

SENATE AMENDMENTS TO SENATE BILL 8

By COMMITTEE ON HOUSING AND DEVELOPMENT

April 15

- 1 On page 1 of the printed bill, line 2, after “197.830,” insert “197.850.”
- 2 Delete lines 5 through 29.
- 3 On page 2, delete lines 1 through 38 and insert:
- 4 **“SECTION 1. (1) As used in this section, ‘affordable housing’ means residential property:**
- 5 **“(a) In which:**
- 6 **“(A) Each unit on the property is made available to own or rent to families with incomes**
- 7 **of 80 percent or less of the area median income as determined by the Oregon Housing Sta-**
- 8 **bility Council based on information from the United States Department of Housing and Urban**
- 9 **Development; or**
- 10 **“(B) The average of all units on the property is made available to families with incomes**
- 11 **of 60 percent or less of the area median income; and**
- 12 **“(b) Whose affordability is enforceable, including as described in ORS 456.270 to 456.295,**
- 13 **for a duration of no less than 40 years.**
- 14 **“(2) A local government shall allow affordable housing, and may not require a zone**
- 15 **change or conditional use permit for affordable housing on property if:**
- 16 **“(a) The housing is owned by:**
- 17 **“(A) A public body, as defined in ORS 174.109; or**
- 18 **“(B) A nonprofit corporation that is organized as a religious corporation; or**
- 19 **“(b) The property is zoned:**
- 20 **“(A) For commercial uses;**
- 21 **“(B) To allow religious assembly; or**
- 22 **“(C) As public lands.**
- 23 **“(3) Subsection (2) of this section:**
- 24 **“(a) Does not apply to the development of housing not within an urban growth boundary.**
- 25 **“(b) Does not trigger any requirement that a local government consider or update an**
- 26 **analysis as required by a statewide planning goal relating to economic development.**
- 27 **“(c) Does not apply on lands where the local government determines that:**
- 28 **“(A) The development on the property cannot be adequately served by water, sewer,**
- 29 **storm water drainage or streets, or will not be adequately served at the time that develop-**
- 30 **ment on the lot is complete;**
- 31 **“(B) The property contains a slope of 25 percent or greater;**
- 32 **“(C) The property is within a 100-year floodplain; or**
- 33 **“(D) The development of the property is constrained by land use regulations based on**
- 34 **statewide land use planning goals relating to:**
- 35 **“(i) Natural disasters and hazards; or**

1 “(ii) Natural resources, including air, water, land or natural areas, but not including open
2 spaces or historic resources.

3 “(4) A local government shall approve an application at an authorized density level and
4 authorized height level, as defined in ORS 227.175 (4), for the development of affordable
5 housing, at the greater of:

6 “(a) Any local density bonus for affordable housing; or

7 “(b) Without consideration of any local density bonus for affordable housing:

8 “(A) For property with existing maximum density of 16 or fewer units per acre, 200 per-
9 cent of the existing density and 12 additional feet;

10 “(B) For property with existing maximum density of 17 or more units per acre and 45 or
11 fewer units per acre, 150 percent of the existing density and 24 additional feet; or

12 “(C) For property with existing maximum density of 46 or more units per acre, 125 per-
13 cent of the existing density and 36 additional feet.

14 “(5)(a) Subsection (4) of this section does not apply to housing allowed under subsection
15 (2) of this section in areas that are not zoned for residential uses.

16 “(b) A local government may reduce the density or height of the density bonus allowed
17 under subsection (4) of this section as necessary to address a health, safety or habitability
18 issue, including fire safety, or to comply with a protective measure adopted pursuant to a
19 statewide land use planning goal. Notwithstanding ORS 197.350, the local government must
20 adopt findings supported by substantial evidence demonstrating the necessity of this re-
21 duction.

22 “SECTION 1a. Section 1 of this 2021 Act is added to and made a part of ORS 197.286 to
23 197.314.

24 “SECTION 2. (1) The Land Use Board of Appeals shall award attorney fees to an applicant
25 whose application is only for the development of affordable housing, as defined in section 1
26 of this 2021 Act, or publicly supported housing, as defined in ORS 456.250, if the board affirms
27 a quasi-judicial land use decision approving the application or reverses a quasi-judicial land
28 use decision denying the application.

29 “(2) A party who was awarded attorney fees under this section or ORS 197.850 shall repay
30 the fees plus any interest from the time of the judgment if the property upon which the fees
31 are based is developed for a use other than affordable housing.

32 “(3) As used in this section:

33 “(a) ‘Applicant’ includes:

34 “(A) An applicant with a funding reservation agreement with a public funder for the
35 purpose of developing publicly supported housing;

36 “(B) A housing authority, as defined in ORS 456.005;

37 “(C) A qualified housing sponsor, as defined in ORS 456.548;

38 “(D) A religious nonprofit corporation;

39 “(E) A public benefit nonprofit corporation whose primary purpose is the development
40 of affordable housing; and

41 “(F) A local government that approved the application of an applicant described in this
42 paragraph.

43 “(b) ‘Attorney fees’ includes prelitigation legal expenses, including preparing the appli-
44 cation and supporting the application in local land use hearings or proceedings.

45 “SECTION 2a. Section 2 of this 2021 Act is added to and made a part of ORS 197.830 to

1 **197.845.”.**

2 On page 5, line 23, delete “(4)”.

3 On page 6, after line 5, insert:

4 “**SECTION 3a.** ORS 197.850 is amended to read:

5 “197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS
6 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

7 “(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued
8 under ORS 197.830 to 197.845 is solely as provided in this section.

9 “(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred
10 upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the
11 Court of Appeals. The petition must be filed within 21 days following the date the board delivered
12 or mailed the order upon which the petition is based.

13 “(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a pe-
14 tition on all persons identified in the petition as adverse parties of record in the board proceeding
15 is jurisdictional and may not be waived or extended.

16 “(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of
17 the petition must be served by first class, registered or certified mail on the board and all other
18 parties of record in the board proceeding.

19 “(5) Within seven days after service of the petition, the board shall transmit to the court the
20 original or a certified copy of the entire record of the proceeding under review, but, by stipulation
21 of all parties to the review proceeding, the record may be shortened. The court may tax a party that
22 unreasonably refuses to stipulate to limit the record for the additional costs. The court may require
23 or permit subsequent corrections or additions to the record when deemed desirable. Except as spe-
24 cifically provided in this subsection, the court may not tax the cost of the record to the petitioner
25 or any intervening party. However, the court may tax such costs and the cost of transcription of
26 record to a party filing a frivolous petition for judicial review.

27 “(6) Petitions and briefs must be filed within time periods and in a manner established by the
28 Court of Appeals by rule.

29 “(7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the re-
30 cord.

31 “(b) The court may hear oral argument more than 49 days from the date of transmittal of the
32 record provided the court determines that the ends of justice served by holding oral argument on
33 a later day outweigh the best interests of the public and the parties. The court may not hold oral
34 argument more than 49 days from the date of transmittal of the record because of general congestion
35 of the court calendar or lack of diligent preparation or attention to the case by any member of the
36 court or any party.

37 “(c) The court shall set forth in writing a determination to hear oral argument more than 49
38 days from the date the record is transmitted, together with the reasons for its determination, and
39 shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable
40 thereafter.

41 “(d) In making a determination under paragraph (b) of this subsection, the court shall consider:

42 “(A) Whether the case is so unusual or complex, due to the number of parties or the existence
43 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
44 the case and for the court to prepare for oral argument; and

45 “(B) Whether the failure to hold oral argument at a later date likely would result in a miscar-

1 riage of justice.

2 “(8) Judicial review of an order issued under ORS 197.830 to 197.845 must be confined to the
3 record. The court may not substitute its judgment for that of the board as to any issue of fact.

4 “(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the
5 order only if it finds:

6 “(a) The order to be unlawful in substance or procedure, but error in procedure is not cause for
7 reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced
8 thereby;

9 “(b) The order to be unconstitutional; or

10 “(c) The order is not supported by substantial evidence in the whole record as to facts found
11 by the board under ORS 197.835 (2).

12 “(10) The Court of Appeals shall issue a final order on the petition for judicial review with the
13 greatest possible expediency.

14 “(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the
15 board shall respond to the court’s appellate judgment within 30 days.

16 “(12) A party must file with the board an undertaking with one or more sureties insuring that
17 the party will pay all costs, disbursements and attorney fees awarded against the party by the Court
18 of Appeals if:

19 “(a) The party appealed a decision of the board to the Court of Appeals; and

20 “(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney
21 fees and expenses against that party under ORS 197.830 (15)(b) or (c).

22 “(13) Upon entry of its final order, the court shall award attorney fees and expenses to a party
23 who:

24 “(a) Prevails on a claim that an approval condition imposed by a local government on an appli-
25 cation for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article
26 I, Oregon Constitution, or the Fifth Amendment to the United States Constitution; or

27 “(b) Is entitled to attorney fees under [ORS 197.830 (15)(c)] **section 2 of this 2021 Act.**

28 “(14) The undertaking required in subsection (12) of this section must be filed with the board
29 and served on the opposing parties within 10 days after the date the petition was filed with the
30 Court of Appeals.”.

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