

Requested by Representative GAMBA

**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)(A) ‘Adjustment’ means a deviation from existing land use reg-**
9 **ulations;**

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

11 **“(i) A request to allow a use of property not otherwise permissible**
12 **under applicable zoning requirements;**

13 **“(ii) A complete waiver of land use regulations; and**

14 **“(iii) Requirements or land use regulations related to accessibility,**
15 **affordability, fire ingress or egress requirements, or statewide land use**
16 **planning goals relating to natural resources, natural hazards,**
17 **Willamette River Greenway, estuarine resources, coastal shorelands,**
18 **beaches and dunes or ocean resources.**

19 **“(b) ‘Climate friendly area’ means an area designated by a city as**
20 **a climate friendly area under a rule of the Land Conservation and**
21 **Development Commission.**

1 **“(2) This section applies only to:**
2 **“(a) Applications for a building permit or a quasi-judicial, limited**
3 **or ministerial land use decision;**
4 **“(b) Applications for uses that are allowed outright and whose res-**
5 **idential components are subject to clear and objective standards;**
6 **“(c) Adjustments that may be resolved through an administrative**
7 **process of the local government that allows for flexibility in addressing**
8 **development or design standards for residential development;**
9 **“(d) Development on lands zoned for residential or mixed-use resi-**
10 **dential uses;**
11 **“(e) Development within an urban growth boundary, not including**
12 **lands that have not been annexed by a city; and**
13 **“(f) Development of new net units of:**
14 **“(A) Multifamily housing;**
15 **“(B) Mixed-use residential development;**
16 **“(C) Manufactured dwelling parks;**
17 **“(D) Accessory dwelling units;**
18 **“(E) Middle housing, as defined in ORS 197.758; or**
19 **“(F) Single-family detached housing only if the developer submits:**
20 **“(i) A written commitment that the initial sale price is anticipated**
21 **to be affordable to a household with an income of 120 percent of the**
22 **area median income; and**
23 **“(ii) A pro forma project statement or public funding award that**
24 **reasonably demonstrates the feasibility of such sale price.**
25 **“(3) A local government may approve no more than 10 distinct ad-**
26 **justments under this section. Each development standard described in**
27 **subsection (4) of this section and each design standard described in**
28 **subsection (5) of this section is a distinct adjustment.**
29 **“(4) A local government shall grant an adjustment to the following**
30 **development standards:**

1 “(a) Side and rear setbacks, provided that the setbacks still comply
2 with utility siting, middle housing siting, building code requirements
3 and land use regulations implementing a statewide land use planning
4 goals protecting natural resources or the Willamette River Greenway;

5 “(b) The amount of landscaped area, for a reduction of up to 25
6 percent, provided that stormwater management requirements and tree
7 codes are met and that there is no impact to tree canopy, ground or
8 surface water resources or natural resources inventoried under a
9 statewide land use planning goal;

10 “(c) Parking minimums;

11 “(d) Minimum lot size, for up to a 10 percent reduction;

12 “(e) Minimum lot widths and depths, for up to a 10 percent re-
13 duction;

14 “(f) Requirements for bicycle parking spaces that establish:

15 “(A) The maximum number of spaces, provided that there is at least
16 one-half space per unit residential unit; or

17 “(B) The location of the spaces, provided that the spaces are within
18 or adjacent to the residential development;

19 “(g) Maximum building lot coverage requirements:

20 “(A) For up to a 15 percent increase, for accessory dwelling units
21 with a single-family detached house; or

22 “(B) For up to a 20 percent increase, for multifamily, mixed-use
23 residential and middle housing;

24 “(h) Unit density maximums, up to the greater of:

25 “(A) An amount necessary to account for other adjustments under
26 this section; or

27 “(B) The calculated minimum density of the underlying zone;

28 “(i) Building height maximums, in addition to existing applicable
29 height bonuses, except where denial of the variance is necessary to
30 address a fire, life or safety issue, for an increase of the greater of:

1 “(A) One story; or
2 “(B) A 20 percent increase to base zone height with rounding con-
3 sistent with methodology outlined in city code; and
4 “(j) Allowing on the on the ground floor of a mixed-use building:
5 “(A) Residential uses except for one face of the building that faces
6 the street and is within 20 feet of the street; and
7 “(B) Nonresidential uses supporting the residential uses of the
8 building, including lobbies, passenger loading, community rooms, ex-
9 ercise facilities, offices, activity spaces or live-work spaces.
10 “(5) A local government shall grant an adjustment to design stan-
11 dards that regulate:
12 “(a) Facade materials, articulation, color or pattern;
13 “(b) Roof forms and materials;
14 “(c) Entry and garage door materials and patterns;
15 “(d) Garage door orientation, except when the building is adjacent
16 to and across from a school or public park;
17 “(e) Window material and design;
18 “(f) Window size or total window area, for up to a 30 percent ad-
19 justment for windows on:
20 “(A) Floors above the ground floor for multifamily and mixed-use
21 buildings; and
22 “(B) Any floor for single-family and middle housing, except for the
23 ground floor in a climate friendly area;
24 “(g) Building orientation requirements;
25 “(h) Building height transition requirements, for up to a 50 percent
26 adjustment from the base zone; or
27 “(i) Balconies porches, recesses and offsets for:
28 “(A) Single-family detached and middle housing; and
29 “(B) Floors above the ground level for buildings with three or more
30 stories not within a climate friendly area or Metro regional centers

1 or town centers.

2 “(6) To qualify for an adjustment under this section, the application
3 must demonstrate that:

4 “(a) The adjustment will reduce development times;

5 “(b) The adjustment will increase the number of housing units
6 within the application;

7 “(c) All of the units are subject to an affordable housing covenant
8 making them affordable to moderate income households as described
9 in ORS 456.270 for a minimum of 30 years; or

10 “(d) At least 20 percent of the units are subject to an affordable
11 housing covenant making them affordable to low income households
12 as described in ORS 456.270 for a minimum of 60 years.

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

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

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

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

1 **“(4) Only by the applicant may appeal a land use decision made**
2 **under section 2 of this 2023 Act.**

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

8 **“(a) The appeal may be made only once from any decision, including**
9 **a decision other than a final decision, made by a local government’s**
10 **governing body, planning commission, hearings body or hearings offi-**
11 **cer.**

12 **“(b) The appeal serves to waive any unexhausted right of appeal**
13 **prescribed by the local government, including as described in ORS**
14 **215.422 and 227.180.**

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

17 **“(d) The issues on appeal must be argued without oral argument**
18 **on an expedited petition and briefing schedule established by an order**
19 **of the board.**

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

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

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

24 **“SECTION 4. (1) A city required to provide a report under section**
25 **37 (1), chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), shall**
26 **include as part of that report information reasonably requested from**
27 **the Department of Land Conservation and Development on residential**
28 **development produced through approvals of adjustments granted un-**
29 **der section 2 of this 2023 Act. The department may not develop a sep-**
30 **arate process for collecting this data or otherwise place an undue**

1 **burden on local governments.**

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

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

10 **“SECTION 6. As used in sections 6 to 8 of this 2023 Act, ‘housing**
11 **law’ means ORS 92.010 to 92.192, 92.830 to 92.845, 197.286 to 197.314,**
12 **197.360 to 197.380, 197.475 to 197.490, 197.505 to 197.540, 197.660 to 197.670,**
13 **197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150,**
14 **455.152, 455.153, 455.154, 455.155, 455.156, 455.157, 455.158, 455.165, 455.170,**
15 **455.175, 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208, 455.210,**
16 **455.220, 455.465, 455.467 and 455.610 and section 2 of this 2023 Act and**
17 **administrative rules implementing those laws, to the extent that the**
18 **law or rule creates a mandatory duty on a local government or its**
19 **agent and the application of the law or rule relates to residential de-**
20 **velopment or pertains to a permit for a residential use or division of**
21 **land for residential purposes.**

22 **“SECTION 7. (1) The Department of Land Conservation and Devel-**
23 **opment and the Department of Consumer and Business Services shall**
24 **enter into an interagency agreement to establish and administer the**
25 **Housing Accountability and Production Office. Each department is**
26 **authorized to take any action that may be taken by the office under**
27 **sections 6 to 8 of this 2023 Act.**

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

29 **“(a) Provide technical assistance to local jurisdictions to comply**
30 **with housing laws and to reduce permitting and land use barriers to**

1 **housing production;**

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

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

8 **“(3) The Land Conservation and Development Commission and the**
9 **Department of Consumer and Business Services may jointly or sepa-**
10 **rately adopt, amend or repeal rules for:**

11 **“(a) Carrying out the responsibilities of the departments and the**
12 **office under sections 6 to 8 of this 2023 Act; and**

13 **“(b) Establishing model codes, procedures and practices by which**
14 **local governments may comply with any housing law.**

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

17 **“SECTION 8. (1) The Housing Accountability and Production Office**
18 **established under section 7 of this 2023 Act shall establish a form or**
19 **format through which the office receives allegations of local**
20 **governments’ violations of housing laws only from residential devel-**
21 **opers.**

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

28 **“(3) If the office has a reasonable basis to conclude that a violation**
29 **has been committed, the office shall deliver written warning notice to**
30 **the local government specifying the violation and any authority under**

1 **this section that the office intends to invoke if the violation continues**
2 **or is not remedied. The notice may include an invitation to address**
3 **the suspected violation through mediation, the execution of a volun-**
4 **tary compliance agreement or the adoption of suitable models devel-**
5 **oped by the office under section 7 (3)(b) of this 2023 Act.**

6 **“(4) No earlier than 60 days after a warning notice is delivered un-**
7 **der subsection (3) of this section, the office may take no more than**
8 **one of the following actions:**

9 **“(a) Request an enforcement order under ORS 197.320 (14) without**
10 **first complying with ORS 197.319 (1) and (2). Notwithstanding ORS**
11 **183.635 (2) and 197.328 (1), a request under this paragraph must be as-**
12 **signed to an administrative law judge appointed under ORS 183.635**
13 **unless the Land Conservation and Development Commission has pre-**
14 **viously appointed a hearing officer or a pool of hearing officers to re-**
15 **view petitions filed under this section.**

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

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

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

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

1 “(a) Takes any action under subsection (3) or (4) of this section; or
2 “(b) Has determined that it will not take further actions or make
3 further investigations.

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

10 “(7) Nothing in this section:

11 “(a) Amends the jurisdiction of the Land Use Board of Appeals or
12 a circuit court;

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

14 “(c) Tolls or extends the statute of limitations for any claim or
15 deadline for any appeal or other action, except as provided in sub-
16 section (8) of this section.

17 “(8) Notwithstanding ORS 197.830 (9), a notice of intent to appeal a
18 land use decision under ORS 197.830 may be filed up to 21 days after
19 a complainant receives a notice under subsection (5) of this section,
20 provided that the allegation was filed under subsection (1) of this sec-
21 tion within 14 days following the decision.

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

24 “SECTION 10. On or before September 15, 2024, the Housing Ac-
25 countability and Production Office established under sections 6 to 8
26 of this 2023 Act shall:

27 “(1) Contract with an organization possessing relevant expertise to
28 produce a report identifying improvements in the local building plan
29 approval, land use, zoning and permitting processes, including but not
30 limited to plan approval timelines, process efficiency, local best prac-

1 **tices and other ways to accelerate and improve the efficiency of the**
2 **development process for construction, with a focus on increasing**
3 **housing production; and**

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

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

8 “197.320. The Land Conservation and Development Commission shall issue
9 an order requiring a local government, state agency or special district to
10 take action necessary to bring its comprehensive plan, land use regulation,
11 limited land use decisions or other land use decisions or actions into com-
12 pliance with the goals, acknowledged comprehensive plan provisions, land
13 use regulations or housing production strategy if the commission has good
14 cause to believe:

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

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

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

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

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

28 “(6) A local government has engaged in a pattern or practice of decision
29 making that violates an acknowledged comprehensive plan or land use reg-
30 ulation. In making its determination under this subsection, the commission

1 shall determine whether there is evidence in the record to support the deci-
2 sions made. The commission shall not judge the issue solely upon adequacy
3 of the findings in support of the decisions[;].

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

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

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

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

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

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

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

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

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

27 “197.335. (1) An order issued under ORS 197.328 and the copy of the order
28 mailed to the local government, state agency or special district shall set
29 forth:

30 “(a) The nature of the noncompliance, including, but not limited to, the

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

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

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

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

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

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

28 “(2) Judicial review of a final order of the commission shall be governed
29 by the provisions of ORS chapter 183 applicable to contested cases except
30 as otherwise stated in this section. The commission’s final order shall in-

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

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

14 “(b) The order to be unconstitutional;

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

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

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

1 vation and Development before the local decision becomes final.

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

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

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

28 “(5)(a) As part of its order under this section, the commission may notify
29 the officer responsible for disbursing funds from any grant or loan made by
30 a state agency to withhold such funds from a special district to which the

1 order is directed. The officer responsible for disbursing funds shall withhold
2 funds as outlined in this section and shall release funds to the special dis-
3 trict or department when notified to do so by the commission.

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

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

16 “[~~(6)~~] (7) The commission may institute actions or proceedings for legal
17 or equitable remedies in the Circuit Court for Marion County or in the cir-
18 cuit court for the county to which the commission’s order is directed or
19 within which all or a portion of the applicable city is located to enforce
20 compliance with the provisions of any order issued under this section or to
21 restrain violations thereof. Such actions or proceedings may be instituted
22 without the necessity of prior agency notice, hearing and order on an alleged
23 violation.

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

25 “455.770. (1) In addition to any other authority and power granted to the
26 Director of the Department of Consumer and Business Services under ORS
27 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,
28 479.995 and 480.510 to 480.670 and [*this chapter and*] ORS chapters 447, **455,**
29 **460 and 693 and sections 6 to 8 of this 2023 Act**, with respect to munici-
30 palities, building officials and inspectors, if the director has reason to believe

1 that there is a failure to enforce or a violation of any provision of the state
2 building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420,
3 479.510 to 479.945, 479.995 or 480.510 to 480.670 [*or this chapter*] or ORS
4 chapter 447, ~~455~~, 460 or 693 or any rule adopted under those statutes, the
5 director may:

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

7 “(b) Take sworn testimony; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “197.843. (1) The Land Use Board of Appeals shall award attorney fees to
16 [*an applicant whose application is only for the development of affordable*
17 *housing, as defined in ORS 197.308, or publicly supported housing, as defined*
18 *in ORS 456.250*] **a person whose application includes the development**
19 **of needed housing, as defined in section 23, chapter 13, Oregon Laws**
20 **2023 (Enrolled House Bill 2001), and any local government that ap-**
21 **proved a quasi-judicial land use decision**, if the board affirms a quasi-
22 judicial land use decision approving the application or reverses a
23 quasi-judicial land use decision denying the application.

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

28 “(3) As used in this section[:],

29 “[*(a) ‘Applicant’ includes:*]

30 “[*(A) An applicant with a funding reservation agreement with a public*”

1 *funder for the purpose of developing publicly supported housing;]*

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

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

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

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

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

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

12 **“SECTION 15. The amendments to ORS 197.843 by section 14 of this**
13 **2023 Act apply to decisions for which a notice of intent to appeal under**
14 **ORS 197.830 is filed on or after January 1, 2024.**

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

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

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

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

29 **“Sec. 6. As used in sections 6 to 8 of this 2023 Act, ‘housing law’ means**
30 **ORS 92.010 to 92.192, 92.830 to 92.845, 197.286 to 197.314, 197.360 to 197.380,**

1 197.475 to 197.490, 197.505 to 197.540, 197.660 to 197.670, 197.748, 197.758,
2 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150, 455.152, 455.153, 455.154,
3 455.155, 455.156, 455.157, 455.158, 455.165, 455.170, 455.175, 455.180, 455.185 to
4 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465, 455.467 and
5 455.610 [*and section 2 of this 2023 Act*] and administrative rules implementing
6 those laws, to the extent that the law or rule creates a mandatory duty on
7 a local government or its agent and the application of the law or rule relates
8 to residential development or pertains to a permit for a residential use or
9 division of land for residential purposes.

10 **SECTION 18. Section 17 of this 2023 Act becomes operative on**
11 **January 1, 2032.**

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

16 **“(1) The amount of \$___ to perform the duties of the Housing Ac-**
17 **countability and Production Office under sections 6 to 8 of this 2023**
18 **Act.**

19 **“(2) The amount of \$___ to provide:**

20 **“(a) On or before February 1, 2024, technical assistance and grants**
21 **to local governments that proactively acknowledge local housing laws**
22 **that need to be updated in order to comply with state requirements;**
23 **and**

24 **“(b) On and after April 1, 2024, technical assistance and grants to**
25 **assist local governments with the implementation of voluntary com-**
26 **pliance agreements as described in section 8 (3) of this 2023 Act.**

27 **SECTION 20. This 2023 Act being necessary for the immediate**
28 **preservation of the public peace, health and safety, an emergency is**
29 **declared to exist, and this 2023 Act takes effect July 1, 2023.”.**

30