

Requested by Representative RAYFIELD

**PROPOSED AMENDMENTS TO
HOUSE BILL 3414**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and line 3 and insert “amending ORS 197.320, 197.335, 197.843 and
3 455.770; and declaring an emergency.”.

4 Delete lines 5 through 26 and delete pages 2 through 7 and insert:

5 **“SECTION 1. Sections 2 to 4 of this 2023 Act are added to and made**
6 **a part of ORS 197.286 to 197.314.**

7 **“SECTION 2. (1) As used in sections 2 to 4 of this 2023 Act:**

8 **“(a) ‘Adjustment’ means a deviation from an existing land use**
9 **regulation;**

10 **“(b) ‘Adjustment’ does not include:**

11 **“(A) A request to allow a use of property not otherwise permissible**
12 **under applicable zoning requirements or land use regulations or re-**
13 **quirements related to accessibility, affordability, fire ingress or egress**
14 **or statewide land use planning goals relating to natural resources,**
15 **natural hazards, Willamette River Greenway, estuarine resources,**
16 **coastal shorelands, beaches and dunes or ocean resources; or**

17 **“(B) A complete waiver of land use regulations.**

18 **“(2) This section applies only to:**

19 **“(a) Applications for a building permit or a quasi-judicial, limited**
20 **or ministerial land use decision;**

21 **“(b) Development on lands zoned for residential or mixed-use resi-**

1 **dential uses;**

2 **“(c) Development within an urban growth boundary, not including**
3 **lands that have not been annexed by a city; and**

4 **“(d) Development of net new housing units, including single-family**
5 **or multifamily, mixed-use residential, manufactured dwelling parks,**
6 **accessory dwelling units or middle housing as defined in ORS 197.758.**

7 **“(3) A local government may approve no more than 10 distinct ad-**
8 **justments under this section. Each development standard described in**
9 **subsection (4) of this section and each design standard described in**
10 **subsection (5) of this section is considered a distinct adjustment. Ad-**
11 **justments meeting the criteria under this section shall be granted by**
12 **a local government and may be resolved through an existing or new**
13 **administrative process of the local government that allows for flexi-**
14 **bility in addressing development or design standards for residential**
15 **development.**

16 **“(4) A local government shall grant an adjustment to the following**
17 **development standards:**

18 **“(a) Side and rear setbacks and step backs, provided that the set-**
19 **backs still comply with utility siting requirements;**

20 **“(b) The amount of landscaped area, common area or open space**
21 **area, for a reduction of up to 25 percent, provided that stormwater**
22 **management requirements and tree codes are met and that there is**
23 **no impact to tree canopy or ground or surface water resources;**

24 **“(c) Parking minimums;**

25 **“(d) Minimum or maximum lot sizes, for up to a 10 percent adjust-**
26 **ment;**

27 **“(e) Minimum or maximum lot widths and depths, for up to a 10**
28 **percent adjustment;**

29 **“(f) Requirements for bicycle parking that establish:**

30 **“(A) The minimum number of spaces, provided that there is at least**

1 **one-half space per unit residential unit; or**
2 **“(B) The location of the spaces, provided that secure, covered bi-**
3 **cycle parking spaces are within or adjacent to the residential devel-**
4 **opment;**
5 **“(g) Minimum or maximum building lot coverage requirements:**
6 **“(A) For up to a 15 percent adjustment, for accessory dwelling units**
7 **with a single-family detached house; or**
8 **“(B) For up to a 20 percent adjustment, for multifamily, mixed-use**
9 **residential and middle housing;**
10 **“(h) Unit density maximums, up to the greater of:**
11 **“(A) An amount necessary to account for other adjustments under**
12 **this section; or**
13 **“(B) The calculated minimum density of the underlying zone;**
14 **“(i) Building height maximums, in addition to existing applicable**
15 **height bonuses, except for single-family detached houses or where de-**
16 **nial of the variance is necessary to address a fire, life or safety issue,**
17 **for an increase of the greater of:**
18 **“(A) One story; or**
19 **“(B) A 20 percent increase to base zone height with rounding con-**
20 **sistent with methodology outlined in city code; and**
21 **“(j) Prohibitions, on the ground floor of a mixed-use building,**
22 **against:**
23 **“(A) Residential uses except for one face of the building that faces**
24 **the street and is within 20 feet of the street; and**
25 **“(B) Nonresidential active uses that support the residential uses of**
26 **the building, including lobbies, day care, passenger loading, commu-**
27 **nity rooms, exercise facilities, offices, activity spaces or live-work**
28 **spaces, except for active uses in specifically and clearly identified re-**
29 **tail transportation corridors.**
30 **“(5) A local government shall grant an adjustment to design stan-**

1 **dards, except for design standards in building codes, that regulate:**
2 **“(a) Facade materials, articulation, color or pattern;**
3 **“(b) Roof forms and materials;**
4 **“(c) Entry and garage door materials and patterns;**
5 **“(d) Garage door orientation, except when the building is adjacent**
6 **to and across from a school or public park;**
7 **“(e) Window material and design;**
8 **“(f) Window size or total window area, for up to a 30 percent ad-**
9 **justment;**
10 **“(g) Building orientation requirements, not including transit street**
11 **orientation requirements;**
12 **“(h) Building height transition requirements, for up to a 50 percent**
13 **adjustment from the base zone, except where necessary to address a**
14 **fire, life or safety issue; or**
15 **“(i) Balconies, porches, recesses and offsets.**
16 **“(6) To qualify for an adjustment under this section, the applicant**
17 **must state in the application for adjustment that:**
18 **“(a) The adjustment will enable development of housing that would**
19 **not otherwise be feasible due to cost or delay resulting from the un-**
20 **adjusted land use regulations;**
21 **“(b) The adjustment will enable development of housing that re-**
22 **duces the sale or rental prices per residential unit;**
23 **“(c) The adjustment will increase the number of housing units**
24 **within the application;**
25 **“(d) All of the units in the application are subject to an affordable**
26 **housing covenant making them affordable to moderate income house-**
27 **holds as described in ORS 456.270 to 456.295 for a minimum of 30 years;**
28 **or**
29 **“(e) At least 20 percent of the units in the application are subject**
30 **to an affordable housing covenant making them affordable to low in-**

1 come households as described in ORS 456.270 to 456.295 for a minimum
2 of 60 years.

3 **“SECTION 3. (1)(a) Within 30 days after receiving a complete ap-
4 plication under section 2 of this 2023 Act, the local government shall
5 inform the applicant whether the adjustments requested by the appli-
6 cation satisfy the criteria under section 2 of this 2023 Act.**

7 **“(b) If a determination is made that any adjustments do not satisfy
8 such criteria, the local government shall allow an applicant 30 days to
9 submit additional evidence for evaluation under this subsection.**

10 **“(2) Unless an appeal is filed before a final decision under sub-
11 section (5) of this section, an application for an adjustment under
12 section 2 of this 2023 Act must receive a final decision on or before the
13 development application decision and within the timelines imposed by
14 ORS 197.311, 215.416 and 227.175.**

15 **“(3) A denial of an application for an adjustment under section 2
16 of this 2023 Act must be in a brief written statement that explains the
17 criteria and standards considered relevant to the decision, states the
18 facts relied upon in rendering the decision and explains the justifica-
19 tion for the decision based on the criteria, standards and facts set
20 forth.**

21 **“(4) Only the applicant or the Housing Accountability and Pro-
22 duction Office established under section 7 of this 2023 Act may appeal
23 a land use decision made under section 2 of this 2023 Act.**

24 **“(5) In lieu of any other appeal process, an applicant may elect to
25 appeal a land use decision made under section 2 of this 2023 Act to the
26 Land Use Board of Appeals under an expedited appellate process that,
27 notwithstanding any other provision of ORS 197.830 to 197.845, is sub-
28 ject to the following process:**

29 **“(a) The appeal may be made only once from any decision, including
30 a decision other than a final decision, made by a local government’s**

1 governing body, planning commission, hearings body or hearings offi-
2 cer.

3 “(b) The appeal serves to waive any unexhausted right of appeal
4 prescribed by the local government, including as described in ORS
5 215.422 and 227.180.

6 “(c) The board may order issues on appeal under this subsection
7 bifurcated, and decided separately, from any other issue on appeal.

8 “(d) The issues on appeal must be argued without oral argument
9 on an expedited petition and briefing schedule established by an order
10 of the board.

11 “(e) All issues on appeal must be decided by a final order of the
12 board made before the latter of:

13 “(A) 60 days after the receipt of the notice of appeal; or

14 “(B) 40 days after the transmittal of the record.

15 **“SECTION 4. (1) A city required to provide a report under section**
16 **37 (1), chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), shall**
17 **include as part of that report information reasonably requested from**
18 **the Department of Land Conservation and Development on residential**
19 **development produced through approvals of adjustments granted un-**
20 **der section 2 of this 2023 Act. The department may not develop a sep-**
21 **arate process for collecting this data or otherwise place an undue**
22 **burden on local governments.**

23 **“(2) On or before September 15 of each even-numbered year, the**
24 **department shall provide a report to an interim committee of the**
25 **Legislative Assembly related to housing in the manner provided in**
26 **ORS 192.245 on the data collected under subsection (1) of this section.**
27 **The committee shall invite the League of Oregon Cities to provide**
28 **feedback on the report and the efficacy of section 2 of this 2023 Act.**

29 **“SECTION 5. Sections 2 to 4 of this 2023 Act are repealed on Janu-**
30 **ary 2, 2032.**

1 **“SECTION 6. As used in sections 6 to 8 of this 2023 Act, ‘housing**
2 **law’ means ORS 92.010 to 92.192, 92.830 to 92.845, 197.286 to 197.314,**
3 **197.360 to 197.380, 197.475 to 197.490, 197.505 to 197.540, 197.660 to 197.670,**
4 **197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150,**
5 **455.152, 455.153, 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185**
6 **to 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465 and 455.467**
7 **and section 2 of this 2023 Act and administrative rules implementing**
8 **those laws, to the extent that the law or rule creates a mandatory duty**
9 **on a local government or its agent and the application of the law or**
10 **rule relates to residential development or pertains to a permit for a**
11 **residential use or division of land for residential purposes.**

12 **“SECTION 7. (1) The Department of Land Conservation and Devel-**
13 **opment and the Department of Consumer and Business Services shall**
14 **enter into an interagency agreement to establish and administer the**
15 **Housing Accountability and Production Office.**

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

17 **“(a) Provide technical assistance to local jurisdictions to:**

18 **“(A) Comply with housing laws;**

19 **“(B) Reduce permitting and land use barriers to housing production;**
20 **and**

21 **“(C) Support reliable and effective implementation of local proce-**
22 **dures and standards relating to the approval of residential develop-**
23 **ment projects;**

24 **“(b) Serve as a resource for housing developers experiencing per-**
25 **mitting and land use barriers related to housing production, through**
26 **activities that include responding to requests for technical assistance**
27 **regarding housing laws; and**

28 **“(c) Investigate and respond to complaints of violations of housing**
29 **law under section 8 of this 2023 Act.**

30 **“(3) The Land Conservation and Development Commission and the**

1 Department of Consumer and Business Services may jointly or sepa-
2 rately adopt, amend or repeal rules for:

3 “(a) Carrying out the respective responsibilities of the departments
4 and the office under sections 6 to 8 of this 2023 Act; and

5 “(b) Establishing model codes, procedures and practices by which
6 local governments may comply with housing laws.

7 “(4) The office shall prioritize assisting jurisdictions voluntarily
8 undertaking changes to come into compliance with housing laws.

9 **“SECTION 8. (1) The Housing Accountability and Production Office**
10 **established under section 7 of this 2023 Act shall establish a form or**
11 **format through which the office receives allegations of local**
12 **governments’ violations of housing laws. For complaints that relate**
13 **to a specific development project, the office may receive complaints**
14 **only from residential developers.**

15 “(2) The office shall investigate suspected violations of housing laws
16 or violations credibly alleged under subsection (1) of this section, un-
17 less the residential developer has filed a notice of appeal with the Land
18 Use Board of Appeals or has initiated private litigation regarding any
19 aspect of the application decision that was alleged to have been the
20 subject of the housing law violation.

21 “(3) If the office has a reasonable basis to conclude that a violation
22 has been or is likely to be committed, the office shall deliver written
23 warning notice to the local government specifying the violation and
24 any authority under this section that the office intends to invoke if
25 the violation continues or is not remedied. The notice may include
26 an invitation to address the suspected violation through mediation,
27 the execution of a voluntary compliance agreement or the adoption
28 of suitable models developed by the office under section 7 (3)(b) of this
29 2023 Act. The office shall prioritize technical assistance funding to lo-
30 cal governments that agree to comply with housing laws under this

1 subsection. A determination by the office is not a legislative or judicial
2 decision.

3 “(4) No earlier than 60 days after a warning notice is delivered un-
4 der subsection (3) of this section, the office may take the following
5 actions:

6 “(a) Request an enforcement order under ORS 197.320 (14) without
7 first complying with ORS 197.319 (1) and (2). Notwithstanding ORS
8 183.635 (2) and 197.328 (1), a request under this paragraph must be as-
9 signed to an administrative law judge appointed under ORS 183.635
10 unless the Land Conservation and Development Commission has pre-
11 viously appointed a hearing officer or a pool of hearing officers to re-
12 view petitions filed under this section. The hearings officer shall enter
13 a final agency order that may not be appealed to the commission but
14 is subject to judicial review as described in ORS 183.480.

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

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

23 “(d) Except regarding matters under the exclusive jurisdiction of
24 the Land Use Board of Appeals, apply to any circuit court for an order
25 compelling compliance with any housing law. If the court finds that
26 the defendant is not complying with a housing law, the court may
27 grant an injunction requiring compliance.

28 “(5) The office may not, in the name of the office, exercise the au-
29 thority of the Department of Land Conservation and Development
30 under ORS 197.293.

1 **“(6) The office shall send notice to any complainant under sub-**
2 **section (1) of this section when the office:**

3 **“(a) Takes any action under subsection (3) or (4) of this section; or**

4 **“(b) Has determined that it will not take further actions or make**
5 **further investigations.**

6 **“(7) The actions authorized of the office under this section are in**
7 **addition to and may be exercised in conjunction with any other in-**
8 **vestigative or enforcement authority that may be exercised by the**
9 **Department of Land Conservation and Development, the Land Con-**
10 **servation and Development Commission or the Department of Con-**
11 **sumer and Business Services.**

12 **“(8) Nothing in this section:**

13 **“(a) Amends the jurisdiction of the Land Use Board of Appeals or**
14 **of a circuit court;**

15 **“(b) Creates a new cause of action; or**

16 **“(c) Tolls or extends the statute of limitations for any claim or**
17 **deadline for any appeal or other action, except as provided in sub-**
18 **section (9) of this section.**

19 **“(9) Notwithstanding ORS 197.830 (9), a notice of intent to appeal a**
20 **land use decision under ORS 197.830 may be filed up to 21 days after**
21 **a complainant receives a notice under subsection (6) of this section,**
22 **provided that the allegation was filed under subsection (1) of this sec-**
23 **tion within 21 days following the decision.**

24 **“SECTION 9. Section 8 of this 2023 Act applies only to violations**
25 **of housing laws occurring on or after April 1, 2024.**

26 **“SECTION 10. On or before September 15, 2024, the Housing Ac-**
27 **countability and Production Office established under section 7 of this**
28 **2023 Act shall:**

29 **“(1) Contract with an organization possessing relevant expertise to**
30 **produce a report identifying improvements in the local building plan**

1 approval, land use, zoning and permitting processes, including but not
2 limited to plan approval timelines, process efficiency, local best prac-
3 tices and other ways to accelerate and improve the efficiency of the
4 development process for construction, with a focus on increasing
5 housing production; and

6 “(2) Provide the report under subsection (1) of this section to an
7 appropriate interim committee of the Legislative Assembly in the
8 manner provided in ORS 192.245.

9 “**SECTION 11.** ORS 197.320 is amended to read:

10 “197.320. The Land Conservation and Development Commission shall issue
11 an order requiring a local government, state agency or special district to
12 take action necessary to bring its comprehensive plan, land use regulation,
13 limited land use decisions or other land use decisions or actions into com-
14 pliance with the goals, acknowledged comprehensive plan provisions, land
15 use regulations or housing production strategy if the commission has good
16 cause to believe:

17 “(1) A comprehensive plan or land use regulation adopted by a local
18 government not on a compliance schedule is not in compliance with the goals
19 by the date set in ORS 197.245 or 197.250 for such compliance[;].

20 “(2) A plan, program, rule or regulation affecting land use adopted by a
21 state agency or special district is not in compliance with the goals by the
22 date set in ORS 197.245 or 197.250 for such compliance[;].

23 “(3) A local government is not making satisfactory progress toward per-
24 formance of its compliance schedule[;].

25 “(4) A state agency is not making satisfactory progress in carrying out
26 its coordination agreement or the requirements of ORS 197.180[;].

27 “(5) A local government has no comprehensive plan or land use regulation
28 and is not on a compliance schedule directed to developing the plan or
29 regulation[;].

30 “(6) A local government has engaged in a pattern or practice of decision

1 making that violates an acknowledged comprehensive plan or land use reg-
2 ulation. In making its determination under this subsection, the commission
3 shall determine whether there is evidence in the record to support the deci-
4 sions made. The commission shall not judge the issue solely upon adequacy
5 of the findings in support of the decisions[;].

6 “(7) A local government has failed to comply with a commission order
7 entered under ORS 197.644[;].

8 “(8) A special district has engaged in a pattern or practice of decision-
9 making that violates an acknowledged comprehensive plan or cooperative
10 agreement adopted pursuant to ORS 197.020[;].

11 “(9) A special district is not making satisfactory progress toward per-
12 formance of its obligations under ORS chapters 195 and 197[;].

13 “(10) A local government’s approval standards, special conditions on ap-
14 proval of specific development proposals or procedures for approval do not
15 comply with ORS 197.307 (4) or (6)[;].

16 “(11) A local government is not making satisfactory progress toward
17 meeting its obligations under ORS 195.065[;].

18 “(12) A local government within the jurisdiction of a metropolitan service
19 district has failed to make changes to the comprehensive plan or land use
20 regulations to comply with the regional framework plan of the district or
21 has engaged in a pattern or practice of decision-making that violates a re-
22 quirement of the regional framework plan[; *or*].

23 “(13) A city is not making satisfactory progress in taking actions listed
24 in its housing production strategy under ORS 197.290.

25 “(14) **A local government is not complying with a housing law, as**
26 **defined in section 6 of this 2023 Act, except for a housing law that**
27 **pertains to building codes or the administration of building codes.**

28 “**SECTION 12.** ORS 197.335 is amended to read:

29 “197.335. (1) An order issued under ORS 197.328 and the copy of the order
30 mailed to the local government, state agency or special district shall set

1 forth:

2 “(a) The nature of the noncompliance, including, but not limited to, the
3 contents of the comprehensive plan or land use regulation, if any, of a local
4 government that do not comply with the goals or the contents of a plan,
5 program or regulation affecting land use adopted by a state agency or special
6 district that do not comply with the goals. In the case of a pattern or prac-
7 tice of decision-making which violates the goals, comprehensive plan or land
8 use regulations, the order shall specify the decision-making which constitutes
9 the pattern or practice, including specific provisions the Land Conservation
10 and Development Commission believes are being misapplied;

11 “(b) The specific lands, if any, within a local government for which the
12 existing plan or land use regulation, if any, does not comply with the goals;
13 and

14 “(c) The corrective action decided upon by the commission, including the
15 specific requirements, with which the local government, state agency or
16 special district must comply. In the case of a pattern or practice of
17 decision-making that violates an acknowledged comprehensive plan or land
18 use regulation, the commission may require revisions to the comprehensive
19 plan, land use regulations or local procedures which the commission believes
20 are necessary to correct the pattern or practice. Notwithstanding the pro-
21 visions of this section, except as provided in subsection (3)(c) of this section,
22 an enforcement order does not affect:

23 “(A) Land use applications filed with a local government prior to the date
24 of adoption of the enforcement order unless specifically identified by the
25 order;

26 “(B) Land use approvals issued by a local government prior to the date
27 of adoption of the enforcement order; or

28 “(C) The time limit for exercising land use approvals issued by a local
29 government prior to the date of adoption of the enforcement order.

30 “(2) Judicial review of a final order of the commission shall be governed

1 by the provisions of ORS chapter 183 applicable to contested cases except
2 as otherwise stated in this section. The commission's final order shall in-
3 clude a clear statement of findings which set forth the basis for the order.
4 Where a petition to review the order has been filed in the Court of Appeals,
5 the commission shall transmit to the court the entire administrative record
6 of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to
7 a stay of enforcement of an agency order, an appellate court, before it may
8 stay an order of the commission, shall give due consideration to the public
9 interest in the continued enforcement of the commission's order and may
10 consider testimony or affidavits thereon. Upon review, an appellate court
11 may affirm, reverse, modify or remand the order. The court shall reverse,
12 modify or remand the order only if it finds:

13 “(a) The order to be unlawful in substance or procedure, but error in
14 procedure shall not be cause for reversal, modification or remand unless the
15 court shall find that substantial rights of any party were prejudiced thereby;

16 “(b) The order to be unconstitutional;

17 “(c) The order is invalid because it exceeds the statutory authority of the
18 agency; or

19 “(d) The order is not supported by substantial evidence in the whole re-
20 cord.

21 “(3)(a) If the commission finds that in the interim period during which a
22 local government, state agency or special district would be bringing itself
23 into compliance with the commission's order under ORS 197.320 or subsection
24 (2) of this section it would be contrary to the public interest in the conser-
25 vation or sound development of land to allow the continuation of some or
26 all categories of land use decisions or limited land use decisions, it shall,
27 as part of its order, limit, prohibit or require the approval by the local gov-
28 ernment of applications for subdivisions, partitions, building permits, limited
29 land use decisions or land use decisions until the plan, land use regulation
30 or subsequent land use decisions and limited land use decisions are brought

1 into compliance. The commission may issue an order that requires review
2 of local decisions by a hearings officer or the Department of Land Conser-
3 vation and Development before the local decision becomes final.

4 “(b) Any requirement under this subsection may be imposed only if the
5 commission finds that the activity, if continued, aggravates the goal, com-
6 prehensive plan or land use regulation violation and that the requirement
7 is necessary to correct the violation.

8 “(c) The limitations on enforcement orders under subsection (1)(c)(B) of
9 this section shall not be interpreted to affect the commission’s authority to
10 limit, prohibit or require application of specified criteria to subsequent land
11 use decisions involving land use approvals issued by a local government
12 prior to the date of adoption of the enforcement order.

13 “(4) As part of its order under ORS 197.320 or subsection (2) of this sec-
14 tion, the commission may withhold grant funds from the local government
15 to which the order is directed. As part of an order issued under this section,
16 the commission may notify the officer responsible for disbursing state-shared
17 revenues to withhold that portion of state-shared revenues to which the local
18 government is entitled under ORS 221.770, 323.455, 366.762 and 366.800 and
19 ORS chapter 471 which represents the amount of state planning grant mon-
20 eys previously provided the local government by the commission. The officer
21 responsible for disbursing state-shared revenues shall withhold state-shared
22 revenues as outlined in this section and shall release funds to the local
23 government or department when notified to so do by the commission or its
24 designee. The commission may retain a portion of the withheld revenues to
25 cover costs of providing services incurred under the order, including use of
26 a hearings officer or staff resources to monitor land use decisions and limited
27 land use decisions or conduct hearings. The remainder of the funds withheld
28 under this provision shall be released to the local government upon com-
29 pletion of requirements of the commission order.

30 “(5)(a) As part of its order under this section, the commission may notify

1 the officer responsible for disbursing funds from any grant or loan made by
2 a state agency to withhold such funds from a special district to which the
3 order is directed. The officer responsible for disbursing funds shall withhold
4 funds as outlined in this section and shall release funds to the special dis-
5 trict or department when notified to do so by the commission.

6 “(b) The commission may retain a portion of the funds withheld to cover
7 costs of providing services incurred under the order, including use of a
8 hearings officer or staff resources to monitor land use decisions and limited
9 land use decisions or conduct hearings. The remainder of the funds withheld
10 under this provision shall be released to the special district upon completion
11 of the requirements of the commission order.

12 **“(6) As part of its order under this section, upon finding a local**
13 **government has failed to comply as described in ORS 197.320 (14), the**
14 **commission may require the local government to adopt models that**
15 **have been developed by the Housing Accountability and Production**
16 **Office under section 7 (3)(b) of this 2023 Act that are suitable to ad-**
17 **dress the basis for the order.**

18 “[~~(6)~~] (7) The commission may institute actions or proceedings for legal
19 or equitable remedies in the Circuit Court for Marion County or in the cir-
20 cuit court for the county to which the commission’s order is directed or
21 within which all or a portion of the applicable city is located to enforce
22 compliance with the provisions of any order issued under this section or to
23 restrain violations thereof. Such actions or proceedings may be instituted
24 without the necessity of prior agency notice, hearing and order on an alleged
25 violation.

26 **“SECTION 13.** ORS 455.770 is amended to read:

27 “455.770. (1) In addition to any other authority and power granted to the
28 Director of the Department of Consumer and Business Services under ORS
29 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,
30 479.995 and 480.510 to 480.670 and [*this chapter and*] ORS chapters 447, **455,**

1 460 and 693 **and sections 6 to 8 of this 2023 Act**, with respect to municipi-
2 palities, building officials and inspectors, if the director has reason to believe
3 that there is a failure to enforce or a violation of any provision of the state
4 building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420,
5 479.510 to 479.945, 479.995 or 480.510 to 480.670 [*or this chapter*] or ORS
6 chapter 447, **455**, 460 or 693 or any rule adopted under those statutes, the
7 director may:

8 “(a) Examine building code activities of the municipality;

9 “(b) Take sworn testimony; and

10 “(c) With the authorization of the Office of the Attorney General,
11 subpoena persons and records to obtain testimony on official actions that
12 were taken or omitted or to obtain documents otherwise subject to public
13 inspection under ORS 192.311 to 192.478.

14 “(2) The investigative authority authorized in subsection (1) of this sec-
15 tion covers the violation or omission by a municipality related to enforce-
16 ment of codes or administrative rules, certification of inspectors or financial
17 transactions dealing with permit fees and surcharges under any of the fol-
18 lowing circumstances when:

19 “(a) The duties are clearly established by law, rule or agreement;

20 “(b) The duty involves procedures for which the means and methods are
21 clearly established by law, rule or agreement; or

22 “(c) The duty is described by clear performance standards.

23 “(3) Prior to starting an investigation under subsection (1) of this section,
24 the director shall notify the municipality in writing setting forth the
25 allegation and the rules or statutes pertaining to the allegation and give the
26 municipality 30 days to respond to the allegation. If the municipality does
27 not satisfy the director’s concerns, the director may then commence an in-
28 vestigation.

29 “(4) If the Department of Consumer and Business Services or the director
30 directs corrective action, the following shall be done:

1 “(a) The corrective action shall be in writing and served on the building
2 official and the chief executive officers of all municipalities affected;

3 “(b) The corrective action shall identify the facts and law relied upon for
4 the required action; and

5 “(c) A reasonable time shall be provided to the municipality for compli-
6 ance.

7 “(5) The director may revoke any authority of the municipality to ad-
8 minister any part of the state building code or ORS 446.003 to 446.200, 446.225
9 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670
10 [*or this chapter*] or ORS chapter 447, **455**, 460 or 693 or any rule adopted
11 under those statutes if the director determines after a hearing conducted
12 under ORS 183.413 to 183.497 that:

13 “(a) All of the requirements of this section and ORS 455.775 and 455.895
14 were met; and

15 “(b) The municipality did not comply with the corrective action required.

16 **“SECTION 14.** ORS 197.843 is amended to read:

17 “197.843. (1) The Land Use Board of Appeals shall award attorney fees to
18 [*an applicant whose application is only for the development of affordable*
19 *housing, as defined in ORS 197.308, or publicly supported housing, as defined*
20 *in ORS 456.250*] **a person whose application includes the development**
21 **of needed housing, as defined in section 23, chapter 13, Oregon Laws**
22 **2023 (Enrolled House Bill 2001), and any local government that ap-**
23 **proved a quasi-judicial land use decision**, if the board affirms a quasi-
24 judicial land use decision approving the application or reverses a
25 quasi-judicial land use decision denying the application.

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

30 “(3) As used in this section[:],

1 “[(a) ‘Applicant’ includes:]
2 “[(A) An applicant with a funding reservation agreement with a public
3 funder for the purpose of developing publicly supported housing;]
4 “[(B) A housing authority, as defined in ORS 456.005;]
5 “[(C) A qualified housing sponsor, as defined in ORS 456.548;]
6 “[(D) A religious nonprofit corporation;]
7 “[(E) A public benefit nonprofit corporation whose primary purpose is the
8 development of affordable housing; and]
9 “[(F) A local government that approved the application of an applicant de-
10 scribed in this paragraph.]

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

14 “**SECTION 15.** The amendments to ORS 197.843 by section 14 of this
15 2023 Act apply to decisions for which a notice of intent to appeal under
16 ORS 197.830 is filed on or after January 1, 2024.

17 “**SECTION 16.** (1) Sections 2 to 4, 6 and 7 of this 2023 Act and the
18 amendments to ORS 197.320, 197.335, 197.843 and 455.770 by sections 11
19 to 14 of this 2023 Act become operative on January 1, 2024.

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

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

30 “**SECTION 17.** Section 6 of this 2023 Act is amended to read:

1 **“Sec. 6.** As used in sections 6 to 8 of this 2023 Act, ‘housing law’ means
2 ORS 92.010 to 92.192, 92.830 to 92.845, 197.286 to 197.314, 197.360 to 197.380,
3 197.475 to 197.490, 197.505 to 197.540, 197.660 to 197.670, 197.748, 197.758,
4 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150, 455.152, 455.153, 455.156,
5 455.157, 455.165, 455.170, 455.175, 455.180, 455.185 to 455.198, 455.200, 455.202
6 to 455.208, 455.210, 455.220, 455.465 and 455.467 [*and section 2 of this 2023*
7 *Act*] and administrative rules implementing those laws, to the extent that the
8 law or rule creates a mandatory duty on a local government or its agent and
9 the application of the law or rule relates to residential development or per-
10 tains to a permit for a residential use or division of land for residential
11 purposes.

12 **“SECTION 18.** Section 17 of this 2023 Act becomes operative on
13 **January 1, 2032.**

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

18 **“(1)** The amount of \$_____ to perform the duties of the Housing
19 **Accountability and Production Office under sections 6 to 8 of this 2023**
20 **Act.**

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

22 **“(a)** Programs or documents relating to education, guidance or best
23 **practices for local governments regarding compliance with state**
24 **housing laws, as defined in section 6 of this 2023 Act;**

25 **“(b)** Grants to local governments or nonprofit organizations to de-
26 **velop programs or documents under paragraph (a) of this section;**

27 **“(c)** Before April 1, 2024, technical assistance and grants to local
28 **governments that proactively acknowledge the need to update the lo-**
29 **cal implementation of land use regulations and building code enforce-**
30 **ment to comply with housing laws; and**

1 “(d) On and after April 1, 2024, technical assistance and grants to
2 assist local governments with:

3 “(A) The implementation of voluntary compliance agreements as
4 described in section 8 (3) of this 2023 Act; or

5 “(B) Updates to land use regulations needed to comply with changes
6 to Land Conservation and Development Commission rules or the legal
7 interpretations of land use laws or rules, if those changes relate to
8 housing.

9 “SECTION 20. This 2023 Act being necessary for the immediate
10 preservation of the public peace, health and safety, an emergency is
11 declared to exist, and this 2023 Act takes effect July 1, 2023.”.

12
