

HB 4037 -10 STAFF MEASURE SUMMARY

House Committee On Housing and Homelessness

Prepared By: Iva Sokolovska, LPRO Analyst

Meeting Dates: 2/5, 2/10, 2/12

WHAT THE MEASURE DOES:

The omnibus measure modifies how cities and counties may use a state loan program that supports the development of affordable housing. The measure also grants new enforcement authority to a state housing office to address certain local government actions and creates a streamlined local approval pathway for housing developments that meet defined standards and reduces the time local governments have to review repeat applications from the same developer. The measure also clarifies the rights and duties of landlords and tenants when rental housing is destroyed by natural disasters and also directs state agencies to favor housing providers when disposing of excess public property. Becomes operative 91 days after the legislature adjourns.

FISCAL: Has minimal fiscal impact

REVENUE: No revenue impact

Detailed Summary:

City and County Housing Project Funding Programs (Sections 1-11)

- Modifies “eligible housing project” to set a statutory requirement that affordability be maintained for at least as long as the related agency loan remains outstanding, standardizes the affordability period across project types, and expressly authorizes the Oregon Housing and Community Services (OHCS) Department to establish conditions under which affordability restrictions may terminate upon foreclosure.
- Modifies the project funding program for affordable and middle housing by allowing grants and loans up to a capped amount and requiring that funded projects be secured by a recorded affordable housing covenant.
- Clarifies the project funding application and review process.
- Expands the authority of OHCS to manage agency loans.
- Makes revisions to project funding agreements, allows cities and counties to assist sponsoring jurisdictions with administering project funding agreements.
- Updates the property tax exemption statute to align it with the expanded project funding framework.
- Updates repayment provisions for agency loans and allows the sponsoring jurisdiction to release or modify any affordability restrictions applicable to the eligible housing project property to which the agency loan relates upon payment in full of an agency loan.
- Expands and clarifies enforcement provisions by extending liability beyond just a developer to also include a homeowner or other project representative and by allowing penalties not only for false statements made to obtain funding, but also for willful misrepresentations or omissions related to ongoing compliance requirements for an eligible housing project.

Community Development Financial Institutions (Sections 12-13)

- Authorizes amendment of an existing grant agreement with Network for Oregon Affordable Housing (NOAH) to allow longer financing for eligible housing projects.

Enforcement Authority (Sections 14-15)

- Expands The Housing Accountability and Production Office’s (HAPO) authority to issue interim administrative orders requiring use of model codes.
- Allows the Land Conservation and Development Commission (LCDC) to issue compliance orders to any city the fulfils criteria (not only cities with a population of 10,000 or more).

Building Plan Reviews (Section 16)

- Limits plan review requirements for all one- and two-family dwellings not just those of conventional light frame construction.

Review of Housing Applications (Sections 17-19)

- Requires local governments to establish approval standards that allow at least one housing type to be ordinarily permitted outright, without requiring a land use decision, for applications subject to the clear and objective standards pathway
- Removes language explicitly recognizing local government discretion to impose special conditions on specific development approvals and to establish approval procedures.
- Authorizes, but does not require, local governments to provide notice of an approval to adjacent property owners, including owners of property separated only by a public road.
- Prohibits local governments from requiring public hearings, public proceedings, notice of applications, local appeals or review of approved applications for housing applications subject to the clear and objective standards pathway, unless the applicant specifically requests those processes, except for the optional adjacent property owner notice.
- Authorizes an applicant to appeal a denial directly to the Land Use Board of Appeals (LUBA) if the applicant alleges that the local government failed to adopt or apply required clear and objective standards, conditions or procedures.
- Adds a new, faster mandatory decision timeline for certain repeat or standardized housing applications within urban growth boundaries for counties and cities (90-day clock).

Residential Tenancies Impacted by Disasters (Sections 20-21)

- Establishes responsibilities of landlords and tenants when residential tenancies are destroyed by natural disasters.

Use of State Property for Housing (Sections 22-24)

- Removes the statutory requirement that surplus state land be offered first to lessees, adjacent landowners, or local residents, while preserving the state's overarching policy of minimizing land holdings and returning land to productive, taxable use.
- Reorders and clarifies the priority for acquiring surplus state property, with explicit income thresholds for affordable housing (=120% AMI) and a secondary pathway allowing housing development without affordability requirements if earlier priorities are unmet.
- Clarifies state agency authority to transfer or lease state-owned real property (including mineral and geothermal rights) to eligible Indian tribes.

Technical Fixes (Sections 25-27)

- Aligns the expiration of middle housing land division approvals with the timeline of any concurrently submitted plat or plan.
- Clarifies DLCD is separately responsible for reporting to the Legislature on safe harbor protections and incentives related to model system development charges.

ISSUES DISCUSSED:

- Thematic overview of the omnibus measure provisions
- Housing production in rural communities
- Dwellings impacted by natural disasters and landlord and tenant responsibilities and options
- Affordable housing by right in commercially zoned lands (Senate Bill 8, 2021)

EFFECT OF AMENDMENT:

-10 The amendment adds express authority for landlords to issue a termination notice if an occupant or tenant remains in a dwelling unit after the tenancy has already terminated due to destruction of the unit. It authorizes the landlord to issue the notice using the termination process in ORS 90.380(5)(b). The amendment directs agencies to amend the grant agreement and use those funds toward housing for households earning 60-120 percent of area median income. The amendment allows a sponsoring jurisdiction to forgo adopting the ordinance or resolution if authority to review developer applications has been delegated under ORS 307.214, the jurisdiction agrees to repay the agency loan, and the project property will not receive a property tax exemption. It clarifies that the Oregon Department of Administrative Services' obligation to offer disposed state property under the priority system applies only to the extent that doing so is consistent with the department's applicable trust responsibilities. The amendment removes provisions that would authorize the Housing Accountability and Production Office (HAPO) to issue interim administrative orders requiring use of model codes. The amendment also restores local government authority to set approval standards, impose special conditions on specific development proposals, and establish approval procedures. It establishes uniform notice requirements for applications requiring notice only to owners of record within 100 feet of the subject property, or within 500 feet for developments of 20 units or more. The amendment removed the provisions related to the 90-day review timeline for housing development applications. The amendment adds housing authorities to entities offered an opportunity to purchase state lands that are being disposed of or sold.

BACKGROUND:

Oregon law authorizes cities, counties and other sponsoring jurisdictions to establish project funding programs that provide grants and loans to support the development of affordable and middle-income housing (ORS 307.214). Local governments adopting these programs must establish eligibility requirements, application processes and review procedures for developers seeking funding (ORS 307.214; ORS 307.216). Applications must demonstrate project affordability and financial feasibility and are subject to review by both the sponsoring jurisdiction and the Housing and Community Services Department prior to final approval. The department administers a statewide program that provides interest-free agency loans to local governments to finance project grants and loans and allows limited reimbursement for administrative costs (ORS 307.221). Once funding is approved, jurisdictions must enter into project funding agreements with developers, adopt local laws describing funded projects and distribute loan proceeds, while coordinating with county tax officials regarding property tax treatment and exemptions (ORS 307.225). State law also establishes repayment and enforcement provisions, including repayment schedules tied to project completion, early repayment requirements for noncompliance and penalties for fraud or misrepresentation that may result in liens and state collection actions (ORS 307.229; ORS 307.233).

Oregon land use statutes generally require local governments to regulate housing development using clear and objective standards that do not discourage needed housing through unreasonable cost or delay, while preserving local authority to regulate development standards and to offer alternative approval processes that comply with statewide planning goals (ORS 197A.400). Recent statutory provisions also limit the application of certain residential design standards to housing development in specified circumstances. Separately, state law establishes a policy directing state agencies to hold only the real property necessary for official business and encourages the sale or lease of surplus state-owned property to private parties, generally providing priority purchase opportunities to existing lessees, adjacent landowners and regional residents (ORS 270.010).