

# Senate Bill 766

Sponsored by Senator BEYER

## 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 designation of regionally significant industrial areas. Allows for expedited permitting of industrial uses in regionally significant industrial areas.

Establishes Economic Recovery Review Council. Authorizes council to perform expedited site reviews for proposed industrial development projects that have state significance.

Establishes Economic Recovery Review Council Fund and continuously appropriates moneys in fund to council for purposes of performing expedited site reviews.

Sunset council, fund and authority for expedited site reviews for proposed industrial development projects of state significance on January 2 of first even-numbered year after notification that annual average unemployment rate for most recent calendar year in Oregon is less than eight percent.

## A BILL FOR AN ACT

Relating to siting of industrial uses; and appropriating money.

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

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

**(1) Certain investments in industrial development that provides above-average wages and employs a skilled workforce are of such significance to the economic recovery of the State of Oregon that the development merits an expedited site review process.**

**(2) Expedited site 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) 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 jobs in manufacturing, research and development, or resource-related industries.**

**(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 jurisdiction the development would occur.**

**(f) Do not require:**

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

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

**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) In lieu of filing an application for a discretionary permit under ORS 215.402 to 215.438  
 2 or 227.160 to 227.186, a person may file an application for expedited site review of an indus-  
 3 trial development project that the applicant believes will qualify as an industrial development  
 4 project of state significance.

5 (3) The Economic Recovery Review Council, established under section 3 of this 2011 Act,  
 6 may expedite the permitting of an industrial development project of state significance  
 7 through an expedited site review process in which the council reviews the application, by  
 8 applying state and local standards and criteria and after providing an opportunity for public  
 9 participation, to determine whether the proposed project complies with the standards and  
 10 criteria.

11 (4) An owner or developer of a proposed industrial development project may apply to the  
 12 council for expedited site review. The owner or developer must include with the application  
 13 evidence that the project meets the criteria for state significance set forth in subsection (1)  
 14 of this section.

15 (5) If the council determines under subsection (3) of this section that the proposed  
 16 project is an industrial development project of state significance, the council shall apply the  
 17 standards and criteria that apply to review of each permit, license and certificate required  
 18 for project development. If the council determines that the permits, licenses and certificates  
 19 would be issued, the council shall approve the project by issuing a site permit.

20 (6) The council may charge the applicant a fee for costs reasonably incurred to conduct  
 21 the expedited site review. The council shall deposit moneys received under this section in the  
 22 Economic Recovery Review Council Fund established under section 5 of this 2011 Act.

23 (7) Issuance of a site permit by the council under this section binds public bodies, as  
 24 defined in ORS 174.109, as to the approval of the site and the operation of the industrial de-  
 25 velopment project on the site. Public bodies shall:

26 (a) Issue the permits, licenses and certificates required for the industrial development  
 27 project;

28 (b) Enter into intergovernmental agreements as necessary for construction and opera-  
 29 tion of the project; and

30 (c) Subject to the provisions of this section, exercise enforcement authority over each  
 31 permit, license or certificate issued by the public body.

32 (8) A person adversely affected by a final decision of the council may appeal on the record  
 33 before the council to the Oregon Court of Appeals.

34  
 35 **ECONOMIC RECOVERY REVIEW COUNCIL**  
 36

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

39 (a) The Oregon Business Development Department.

40 (b) The Department of Land Conservation and Development.

41 (c) The Department of Transportation.

42 (d) The Department of Environmental Quality.

43 (e) The Department of State Lands.

44 (2) Each member serves during the member's tenure in the role described in subsection  
 45 (1) of this section.

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

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

8 (5) A majority of the members of the council constitutes a quorum for the transaction  
9 of business.

10 (6) If the council has at least one application for expedited site review under consider-  
11 ation, the council shall meet at least once every \_\_\_\_\_ months at a date, time and place  
12 determined by the council. The council may also meet at other dates, times and places  
13 specified by the call of the chairperson or of a majority of the members of the council.

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

18 (2) The council must be funded by the transfer of funds from each agency whose director  
19 is a member of the council. The council shall deposit moneys received pursuant to this sub-  
20 section in the Economic Recovery Review Council Fund established under section 5 of this  
21 2011 Act.

22 (3) The Oregon Business Development Department shall provide office space for the  
23 council.

24 (4) The council may employ an executive director.

25 (5) The designation of the executive director must be by written order, filed with the  
26 Secretary of State.

27 (6) Subject to any applicable provisions of ORS chapter 240, the executive director shall  
28 appoint all subordinate officers and employees of the council, prescribe their duties and fix  
29 their compensation.

30 (7) The council may establish advisory and technical committees the council considers  
31 necessary to aid and advise the council in the performance of council functions. The com-  
32 mittees may be continuing or temporary committees. The council shall determine the rep-  
33 resentation, membership, terms and organization of the committees and shall appoint the  
34 committees' members.

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

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

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

44 (2) Moneys in the Economic Recovery Review Council Fund are continuously appropriated  
45 to the Economic Recovery Review Council for the purpose of administering the provisions

1 of sections 1 to 5 of this 2011 Act.

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

3 (a) Collected by the council from the fees authorized by section 2 (6) of this 2011 Act.

4 (b) Transferred to the council pursuant to section 4 (2) of this 2011 Act.

5 (c) Any other moneys appropriated to the council.

6  
7 REGIONALLY SIGNIFICANT INDUSTRIAL AREAS

8  
9 **SECTION 6.** As used in sections 6 to 11 of this 2011 Act:

10 (1) "Industrial use" means employment activities, including, but not limited to, manu-  
11 facturing, assembly, fabrication, processing, storage, logistics, warehousing, importation,  
12 distribution and transshipment and research and development, that generate income from  
13 the design, development, production, handling or distribution of goods.

14 (2) "Regionally significant industrial area" means an area planned and zoned for indus-  
15 trial use that:

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

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

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

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

25 **SECTION 7.** (1) In cooperation with local governments and private industry, the Oregon  
26 Business Development Department, the Department of Land Conservation and Development  
27 and the Department of Transportation shall identify regionally significant industrial areas.

28 (2) The Land Conservation and Development Commission by rule shall designate \_\_\_\_\_  
29 to \_\_\_\_\_ regionally significant industrial areas within three years after the effective date  
30 of this 2011 Act.

31 (3) The future employment potential of a regionally significant industrial area is subject  
32 to protection from conflicting development in the following ways:

33 (a) Local governments may not plan or zone the area in a manner that would:

34 (A) Prevent industrial uses within the area; or

35 (B) Allow uses that cause conflict with industrial uses.

36 (b) Local governments shall:

37 (A) Buffer regionally significant industrial areas as appropriate to avoid or minimize  
38 conflicts with surrounding uses; and

39 (B) Mitigate for any loss in employment potential within a regionally significant indus-  
40 trial area.

41 (4) If \_\_\_\_\_ percent of the vacant developable land within a regionally significant in-  
42 dustrial area has not been developed within \_\_\_\_\_ years after designation of the area, the  
43 commission by rule may allow protections from conflicting development described in sub-  
44 section (3) of this section to be altered or eliminated.

45 (5) Within a regionally significant industrial area, a new industrial use or the expansion

1 of an existing industrial use is eligible for an expedited industrial use permit if the new or  
2 expanded use does not require a change to the acknowledged comprehensive plan or land use  
3 regulations.

4 **SECTION 8. (1) When an applicant requests review of an application for an expedited**  
5 **industrial use permit under this section, in lieu of the procedure set forth in its compre-**  
6 **hensive plan and land use regulations, the local government shall use the following proce-**  
7 **dures:**

8 (a) If the application for an expedited industrial use permit is incomplete, the local gov-  
9 ernment shall notify the applicant of exactly what information is missing within 21 days of  
10 receipt of the application and allow the applicant to submit the missing information. For  
11 purposes of computation of time under this section, the application is deemed complete on  
12 the date the applicant submits the requested information or refuses in writing to submit it.

13 (b) If the application for an expedited industrial use permit is complete when first sub-  
14 mitted or the applicant submits the requested additional information within 180 days of the  
15 date the application was first submitted, the local government shall approve or deny the ap-  
16 plication on the basis of the standards and criteria that were applicable at the time the ap-  
17 plication was first submitted.

18 (2) The local government shall provide written notice of the receipt of the completed  
19 application for an expedited industrial use permit to the state agencies, local governments  
20 and special districts responsible for providing public facilities or services to the site of the  
21 proposed industrial development project and to owners of property located within 100 feet  
22 of the entire contiguous site for which the application is made. The notification list must be  
23 compiled from the most recent property tax assessment roll. For purposes of appeal to the  
24 referee under section 10 of this 2011 Act, this requirement is deemed to have been met when  
25 the local government can provide an affidavit or other certification that the notice was  
26 given. The local government shall also provide notice to a neighborhood or community plan-  
27 ning organization recognized by the governing body when the boundaries of the planning or-  
28 ganization include the site of the proposed industrial development project.

29 (3) The notice required under subsection (2) of this section shall:

30 (a) State that issues:

31 (A) Providing the basis for an appeal to the referee must be raised in writing prior to the  
32 expiration of the comment period; and

33 (B) Must be raised with sufficient specificity to enable the local government to respond  
34 to the issue.

35 (b) Set forth, by commonly used citation, the applicable criteria for the decision.

36 (c) Set forth the street address or other easily understood geographical reference to the  
37 site of the proposed industrial development project.

38 (d) State the date, time and place that comments are due.

39 (e) State a date, time and place where copies of all evidence submitted by the applicant  
40 will be available for review.

41 (f) Include the name and telephone number of a local government contact person.

42 (g) Briefly summarize the local decision-making process for approval or denial of the  
43 application for an expedited industrial use permit.

44 (4) After notice under subsections (2) and (3) of this section, the local government shall:

45 (a) Provide a 14-day period for submission of written comments prior to the decision.

1 (b) Make a decision to approve or deny the application for an expedited industrial use  
 2 permit within 63 days after receiving a completed application, based on whether the applica-  
 3 tion satisfies the substantive requirements of the local government's comprehensive plan and  
 4 land use regulations. An approval may include conditions to ensure that the proposed in-  
 5 dustrial development project meets the applicable comprehensive plan and land use regu-  
 6 lations. For applications subject to this section, the local government:

7 (A) May not hold a hearing on the application; and

8 (B) Shall issue a written determination of compliance or noncompliance with the appli-  
 9 cable comprehensive plan and land use regulations that includes a summary statement ex-  
 10 plaining the determination. The summary statement may be in any form reasonably intended  
 11 to communicate the local government's basis for the determination.

12 (c) Provide notice of the decision to the applicant, and to a person or organization that  
 13 received notice under subsection (2) of this section, within 63 days of the date of a completed  
 14 application. The notice of decision shall include:

15 (A) The summary statement described in paragraph (b)(B) of this subsection; and

16 (B) An explanation of appeal rights under section 10 of this 2011 Act.

17 **SECTION 9.** (1) Except as provided in subsection (2) of this section, if a local government  
 18 does not make a decision on an application for approval of an expedited industrial use permit  
 19 within 63 days after the application is deemed complete under section 8 of this 2011 Act, the  
 20 applicant may apply in the circuit court for the county in which the application was filed for  
 21 a writ of mandamus to compel the local government to issue the permit. The circuit court  
 22 shall issue the writ unless the local government shows that approval of the permit would  
 23 violate a substantive provision of the applicable comprehensive plan and land use regulations  
 24 or the requirements of section 7 of this 2011 Act. A decision of the circuit court under this  
 25 section may be appealed only to the Oregon Court of Appeals.

26 (2) After seven days' notice to the applicant, the governing body of the local government  
 27 may, at a regularly scheduled public meeting, take action to extend the 63-day time period  
 28 to a date certain for one or more applications for an expedited industrial use permit prior  
 29 to the expiration of the 63-day period, based on a determination that an unexpected or ex-  
 30 traordinary increase in applications for expedited industrial use permits makes action within  
 31 63 days impracticable. An extension may not be granted to a date more than 120 days after  
 32 the application was deemed complete under section 8 of this 2011 Act. Upon approval of an  
 33 extension, the provisions of sections 7 to 11 of this 2011 Act, including the mandamus remedy  
 34 provided by subsection (1) of this section, remain applicable to the application for an expe-  
 35 dited industrial use permit, except that the extended period must be substituted for the  
 36 63-day period wherever applicable.

37 (3) The decision to approve or not approve an extension of time under subsection (2) of  
 38 this section is not a land use decision or limited land use decision.

39 **SECTION 10.** (1) An appeal of a decision made under section 8 of this 2011 Act must be  
 40 made as follows:

41 (a) An appeal must be filed with the local government within 14 days of mailing of the  
 42 notice of the decision under section 8 (4) of this 2011 Act, and must be accompanied by a \$300  
 43 deposit for costs.

44 (b) A decision may be appealed by:

45 (A) The applicant; or

1 (B) Any person or organization entitled to notice under section 8 (2) of this 2011 Act that  
2 submits written comments in the time period established under section 8 of this 2011 Act.

3 (c) An appeal must be based solely on allegations:

4 (A) Of a violation of the substantive provisions of the applicable comprehensive plan and  
5 land use regulations;

6 (B) Of unconstitutionality of the decision;

7 (C) That the application is not eligible for review under sections 7 to 11 of this 2011 Act  
8 and should be reviewed as a land use decision or limited land use decision; or

9 (D) That the parties' substantive rights have been substantially prejudiced by an error  
10 in procedure by the local government.

11 (2) The local government shall appoint a referee to decide the appeal of a decision made  
12 under sections 7 to 11 of this 2011 Act. The referee may not be an employee or official of the  
13 local government. However, a local government that has designated a hearings officer under  
14 ORS 215.406 or 227.165 may designate the hearings officer as the referee for appeals of a de-  
15 cision made under sections 7 to 11 of this 2011 Act.

16 (3) Within seven days after being appointed to decide the appeal, the referee shall notify  
17 the applicant, the local government, the appellant if other than the applicant, any person or  
18 organization entitled to notice under section 8 (2) of this 2011 Act that provided written  
19 comments to the local government, and all providers of public facilities and services entitled  
20 to notice under section 8 (2) of this 2011 Act, and advise them of the manner in which they  
21 may participate in the appeal. A person or organization that provided written comments to  
22 the local government but did not file an appeal under subsection (1) of this section may  
23 participate only with respect to the issues raised in the written comments submitted by that  
24 person or organization. The referee may use any procedure for decision-making consistent  
25 with the interests of the parties to ensure a fair opportunity to present information and ar-  
26 gument. The referee shall provide the local government an opportunity to explain its deci-  
27 sion. However, the referee is not limited to reviewing the local government decision and may  
28 consider information not presented to the local government.

29 (4)(a) The referee shall apply the substantive requirements of the local government's  
30 comprehensive plan and land use regulations. If the referee determines that the proposed  
31 industrial development project does not qualify for an expedited industrial use permit as de-  
32 scribed in section 7 of this 2011 Act, the referee shall remand the application for consider-  
33 ation as a land use decision or limited land use decision. In all other cases, the referee shall  
34 seek to identify means by which the application can satisfy the applicable requirements.

35 (b) The referee shall make a written decision approving or denying the application for  
36 an expedited industrial use permit or approving the application with conditions designed to  
37 ensure that the proposed industrial development project satisfies the applicable comprehen-  
38 sive plan and land use regulations, within 42 days of the filing of an appeal. The referee may  
39 not remand the application to the local government for any reason other than as set forth  
40 in this subsection.

41 (5) Unless the governing body of the local government finds exigent circumstances, a  
42 referee who fails to issue a written decision within 42 days of the filing of an appeal shall  
43 receive no compensation for service as referee in the appeal.

44 (6) Notwithstanding any other provision of law, the referee shall order the local govern-  
45 ment to refund the deposit for costs paid under subsection (1) of this section to an appellant

1 that materially improves the appellant's position from the decision of the local government.  
 2 The referee shall assess the costs of the appeal in excess of the deposit for costs, up to a  
 3 maximum of \$500, including the deposit for costs paid under subsection (1) of this section,  
 4 against an appellant that does not materially improve the appellant's position from the de-  
 5 cision of the local government. The local government shall pay the portion of the costs of  
 6 the appeal not assessed against the appellant. The costs of the appeal include the compen-  
 7 sation paid the referee and costs incurred by the local government, but not the costs of other  
 8 parties.

9 (7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions,  
 10 aspects of decisions or actions made under sections 6 to 11 of this 2011 Act.

11 (8) A party to a proceeding before a referee under this section may seek judicial review  
 12 of the referee's decision in the manner provided for review of final orders of the Land Use  
 13 Board of Appeals under ORS 197.850 and 197.855. The Oregon Court of Appeals shall review  
 14 decisions of the referee in the same manner as provided for review of final orders of the  
 15 Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or  
 16 any other provision of law, the court shall reverse or remand the decision only if the court  
 17 finds:

18 (a) That the decision does not concern an expedited industrial use permit as described in  
 19 section 7 of this 2011 Act and the appellant raised this issue in proceedings before the ref-  
 20 eree;

21 (b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d),  
 22 or a basis for modification or correction of an award as described in ORS 36.710; or

23 (c) That the decision is unconstitutional.

24 **SECTION 11.** Each city and county shall establish a fee for an application for an exp-  
 25 dited industrial use permit. The fee must be set at a level calculated to recover the estimated  
 26 full cost of processing an application, including the cost of appeals to the referee under sec-  
 27 tion 10 of this 2011 Act, based on the estimated average cost of the applications. Within one  
 28 year after establishing the fee required under this section, the city or county shall review  
 29 and revise the fee, if necessary, to reflect actual costs based on experience processing ap-  
 30 plications under sections 6 to 11 of this 2011 Act.

31  
 32 **ABOLISHMENT OF ECONOMIC RECOVERY REVIEW COUNCIL**  
 33 **AND ECONOMIC RECOVERY REVIEW COUNCIL FUND**  
 34

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

36 (a) The Economic Recovery Review Council established under section 3 of this 2011 Act  
 37 is abolished and the tenure of office of the members of the council, the executive director  
 38 of the council and all employees ceases.

39 (b) The Economic Recovery Review Council Fund established under section 5 of this 2011  
 40 Act is abolished. The Economic Recovery Review Council shall allocate and redistribute the  
 41 unexpended balance of moneys in the fund to the state agencies that funded the council, as  
 42 described in section 4 (2) of this 2011 Act.

43 (2) The members of the council shall allocate and deliver to the respective state agencies  
 44 whose directors served as members of the council all records and property within the juris-  
 45 diction of the council, and the state agencies whose directors served on the council shall take



1 possession of the records and property. The Governor shall resolve any dispute relating to  
2 the allocation and delivery of records and property under this section, and the Governor's  
3 decision is final.

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

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

13  
14 **SUNSET OF ECONOMIC RECOVERY REVIEW COUNCIL**  
15 **AND EXPEDITED SITE REVIEW**  
16

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

21  
22 **UNIT CAPTIONS**  
23

24 **SECTION 14.** The unit captions used in this 2011 Act are provided only for the conven-  
25 ience of the reader and do not become part of the statutory law of this state or express any  
26 legislative intent in the enactment of this 2011 Act.  
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