

**Enrolled**  
**Senate Bill 766**

Sponsored by Senators BEYER, BOQUIST, EDWARDS, GIROD, BATES, Representatives CLEM, GILLIAM; Senators DEVLIN, JOHNSON, MONNES ANDERSON, VERGER, Representative HOYLE

CHAPTER .....

AN ACT

Relating to siting of industrial uses; appropriating money; limiting expenditures; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**LEGISLATIVE FINDINGS**

**SECTION 1. The Legislative Assembly finds and declares that:**

(1) Industrial development that provides above-average wages and employs a skilled workforce is of such significance to the economic recovery of the State of Oregon that the development merits an expedited project review process.

(2) Expedited project review for proposed industrial development projects of state significance bolsters the economies of local communities and contributes to the economic recovery of the State of Oregon as a whole.

**INDUSTRIAL DEVELOPMENT PROJECTS OF  
STATE SIGNIFICANCE**

**SECTION 2. (1) As used in this section:**

(a) "Discretionary local permit" includes local land use permits and licenses.

(b) "Discretionary state permit" does not include a permit or license issued by a state permitting agency pursuant to a federally delegated program.

(c) "Industrial use" means employment activities generating income from:

(A) The production, handling or distribution of goods including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development; and

(B) Services sold in a traded sector, as defined in ORS 285A.010.

(d) "State permitting agencies" means the Department of Environmental Quality, the Department of State Lands and the Department of Transportation.

(2) Industrial development projects of state significance are projects that:

(a) Create jobs with average wages above 180 percent of the minimum wage.

(b) Create a large number of new jobs in relation to the economy and population of the area directly impacted by the development.

(c) Create permanent jobs in industrial uses.  
(d) Involve a significant investment of capital in relation to the economy and population of the area directly impacted by the development.

(e) Have community support, as indicated by a resolution of the governing body of the local government within whose land use jurisdiction the industrial development project would occur.

(f) Do not require:

(A) An exception taken under ORS 197.732 to a statewide land use planning goal;

(B) A change to the acknowledged comprehensive plan or land use regulations of the local government within whose land use jurisdiction the industrial development project would occur; or

(C) A federal environmental impact statement under the National Environmental Policy Act.

(3) In lieu of filing an application for a discretionary local permit under ORS 215.402 to 215.438 or 227.160 to 227.186, and in lieu of filing an application otherwise required by law for a discretionary state permit from a state permitting agency, a person may file an application with the Economic Recovery Review Council for expedited project review of an industrial development project after first filing with the council a notice of intent to seek expedited project review that includes evidence that the proposed project meets the criteria for state significance set forth in subsection (2) of this section.

(4) The Economic Recovery Review Council, established under section 3 of this 2011 Act, may expedite the permitting of up to 10 industrial development projects of state significance per biennium through an expedited project review process in which the council reviews the proposed project to determine whether the project complies with the standards and criteria for applicable discretionary local permits and discretionary state permits. The expedited project review by the council must include:

(a) Review of the notice of intent filed under subsection (3) of this section and a preliminary determination of whether the proposed project qualifies as an industrial development project of state significance.

(b) Preparation and issuance of a project order, if on review of the notice of intent the proposed project appears to qualify as an industrial development project of state significance, that sets forth:

(A) The applicable standards and criteria for approval of each discretionary local permit or discretionary state permit that will be addressed in the expedited project review; and

(B) The deadline for an applicant to file a complete application.

(c) Review of the complete application.

(5) If the applicant files a complete application within the time specified by the council, the council shall:

(a) Provide notice of the application in the manner required by ORS 197.763 for a land use decision or in the manner required for a conditional use permit in the applicable acknowledged land use regulations of the local government within whose land use jurisdiction the proposed project would occur, whichever results in broader notice;

(b) Provide for a public hearing on the proposed project in the land use jurisdiction in which the proposed project would occur;

(c) Consider recommendations of the local government and state permitting agencies that would otherwise have jurisdiction to review the discretionary local permits and discretionary state permits for the proposed project in determining whether the project complies with applicable standards and criteria and in determining whether to impose conditions of approval for the project; and

(d) Apply the standards and criteria for each discretionary local permit and discretionary state permit required for the construction and operation of the proposed project and determine, within 120 days after the date a complete application is filed and based on the record

and the applicable law, whether the project complies with the applicable standards and criteria.

(6) The council has jurisdiction to approve discretionary local permits and discretionary state permits. The council may not waive standards and criteria that apply to issuance of a discretionary local permit or a discretionary state permit. If the council determines that the proposed project complies with the applicable standards and criteria, the council shall issue a project certificate approving the development project. In addition to other conditions reasonably necessary to ensure that the proposed project complies with applicable standards and criteria, the council may impose a condition requiring commencement of construction by a date calculated to ensure that a particular site is developed for the project within a specific time period. If the council determines that the project does not, or can not, comply with applicable standards and criteria, the council shall issue a final order denying the application and explaining why the application was not approved.

(7) A state permitting agency or a local government may recommend conditions of approval reasonably necessary to ensure that the development project complies with applicable standards and criteria.

(8) Expedited project review of an industrial development project is not subject to ORS 183.413 to 183.470.

(9) Issuance of a project certificate:

(a) Binds public bodies, as defined in ORS 174.109, in regard to approval of construction and operation of the development project.

(b) Satisfies requirements imposed on a state permitting agency by ORS 197.180 and administrative rules implementing ORS 197.180.

(10) After the council issues a project certificate, state permitting agencies and local governments shall:

(a) Issue discretionary local permits and discretionary state permits as required in the certificate; and

(b) Exercise enforcement authority over the permits, including conditions imposed in the certificate.

(11) The council shall charge the applicant a fee calculated to recover the costs reasonably incurred to conduct expedited project review, including the costs incurred by state permitting agencies and local governments that make recommendations to the council concerning whether the proposed project complies with applicable standards and criteria. If the fee charged by the council includes costs incurred by a state permitting agency or a local government, the council shall pay or reimburse the state permitting agency or the local government in the manner provided by ORS 469.360. The council may require the applicant to pay all or a portion of the fee before initiation of the expedited project review and may require progress payments as the review proceeds. The fee required by this section is in lieu of any fee or fees otherwise required for review of a discretionary local permit or a discretionary state permit addressed in the project certificate. The council shall deposit moneys received under this section in the Economic Recovery Review Council Fund established under section 5 of this 2011 Act.

(12) The Land Use Board of Appeals does not have jurisdiction to consider decisions, aspects of decisions or actions taken under sections 1 to 5 of this 2011 Act.

(13) A person who participated in the proceedings before the council may appeal a final order of the council to the Court of Appeals. The appeal shall proceed in the manner provided by ORS 197.850, 197.855 and 197.860. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds that:

(a) The council's determination that the proposed project qualifies as an industrial development project of state significance under subsection (2) of this section was clearly in error;

- (b) There is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d) or a basis for modification or correction of an award as described in ORS 36.710; or
- (c) The decision was unconstitutional.

### **ECONOMIC RECOVERY REVIEW COUNCIL**

**SECTION 3.** (1) There is established an Economic Recovery Review Council, consisting of five members who serve in their respective roles as the directors of:

- (a) The Oregon Business Development Department.
  - (b) The Department of Land Conservation and Development.
  - (c) The Department of Transportation.
  - (d) The Department of Environmental Quality.
  - (e) The Department of State Lands.
- (2) Each member serves during the member's tenure in the role described in subsection (1) of this section.

(3) If a local government with land use jurisdiction requests to participate, the council shall designate one elected official of the local government as a voting member of the council for purposes of:

- (a) Review of a proposed industrial development project of state significance under section 2 of this 2011 Act.
- (b) Designation of a regionally significant industrial area pursuant to section 7 of this 2011 Act.

(4) Members of the council are not entitled to compensation, but at the discretion of the council may be reimbursed, from funds available to the council, for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

(5) The council shall select one of its members as chairperson and another as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of the offices as the council determines.

(6) A majority of the members of the council constitutes a quorum for the transaction of business.

**SECTION 4.** (1) The Economic Recovery Review Council is an independent council that reports directly to the Governor. For the purposes of the responsibilities of the council, the members of the council are not responsible to the boards or commissions to which the members report as directors of their respective state agencies.

(2) The Oregon Business Development Department shall provide administrative support and office space for the council.

(3) The council may employ a program manager.

(4) The designation of the program manager must be by written order, filed with the Secretary of State.

(5) Subject to any applicable provisions of ORS chapter 240, the program manager shall appoint all subordinate officers and employees of the council, prescribe their duties and fix their compensation.

(6) The council may establish advisory and technical committees the council considers necessary to aid and advise the council in the performance of council functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms and organization of the committees and shall appoint the committees' members.

(7) Members of the committees are not entitled to compensation, but at the discretion of the council may be reimbursed, from funds available to the council, for actual and necessary travel and other expenses incurred by them in the performance of their official duties, in the manner and amount provided in ORS 292.495.

(8) In accordance with applicable provisions of ORS chapter 183, the council may adopt rules necessary for the administration of sections 1 to 5 of this 2011 Act.

**SECTION 5.** (1) The Economic Recovery Review Council Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Economic Recovery Review Council Fund shall be credited to the fund.

(2) Moneys in the Economic Recovery Review Council Fund are continuously appropriated to the Economic Recovery Review Council for the purpose of administering the provisions of sections 1 to 7 of this 2011 Act.

(3) The Economic Recovery Review Council Fund consists of moneys:

(a) Collected by the council from the fees authorized by section 2 (11) of this 2011 Act.

(b) Any other moneys appropriated to the council.

## REGIONALLY SIGNIFICANT INDUSTRIAL AREAS

**SECTION 6.** As used in sections 6 to 11 of this 2011 Act:

(1) "Industrial use" means employment activities, including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010.

(2) "Regionally significant industrial area" means an area planned and zoned for industrial use that:

(a) Contains vacant sites, including brownfields, that are suitable for the location of new industrial uses or the expansion of existing industrial uses and that collectively can provide significant additional employment in the region;

(b) Has site characteristics that give the area significant competitive advantages that are difficult or impossible to replicate in the region;

(c) Has superior access to transportation and freight infrastructure, including, but not limited to, rail, port, airport, multimodal freight or transshipment facilities, and other major transportation facilities or routes; and

(d) Is located in close proximity to major labor markets.

**SECTION 7.** (1) Within three years after the effective date of this 2011 Act, in cooperation with local governments and private industry, the Economic Recovery Review Council, by rule, shall designate at least five and not more than 15 regionally significant industrial areas. The council shall base the designation of regionally significant industrial areas on the criteria in the definition of "regionally significant industrial area" and the judgment of the council concerning the relative importance of the areas in terms of potential, long-term job creation.

(2) A local government may nominate a regionally significant industrial area for designation by the council.

(3) An area containing multiple sites certified by the Oregon Business Development Department as ready for development within six months or less is eligible for designation by the council if the area is a regionally significant industrial area.

(4) In addition to demonstrating compliance with other provisions of law, including, but not limited to, a statewide land use planning goal concerning economic development and rules implementing the goal, the future employment potential of a regionally significant industrial area shall be protected from conflicting development in the following ways:

(a) A local government may not adopt a provision of a comprehensive plan or land use regulation that prevents industrial uses within the area.

(b) A local government may not adopt a provision of a comprehensive plan or land use regulation that allows new nonindustrial uses within the area that conflict with existing or planned industrial uses.

(c) A local government may not decrease the land area planned or zoned for industrial uses within the regionally significant industrial area.

(d) A local government may adopt a provision of a comprehensive plan or land use regulation, including development standards or overlay zones, that restricts the type or extent of current or future industrial uses within the area, but only if the local government mitigates at the same time the effect of the new provision by:

(A) Clearly maintaining or increasing the industrial employment potential of the area; and

(B) Clearly maintaining the important site characteristics and functions that led to the designation of the site as a regionally significant industrial area.

(5) Subsection (4) of this section does not apply to a provision of a comprehensive plan or land use regulation that is necessary:

(a) To protect public health or safety; or

(b) To implement federal law.

(6) If 50 percent of the developable land within a regionally significant industrial area has not been developed within 10 years after designation of the area, the council shall remove the designation, unless landowners representing a majority of the land within the area request that the designation be continued.

(7) Within a regionally significant industrial area, a new industrial use or the expansion of an existing industrial use is eligible for an expedited industrial land use permit issued under section 8 of this 2011 Act if the new or expanded use does not require a change to the acknowledged comprehensive plan or land use regulations.

(8) In addition to other criteria for distribution of available funds, the Oregon Infrastructure Finance Authority and the Oregon Transportation Commission may consider the designation of an area as a regionally significant industrial area in prioritizing funding for transportation and other public infrastructure.

(9) Sections 6 to 11 of this 2011 Act do not apply to land in the Willamette River Greenway Plan boundary between river mile 1 and river mile 11.

**SECTION 8.** (1) An applicant for a new industrial use or the expansion of an existing industrial use located within a regionally significant industrial area may request that an application for a land use permit be reviewed as an application for an expedited industrial land use permit under this section if the proposed use does not require:

(a) An exception taken under ORS 197.732 to a statewide land use planning goal;

(b) A change to the acknowledged comprehensive plan or land use regulations of the local government within whose land use jurisdiction the new or expanded industrial use would occur; or

(c) A federal environmental impact statement under the National Environmental Policy Act.

(2) If the applicant makes a request that complies with subsection (1) of this section, the local government shall review the applications for land use permits for the proposed industrial use by applying the standards and criteria that otherwise apply to the review and by using the procedures set forth for review of an expedited land division in ORS 197.365 and 197.370.

**SECTION 9.** (1) The Land Use Board of Appeals does not have jurisdiction to consider decisions, aspects of decisions or actions taken under sections 6 to 11 of this 2011 Act.

(2) An appeal of a decision on an application for an expedited industrial land use permit made under section 8 of this 2011 Act may be made in the manner set forth in ORS 197.375 for appeal of a decision on an expedited land division. Notwithstanding ORS 197.375:

(a) The applicant and a person who filed written comments in the time period established under ORS 197.365 may file an appeal;

(b) If an appeal is filed, the referee shall hold a hearing on the appeal; and

(c) The referee shall issue a written decision within 56 days after the appeal was filed.

(3) A party to a proceeding before a referee under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the manner provided for review of final orders of the Land Use Board of Appeals in ORS 197.850 and 197.855. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds that:

(a) The local government's decision clearly does not concern an application for an expedited industrial land use permit as described in section 8 of this 2011 Act and the appellant raised this issue in proceedings before the referee;

(b) The referee's decision contains a clear, material error of fact based on the record, and the appellant raised the issue in proceedings before the referee;

(c) The referee's decision contains a clear, material error of law, giving deference to any interpretations of law by the referee, and the appellant raised the issue in proceedings before the referee; or

(d) The decision of the local government or the referee is unconstitutional.

**SECTION 10.** Each city and county with land use jurisdiction within a regionally significant industrial area designated by the Economic Recovery Review Council may establish a fee for review of an application for an expedited industrial land use permit. The fee must be set at a level estimated to recover the full cost of processing an application, including the cost of appeals to a referee under section 9 of this 2011 Act, based on the estimated cost of the use proposed in the application.

**SECTION 11.** The Land Conservation and Development Commission shall administer regionally significant industrial areas and may adopt rules as necessary to implement sections 6 to 11 of this 2011 Act.

#### **ABOLISHMENT OF ECONOMIC RECOVERY REVIEW COUNCIL AND ECONOMIC RECOVERY REVIEW COUNCIL FUND**

**SECTION 12.** (1) On the date specified in section 13 of this 2011 Act:

(a) The Economic Recovery Review Council established under section 3 of this 2011 Act is abolished and the tenure of office of the members of the council, the program manager for the council and all employees ceases.

(b) The Economic Recovery Review Council Fund established under section 5 of this 2011 Act is abolished. The Economic Recovery Review Council shall transfer the unexpended balance of moneys in the fund to the General Fund.

(2) The members of the council shall allocate and deliver to the respective state agencies whose directors served as members of the council all records and property within the jurisdiction of the council, and the state agencies whose directors served on the council shall take possession of the records and property. The Governor shall resolve any dispute relating to the allocation and delivery of records and property under this section and the Governor's decision is final.

(3) The abolishment of the council does not relieve a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers of the council abolished by this section. The Oregon Department of Administrative Services may undertake the collection or enforcement of any such liability, duty or obligation.

(4) The rights and obligations of the council legally incurred under contracts, leases and business transactions executed, entered into or begun before the date specified in section 13 of this 2011 Act are transferred to the Oregon Department of Administrative Services. For the purpose of succession to these rights and obligations, the department is a continuation of the council and not a new authority.

(5) Notwithstanding the repeal of sections 1 to 5 of this 2011 Act by section 13 of this 2011 Act, members of the council may take action under this section that are necessary to wind

down the operations of the council before, on or after the date of the repeal of sections 1 to 5 of this 2011 Act.

**SUNSET OF ECONOMIC RECOVERY REVIEW COUNCIL  
AND EXPEDITED PROJECT REVIEW**

**SECTION 13.** Sections 1 to 5 of this 2011 Act are repealed on January 2 of the first even-numbered year after the Employment Department notifies the Economic Recovery Review Council and the Office of the Legislative Counsel that the annual average unemployment rate for the most recent calendar year in Oregon is less than six percent.

**MISCELLANEOUS PROVISIONS**

**SECTION 14.** (1) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2, chapter 254, Oregon Laws 2011 (Enrolled House Bill 5032), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Land Conservation and Development, is increased by \$94,418.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter \_\_\_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 5528), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Business Development Department, is increased by \$418,155 for business, innovation and trade.

(3) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (3), chapter \_\_\_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 5528), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Business Development Department, is increased by \$26,573 for shared services.

**SECTION 15.** The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

**SECTION 16.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

**Passed by Senate June 9, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 16, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State