has been committed, the office shall deliver written warning notice to**
20 **the local government specifying the violation, and any authority under**
21 **this section that the office intends to invoke if the violation continues**
22 **or is not remedied. The notice may include an invitation to address**
23 **the suspected violation through mediation, the execution of a volun-**
24 **tary compliance agreement or the adoption of suitable models devel-**
25 **oped by the office under section 3 (3)(b) of this 2023 Act.**

26 **“(4) The office shall consider self-reported violations and voluntary**
27 **compliance agreements initiated by local governments in determining**
28 **the manner and timeliness of actions taken under subsection (5) of**
29 **this section.**

30 **“(5) No earlier than 60 days after a warning notice is delivered un-**

1 **der subsection (3) of this section, the office may:**

2 **“(a) Request an enforcement order under ORS 197.320 (14) without**
3 **first complying with ORS 197.319 (1) and (2). Notwithstanding ORS**
4 **183.635 (2) and 197.328 (1), a request under this paragraph must be as-**
5 **signed to an administrative law judge appointed under ORS 183.635**
6 **unless the Land Conservation and Development Commission has pre-**
7 **viously appointed a hearing officer or a pool of hearing officers to re-**
8 **view petitions filed under this section.**

9 **“(b) Seek a court order against a local government as described**
10 **under ORS 455.160 (3) without being adversely affected or serving the**
11 **demand as described in ORS 455.160 (2).**

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

17 **“(d) Apply to any circuit court for an order compelling compliance**
18 **with any housing law. If the court finds that the defendant is not**
19 **complying with a housing law, the court may grant an injunction re-**
20 **quiring compliance.**

21 **“(6) The office may not, in the name of the office, exercise the au-**
22 **thority of the Department of Land Conservation and Development**
23 **under ORS 197.293.**

24 **“(7) The actions authorized under this section and section 3 of this**
25 **2023 Act are in addition to and may be exercised in conjunction with**
26 **any other investigative, review or enforcement authority that may be**
27 **exercised by the Department of Land Conservation and Development,**
28 **the Land Conservation and Development Commission or the Depart-**
29 **ment of Consumer and Business Services.”.**

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

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

2 “197.843. (1) The Land Use Board of Appeals shall award attorney fees to
3 *[an applicant whose application is only for the development of affordable*
4 *housing, as defined in ORS 197.308, or publicly supported housing, as defined*
5 *in ORS 456.250]* **a person whose application includes the development**
6 **of needed housing, as defined in section 23, chapter 13, Oregon Laws**
7 **2023 (Enrolled House Bill 2001), and any local government that ap-**
8 **proved a quasi-judicial land use decision,** if the board affirms a quasi-
9 judicial land use decision approving the application or reverses a
10 quasi-judicial land use decision denying the application.

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

15 “(3) As used in this section[:],

16 “[*(a) ‘Applicant’ includes:*]

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

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

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

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

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

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

26 “[*(b)*] ‘attorney fees’ includes prelitigation legal expenses, including pre-
27 paring the application and supporting the application in local land use
28 hearings or proceedings.

29 **“SECTION 10. The amendments to ORS 197.843 by section 9 of this**
30 **2023 Act apply to decisions for which a notice of intent to appeal under**

1 **ORS 197.830 is filed on or after January 1, 2024.**

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

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

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

15 **“SECTION 12. In addition to and not in lieu of any other appropri-**
16 **ation, there is appropriated to the Department of Land Conservation**
17 **and Development, for the biennium beginning July 1, 2023, out of the**
18 **General Fund, the amount of \$5,400,000 to perform the duties of the**
19 **Housing Accountability and Production Office under sections 3 to 5 of**
20 **this 2023 Act.**

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

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