

SB 1537 A STAFF MEASURE SUMMARY

Senate Committee On Housing and Development

Action Date: 02/13/24

Action: Do pass with amendments. Refer to Ways and Means by prior reference. (Printed A-Eng).

Vote: 5-0-0-0

Yeas: 5 - Anderson, Jama, Knopp, Patterson, Sollman

Fiscal: Fiscal impact issued

Revenue: Revenue impact issued

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Meeting Dates: 2/8, 2/13

WHAT THE MEASURE DOES:

The measure establishes the Housing Accountability and Production Office (HAPO) and directs HAPO to assist local governments with housing production. The measure requires local governments to grant land use regulation and design adjustments in certain circumstances and modifies the definition of limited land use decisions. It allows housing permit applicants to opt in to amended housing regulations and expands eligibility of prevailing applicants for housing development to receive attorney fees in a Land Use Board of Appeals review. Establishes the Housing Infrastructure Support Fund to provide capacity and support to municipalities for the planning and financing of infrastructure for housing unit production. Establishes the Housing Project Revolving Loan Fund to cover eligible developer costs, including infrastructure and system development charges, predevelopment costs, construction costs, and land write-downs. The measure allows cities to undergo either a one-time urban growth boundary amendment or a land exchange in specified conditions.

Detailed Summary:

Housing Accountability and Production Office (Sections 1 – 7)

Directs the Department of Land Conservation and Development (DLCD) and Department of Consumer and Business Services (DCBS) to establish the Housing Accountability and Production Office (HAPO). Appropriates \$5 million to the HAPO Fund, and directs HAPO to prioritize assisting local governments in voluntarily undertaking changes to comply with housing laws and reduce barriers to housing development. Directs HAPO to investigate housing law violations, and describes the process for enforcement orders and allowable actions cities may take to address the basis for an enforcement order. Sets an operative date of July 1, 2025, and applies provisions to violations of housing laws occurring on or after the operative date. Appropriates an unspecified amount to DLCD to implement the provisions of this Act.

Opting In to Amended Housing Regulations (Sections 8 – 9)

Allows applicants for permits, limited land use decisions, and zone changes for the development of housing to request their application be reviewed using standards and criteria that become operative while their application is pending. Restarts application timelines for the purposes of this Act if a review under different standards is requested. Allows cities and counties to require a fee covering costs incurred by the request, to require additional information if the request changes the application or needs context, or to deny a request in specified conditions.

Attorney Fees for Needed Housing Challenges (Sections 10 – 11)

Modifies existing statute that awards attorney fees to applicants for the development of affordable housing if the applicant prevails in a Land Use Board of Appeals (LUBA) review. Awards attorney fees, if the board affirms the decision, to applicants for any exclusively-housing development, and to any local government approving the land use decision. Clarifies attorney fees also include the cost of processing an application. Applies provisions to decisions for which a notice of intent to appeal is filed on or after January 1, 2025.

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Infrastructure Supporting Housing Production (Sections 12 – 23)

Establishes and allocates \$3 million to the Housing Infrastructure Support Fund (HISF). The HISF is administered by the Oregon Business Development Department to provide capacity and support to municipalities for the planning and financing of infrastructure for water, sewers and sanitation, stormwater, and transportation to produce housing units. Repeals these provisions on January 2, 2030. Requires the DLCD to develop assessment metrics for infrastructure projects. Requires DLCD to report to the Legislative Assembly on or before September 15th each even-numbered year on received infrastructure project proposals and assessments of each project.

Housing Project Revolving Loans (Sections 24 – 36)

Appropriates \$75 million to establish the Housing Project Revolving Loan Fund. Directs Oregon Housing and Community Services (OHCS) to develop a program to make loans to local jurisdictions, which in turn awards grants to developers to cover eligible costs, including infrastructure and system development charges, predevelopment costs, construction costs, and land write-downs. Requires these costs be part of the development of new housing or commercial to residential conversions, for households earning 120 percent or less of area median income. Assesses an annual fee and property tax exemption and notes the exemption in the property's tax records, and limits the fee timeframe to no longer than ten years, unless the sponsoring jurisdiction and OHCS agree a longer term is needed to repay the loan principal and fees. Requires the program be operational no later than June 30, 2025.

Housing Land Use Adjustments (Sections 37 – 43)

Specifies conditions and timelines under which local governments must grant adjustments to existing land use regulation and design and development standards for housing development. Specifies that decisions on adjustment applications are limited land use decisions only the applicant may appeal. Allows local governments to apply to HAPO for an exemption to adjustments, subject to certain conditions. Allows cities to apply for exemptions to DLCD before these provisions' operational date of January 1, 2025; allows DLCD to perform any action HAPO would take in this regard and makes these decisions and actions binding on HAPO. Allows HAPO to establish conditions requiring a city to continue demonstrating it meets the qualification criteria for an exemption and allows HAPO to revoke the exemption if the city fails to comply with conditions of approval. Directs DLCD to provide a report to an interim committee of the Legislative Assembly on the residential development produced through the approvals of adjustments on or before September 15th of each even-numbered year; directs the interim legislative committee to consider feedback on the report from the League of Oregon Cities. Places an operative date on these provisions of January 1, 2025; repeals them on January 2, 2032.

Limited Land Use Decisions (Sections 44 – 47)

Includes approval or denial of applications for replats, property line adjustments, and extension alterations or expansions of a nonconforming use in the definition of "limited land use decision." Directs cities to only apply procedures specified in ORS 197.195 to limited land use decisions. Allows HAPO to approve a hardship exemption or time extension to these provisions if the local government demonstrates a hardship would result from implementing a limited land use decision. Places operative date on these provisions of January 1, 2025; repeals them January 2, 2032.

One-Time Site Additions to Urban Growth Boundaries (Sections 48 – 60)

Allows cities outside Metro to add sites to their urban growth boundary (UGB), and cities within Metro to petition Metro to add a site within the Metro UGB, in specified conditions for the purposes of building housing of specified types and affordability. Limits these additions to 50 net residential acres for cities with populations under 25,000; to 100 acres for cities with populations of 25,000 or greater; and to 300 acres for Metro. Requires cities to demonstrate need for the UGB amendment using specified criteria, provide public notice and opportunity for public participation, and adopt a conceptual plan subject to the specified requirements. Allows cities to perform a land exchange in lieu of a UGB amendment, in which case the residential site being added to the UGB replaces a

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residential site roughly equivalent in size that is being removed from the UGB. Subjects the UGB amendments and land exchanges allowed by the Act to DLCD review, and requires cities to report development progress of these sites to DLCD every two years until January 2, 2033, or until the development is complete. Repeals these provisions January 2, 2033.

ISSUES DISCUSSED:

- Definitions of housing affordability
- Applicability of attorney fee changes
- Funding for essential services as cities grow
- Applicability and size of urban growth boundary additions
- Options for Metro to use alternative land exchange option
- Provisions of the amendments

EFFECT OF AMENDMENT:

The amendment clarifies the role of the Housing Accountability and Production Office (HAPO) and describes technical assistance the Land Use Board of Appeals (LUBA) may provide to local governments. Modifies timelines and fees for housing applicants requesting to opt in to amended housing regulations. Clarifies conditions under which attorney fees are awarded in housing-related LUBA cases. Removes the Housing Infrastructure Project Fund, Housing Site Readiness Fund, and other initiatives; requires the Department of Land Conservation and Development (DLCD) to develop assessment metrics for infrastructure projects. Modifies loan terms and fee amounts for the Housing Project Revolving Loan Fund; reduces appropriation. Allows DLCD to perform specified HAPO actions prior to the time HAPO becomes operational. Expands definition of “limited land use decision.” Reduces net residential acreage permitted in urban growth boundary (UGB) additions, and allows Metro to use the alternative land exchange option.

Detailed Summary:

Housing Accountability and Production Office (Sections 1 – 7)

Requires the Housing Accountability and Production Office (HAPO) to develop procedures for evaluating the credibility of housing law violations. Allows the Land Use Board of Appeals (LUBA) to provide technical assistance to local governments unrelated to the resolution of complaints involving LUBA appeals or private litigation. Allows local governments to make land use decisions affected by enforcement orders prior to notifying affected applicants. Allows a hearings officer to prepare an enforcement order or an order of dismissal. Expands allowable actions that local governments may take to address the basis for an enforcement order. Removes the appropriation to DLCD to provide technical assistance.

Opting In to Amended Housing Regulations (Sections 8 – 9)

Restarts application timelines for the purposes of this Act if a review under different standards is requested. Permits cities and counties to deny an opt in request if they issued a public notice of the application, or an opt in request was previously made. Clarifies cities and counties may only require the applicant pay a fee to cover costs incurred by the request, and may require a new application or duplicative information only if the request changes other application information or additional context for the change is needed.

Attorney Fees for Needed Housing Challenges (Sections 10 – 11)

Clarifies conditions under which attorney fees are awarded in Land Use Board of Appeals cases involving housing. Clarifies attorney fees also include the cost of processing an application.

Infrastructure Supporting Housing Production (Sections 12 – 23)

Removes sections 17-23 on water infrastructure funding; other utility infrastructure financing; the Housing Infrastructure Project Fund; site mitigation and readiness; the Housing Site Readiness Fund; site acquisition; and electrification incentives (note: subsequent sections were not renumbered). Reduces the appropriation to the Housing Infrastructure Support Fund from \$5 million to \$3 million. Requires the DLCD to develop assessment

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metrics for infrastructure projects. Requires DLCD to report to the Legislative Assembly on or before September 15th of each even-numbered year on current infrastructure project proposals and assessments of each project.

Housing Project Revolving Loans (Sections 24 – 36)

Adds infrastructure costs as an eligible cost. Includes administrative costs in the loan amount. Establishes that Oregon Housing and Community Services (OHCS) sets a period of affordability for eligible housing projects for at least as long as the term of the loan. Allows the term of the loan to exceed a period of 10 years if agreed upon by the sponsoring jurisdiction and OHCS, if needed in order to fully repay the loan principal and fees. Includes operating taxes and local option taxes in the calculations to determine the grant, tax exemption, and fee amounts. Increases the allowable amount of reimbursement to sponsoring jurisdictions for administrative costs of the grant program to 5 percent of loan proceeds. Limits expenditures from the fund, for the first 2 years of program operation, to 2/3 of the money appropriated to the fund. Reduces appropriation to Housing Project Revolving Loan Fund from \$200 million to \$75 million.

Housing Land Use Adjustments (Sections 37 – 43)

Clarifies that adjustments do not include deviations from land use regulations or requirements related to safety; wildlife protection; fire code implementation; air quality, surface, ground, or stormwater requirements; or changes beyond those explicitly requested and allowed. Allows HAPO to establish conditions requiring a city to continue demonstrating it meets the qualification criteria for an exemption, and allows HAPO to revoke the exemption if the city fails to comply with conditions of approval. Allows cities to apply for exemptions to DLCD before these provisions' operational date of January 1, 2025. Allows DLCD to perform any action HAPO would take in this regard, and makes these decisions and actions binding on HAPO. Clarifies notification requirements and that a decision on an adjustment application is a limited land use decision that only the applicant may appeal.

Limited Land Use Decisions (Sections 44 – 47)

Replaces the provisions. Includes approval or denial of applications for replats, property line adjustments, and extension alterations or expansions of a nonconforming use in the definition of "limited land use decision." Directs cities to only apply procedures specified in ORS 197.195 to limited land use decisions. Allows HAPO to approve a hardship exemption or time extension to these provisions if the local government demonstrates a hardship would result from implementing a limited land use decision.

One-Time Site Additions to Urban Growth Boundaries (Sections 48 – 60)

Clarifies that Metro must adopt urban growth boundary (UGB) amendments for petitions deemed compliant, rather than for all received. Clarifies that demonstration of need also applies to Metro lands adjacent to cities. Provides options to demonstrate need for affordable housing through: 1) having a greater percentage of extremely cost-burdened households than the state average based on data from the Comprehensive Housing Affordability Strategy from the United States Department of Housing and Urban Development, or 2) OHCS equity indicator data showing at least 25 percent of renter households in the city are severely rent burdened.

Requires air, water, and land resource quality to be protected as they relate to statewide land use planning goals. Requires affordable units be dispersed throughout the site. Requires a binding agreement with each owner within the site and applicable providers that the site will receive urban services, for additions of 15 net residential acres or less that do not require a conceptual plan. Modifies land designations for sites removed from a UGB in a land exchange. Requires that sites added in land exchanges be adjacent to the UGB; be in an urban reserve land, nonresource land, or subject to land use goal exceptions; and that the city has not already adopted an amendment or land exchange under this Act.

Allows Metro to use the land exchange option. Modifies city population tiers for conceptual plan density requirements. Reduces the net residential acreage which may be added to UGBs to 50 net residential acres for cities with populations under 25,000; to 100 acres for cities with populations of 25,000 or greater; and to 300 acres for Metro.

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BACKGROUND:

On January 10, 2023, Governor Kotek issued Executive Order 23-04, which established an annual housing production target of 36,000 homes in Oregon, and which established the Governor's Housing Production Advisory Council (HPAC), tasked with providing recommendations to achieve the housing production target. The HPAC's January 2024 [report](#) included recommendations on one-time urban growth boundary (UGB) amendments, funding for infrastructure and affordable housing, and adjustments to land use standards, are incorporated into Senate Bill 1537.

Executive Order 23-04 and the draft HPAC report cite a housing shortage as detailed by the Department of Land Conservation and Development (DLCD), which states in its December 2022 Oregon Housing Needs Analysis (OHNA) Legislative Recommendations [Report](#) that Oregon needs to develop more than 550,000 new housing units across income levels to accommodate 20 years of population growth, and to account for current underproduction and the lack of units for people experiencing homelessness. DLCD notes that of these needed housing units, 20 percent (nearly 112,000 units) must be affordable to moderate income households earning between 80 and 120 percent of area median income, while 10 percent (nearly 56,000 units) be affordable to low-income households earning between 60 and 80 percent of area median income.