

# House Bill 3327

Sponsored by Representative SCHAUFLER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Governor and State Department of Geology and Mineral Industries to expedite site review for sites of aggregate mines that are significant aggregate resources. Authorizes local governments to opt out of expedited site review within jurisdictional boundaries of local government.

## A BILL FOR AN ACT

1  
2 Relating to the siting of aggregate mines.

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

4 **SECTION 1. As used in sections 1 to 5 of this 2011 Act:**

5 (1) "Public body" has the meaning given that term in ORS 174.109.

6 (2) "Significant aggregate resource" means the site of a mine that has at least five  
7 million tons of aggregate meeting or exceeding quality standards for base rock established  
8 by rule of the State Department of Geology and Mineral Industries.

9 **SECTION 2. The Legislative Assembly finds that:**

10 (1) Aggregate is an important statewide resource; and

11 (2) The state's interest is served by having an affordable, readily available supply of high  
12 quality aggregate necessary to the state's economic development and recovery.

13 **SECTION 3. (1) The State Department of Geology and Mineral Industries shall:**

14 (a) Establish criteria and standards, by rule, for determining whether to categorize the  
15 site of an aggregate mine as a significant aggregate resource; and

16 (b) When presented with an application to approve siting an aggregate mine, apply the  
17 criteria and standards to determine whether the site of the aggregate mine is a significant  
18 aggregate resource entitled to expedited site review under sections 1 to 5 of this 2011 Act.

19 (2) The department shall consult with other state agencies as necessary to implement  
20 sections 1 to 5 of this 2011 Act.

21 (3) The department may enter into agreements with local governments authorized to is-  
22 sue discretionary permits, licenses or certificates for mining aggregate to act on behalf of  
23 the permitting, licensing or certifying authority for the purpose of issuing a permit, license  
24 or certificate for a significant aggregate resource.

25 (4) The governing body of a local government may elect, by ordinance or resolution, to  
26 reject the implementation of expedited site review pursuant to sections 1 to 5 of this 2011  
27 Act within the jurisdictional boundaries of the local government.

28 **SECTION 4. (1) In lieu of filing an application for a discretionary permit under ORS**  
29 **215.402 to 215.438 or 227.160 to 227.186, a person may file an application for expedited site**  
30 **review of a proposed site for an aggregate mine that the applicant considers qualified to be**  
31 **categorized as a significant aggregate resource.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1           (2) Within 180 days after receiving an application under this section, the State Department of Geology and Mineral Industries shall hold a public hearing within the region in which  
2 the site of the aggregate mine is located to take testimony regarding the site's significance,  
3 reclamation and operating conditions.  
4

5           (3) At least 10 days before the public hearing required by subsection (2) of this section,  
6 the department shall make the application available for public review.

7           (4) During the public hearing, a person may submit oral or written comments on the site  
8 of the aggregate mine, including comments on the site's significance, reclamation or operating  
9 conditions.

10          (5) If operating conditions are proposed by public comment during the public hearing,  
11 each proposed operating condition must be:

12           (a) Stated separately in writing; and

13           (b) Supported by a statement of need or reasoning.

14          (6) The department shall hold the record open for 45 days after the date of the public  
15 hearing to receive additional public comment.

16          (7) Within 30 days after the department closes the record, the applicant may respond in  
17 writing to the public comments and proposed operating conditions received by the department.  
18 The applicant's response must address each comment or proposed operating condition  
19 separately and include the applicant's reasons for approving or disapproving of the comment  
20 or proposed operating condition.

21          (8) Within 45 days after the department closes the record or the applicant submits a  
22 written response under subsection (7) of this section, whichever is later, the department  
23 shall:

24           (a) Make a determination whether to categorize the site of the aggregate mine as a significant  
25 aggregate resource qualified for expedited site review; and

26           (b) If the site is a significant aggregate resource, draft proposed reclamation standards  
27 and conditions for operation. The determination and the proposed standards and conditions  
28 must be supported by findings in writing that address each comment discussed in the public  
29 hearing and discussed by the applicant.

30          (9) Notwithstanding subsections (2) to (8) of this section, the department is not required  
31 to hold a public hearing before disapproving expedited site review for the site of an aggregate  
32 mine when it is apparent on the face of the application that the site is not a significant aggregate  
33 resource.

34          (10) Upon making a determination under subsection (8) or (9) of this section and drafting  
35 proposed standards and conditions, if necessary, the department shall notify the Governor  
36 and make all appropriate documents and materials available for review by the Governor.

37          (11) Within 30 days after receiving notification under subsection (10) of this section, the  
38 Governor shall:

39           (a) Approve the site of the aggregate mine and the proposed reclamation standards and  
40 proposed operating conditions and issue a site permit for the aggregate mine;

41           (b) Approve the site of the aggregate mine, but refer the proposed reclamation standards  
42 or proposed operating conditions back to the department with written suggestions for  
43 changes; or

44           (c) Disapprove the site of the aggregate mine.

45          (12) Issuance of a site permit by the Governor for an aggregate mine under this section

1 binds public bodies as to the approval of the site and the operation of an aggregate mine that  
 2 is a significant aggregate resource. Public bodies shall:

3 (a) Issue the permits, licenses and certificates required for the construction and opera-  
 4 tion of the aggregate mine;

5 (b) Enter into intergovernmental agreements as necessary for construction and opera-  
 6 tion of the aggregate mine; and

7 (c) Subject to the provisions of this section, exercise enforcement authority over all  
 8 permits, licenses and certificates issued by the public body.

9 **SECTION 5.** (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825 or any other  
 10 law, exclusive jurisdiction is conferred upon the Supreme Court for judicial review of expe-  
 11 dited site review decisions for sites of aggregate mines made under sections 1 to 5 of this  
 12 2011 Act.

13 (2) Proceedings for judicial review shall be instituted when an adversely affected person  
 14 or local government files a petition with the Supreme Court:

15 (a) Within 21 days after issuance of the specific decision on which the petition is based.

16 (b) That states the nature of the decision the petitioner desires reviewed, states in what  
 17 manner the decision below rejected the position raised by the petitioner below and states,  
 18 by supporting affidavit, the facts showing how the petitioner is adversely affected.

19 (3) For purposes of judicial review of a siting decision under sections 1 to 5 of this 2011  
 20 Act, the petitioner is adversely affected if the petitioner can establish by clear and convinc-  
 21 ing evidence in the affidavit that the petitioner:

22 (a) Participated before the department;

23 (b) Will be within sight or sound of the site of the aggregate mine or is affected eco-  
 24 nomically in excess of \$5,000 in value; and

25 (c) Proposed conditions pursuant to section 3 of this 2011 Act that were not implemented  
 26 by the department and the Governor.

27 (4) The petitioner shall serve a copy of the petition by registered or certified mail upon  
 28 the department and the Attorney General.

29 (5) Within 30 days after service of the petition, the department shall transmit to the  
 30 Supreme Court, or a special master designated by the Supreme Court, the original or a cer-  
 31 tified copy of the entire record and any findings that may have been made. The court shall  
 32 not substitute its judgment for that of the Governor or the department as to any issue of  
 33 fact or issue within executive branch discretion.

34 (6) If the petition is for review of a decision made by the department, the record must  
 35 include only:

36 (a) The determination and findings of the department.

37 (b) The proposed operating conditions for the site of the aggregate mine.

38 (c) The proposed reclamation standards established for the site of the aggregate mine.

39 (d) The transcript of the public hearing before the department.

40 (e) Evidence submitted by the petitioner to the department.

41 (7) On the motion of any party to the judicial review, the Supreme Court may supplement  
 42 the record with additional materials from the public hearing before the department.

43 (8) On motion of the department, the Supreme Court may limit the transcript to those  
 44 matters in which the petitioner is interested based on the issues raised in the petition pur-  
 45 suant to subsection (2)(b) of this section.

1           **(9) Upon review, the Supreme Court may reverse or remand the decision if the Supreme**  
2 **Court concludes that the Governor or the department:**

3           **(a) Exceeded the statutory or constitutional authority of the decision maker;**

4           **(b) Made a decision based on findings that are not supported by substantial evidence in**  
5 **the record as described in ORS 183.482 (8)(c); or**

6           **(c) Did not implement a proposed operating condition submitted during public testimony**  
7 **without providing the reasons for refusing the proposed operating condition.**

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