

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 3414 - A

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

Prepared by: Michael Graham

Reviewed by: Ben Ruef, Amanda Beitel, John Borden, Michelle Deister, Haylee Morse-Miller, Doug Wilson,
Tom MacDonald

Date: June 24, 2023

Measure Description:

Limits conditions under which local governments may deny variance for housing development within urban growth boundary. Establishes the Housing Accountability and Production Office. Appropriates General Fund to the Department of Land Conservation and Development.

Government Unit(s) Affected:

Department of Land Conservation and Development, Department of Consumer and Business Services, Department of Justice, Counties, Cities, Metro, Land Use Board of Appeals, Judicial Department, Employment Department

Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

Analysis:

HB 3414 - A requires local governments to grant an adjustment to specified development and design standards for an application for a housing development project, subject to certain conditions. The measure clarifies that local government land use decisions may be appealed only by an applicant for adjustment or by the Housing Accountability and Production Office. An applicant also may elect to appeal a local government land use decision to the Land Use Board of Appeals (LUBA) under an expedited appellate review process. Cities with a population of 10,000 or more must include housing developed through adjustment approvals as part of their annual housing capacity reporting to the Department of Land Conservation and Development (DLCD), which DLCD must report in turn to an interim legislative committee related to housing by September 15th of each year. The measure's adjustment approval provisions sunset on January 2, 2032.

The measure directs DLCD and the Department of Consumer and Business Services (DCBS) to establish and administer the Housing Accountability and Production Office (Office), which is to provide technical assistance to local jurisdictions to comply with housing laws and reduce permitting and land use barriers, serve as a resource to housing developers, investigate and respond to complaints of violations of housing laws, and mediate active disputes related to housing laws. The measure appropriates an unspecified amount of General Fund to DLCD to perform the duties of the Office, as well as \$10 million to provide educational materials, technical assistance, and grants to local governments to update local implementation of land use laws and building code enforcement to align with state requirements, and to implement voluntary compliance agreements. By April 1, 2024, the Office must establish a process for receiving and investigating complaints of alleged violations of housing laws by local governments. The Office is to prioritize technical assistance funding to local governments that agree to comply with housing laws. The Office may take enforcement actions upon a local government's continued violation of housing laws, including actions in conjunction with enforcement measures taken by DLCD, the Land Conservation and Development Commission, or DCBS. By September 15, 2024, the Office must contract with an organization to produce a report identifying improvements in the local building plan approval, land use, zoning, and permitting processes, and provide the report to an appropriate interim legislative committee.

The measure allows cities outside the Portland Metro area to adopt an amendment to their urban growth boundary (UGB) for sites that are adjacent to their existing UGB and that meet certain land use requirements, provided the development projects satisfy certain density and affordability criteria. The measure clarifies that adoption of UGB amendments for these cities does not require county approval. The measure allows cities within Metro to petition Metro to amend their UGB for a housing development site, subject to certain conditions. The measure requires cities within or outside of Metro to adopt a conceptual plan for a site that meets specified criteria. Cities must engage the public, certain public entities, and affected lot owners prior to adoption of a conceptual plan. Cities or Metro must submit a conceptual plan and adopted UGB amendment to DLCD for review and approval within a specified amount of time. Cities for which the UGB was amended under this measure must report to DLCD on the status of the development within the site every two years until January 2, 2033, or until the development as described in the conceptual plan is complete. The measure's provisions related to UGB amendments are repealed on January 2, 2033. The measure takes effect on July 1, 2023.

Department of Land Conservation and Development

The measure is anticipated to have a fiscal impact on DLCD, as the measure directs DLCD to perform work not anticipated in the agency's 2023-25 budget. Standing up, maintaining, and operating the Office will require DLCD to hire experts in state housing laws, as well as programmatic and administrative staff to support the work of the Office. DLCD will hire 13 permanent full-time positions (11.88 FTE), which include:

- One Program Manager 2
- One Operations and Policy Analyst 4
- Three Operations and Policy Analyst 3
- One Operations and Policy Analyst 2
- One Information Services Specialist 5
- One Information Services Specialist 8
- One Administrative Specialist 2
- One Accounting Technician
- One Procurement Specialist 2
- One Fiscal Analyst 2
- One Public Affairs Specialist

The estimated cost of these positions, including related services and supplies, is \$3,140,840 General Fund in the 2023-25 biennium and \$3,544,459 General Fund in the 2025-27 biennium. In addition, because the Office will handle matters involving legal compliance and litigation, DLCD's need for legal services from the Department of Justice (DOJ) is anticipated to increase. Additional costs of at least \$1.1 million are anticipated for DLCD to support the increased use of legal services from DOJ. The measure also appropriates \$10 million General Fund to DLCD for the Office to provide educational materials, technical assistance, and grants to local governments to update local implementation of land use laws and building code enforcement to align with state requirements, and to implement voluntary compliance agreements. In total, the estimated fiscal impact to DLCD is \$14,805,198 General Fund in the 2023-25 biennium and \$15,208,816 General Fund in the 2025-27 biennium.

Department of Justice

The measure is anticipated to have a fiscal impact on DOJ. Because the Office will handle matters involving legal compliance and litigation, DLCD's need for legal services from DOJ is anticipated to increase. DOJ estimates that it will need additional position authority and an increase in Other Funds expenditure limitation to hire four permanent positions (2.55 FTE), including two Senior Assistant Attorney Generals, one Paralegal, and one part-time Legal Secretary. The estimated costs of these positions, including related services and supplies, is \$1,062,082 Other Funds in the 2023-25 biennium, and \$1,465,743 Other Funds in the 2025-27 biennium.

Department of Consumer and Business Services

The measure is anticipated to have a fiscal impact on DCBS, as the measure directs DCBS to perform work not anticipated in the agency's 2023-25 budget. Currently, the impact to DCBS is indeterminate and will be dependent on the size and operational requirements of this new Office. However, although the impact to DCBS

cannot be fully determined at this time, DCBS anticipates at a minimum one additional Operations and Policy Analyst 4 position (0.88 FTE) to assist with staffing the Office, processing complaints related to administration of the building code, and responding to complaints and inquiries. The estimated cost of this position is \$228,085 Other Funds in the 2023-25 biennium and \$259,189 Other Funds in the 2025-27 biennium. DCBS also anticipates incurring one-time costs of \$300,000 Other Funds for the contract to study housing law process improvements. In total, the estimated cost to DCBS is \$528,085 Other Funds in 2023-25 and \$259,189 Other Funds in 2025-27.

Once the Office has been established and DCBS has a better understanding of the size and operational requirements of the Office, DCBS may need to return to the Legislative Assembly or Emergency Board to request additional resources and position authority associated with the Office.

Cities

The new adjustment requirements are anticipated to have an indeterminate fiscal impact on cities. The measure requires cities to review, document findings, and grant adjustment applications within 30 days, which could mean that this work must be prioritized ahead of other planning and development applications. City decisions under the measure are likely to be challenged in court, thus increasing staff time and legal expenses to prepare for and resolve pending litigation. The measure has the potential to increase the workload of local development and permitting staff. Although cities might incur increased costs from staff time, cities might be able to defray some of these costs from grants and technical assistance that the Office will provide to local governments.

Counties

The new adjustment requirements are anticipated to have an indeterminate fiscal impact on counties. By creating the Office, the measure establishes an additional review and legal process for county housing regulations. Any appeals that the Office or an applicant undertakes would cost counties in time and staff capacity, and depending on the appeal, it could have a minimal impact or involve several hundred hours of staff time. Since the Office is an additional oversight body with new processes and procedures and will require more collaboration between counties and the Office, the measure could potentially increase the number of challenges that counties have to litigate. Although the impact to counties would partially depend on the number enforcement actions brought by the Office, some of those costs would likely be offset with grants and technical support.

Counties also may incur a fiscal impact related to any UGB amendments that cities pursue within county boundaries. However, the impact is indeterminate because, due to the case-by-case nature of these decisions, each county has a different system of transportation management, UGB planning intergovernmental agreements, and a different number of cities that might use this option. It is unclear exactly how much these new provisions may cost counties to implement or to serve as urban unincorporated areas until such time as they are annexed into cities. Some of these costs may be absorbable, while others may require counties to complete infrastructure projects to adjust county-owned facilities to meet new urban levels of development.

Metro

The measure is anticipated to have a fiscal impact on Metro; however, the impact is indeterminate. The impact to Metro is largely due to the Charter-mandated report on impacts on existing neighborhoods that it must complete for any UGB amendment that exceeds 100 acres. Every time a petition is received, Metro must review the petition for completeness; prepare the Charter-mandated report on impacts on existing neighborhoods, including consultant support; mail notice to all households within one mile of the expansion area; conduct ordinance preparation; and submit the petition to DLCD. The fiscal impact to Metro would depend on the number of petitions received over time.

Other Government Units

The measure is anticipated to have a minimal fiscal impact on the Land Use Board of Appeals, Judicial Department, and the Employment Department.