

# Senate Bill 1510

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## 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 agencies of executive department, upon receipt of application for discretionary state permit for proposed action, to nominate proposed action to Economic Recovery and Environmental Review Council for enhanced review as project of statewide environmental significance. Specifies criteria for projects of statewide environmental significance.

Authorizes Economic Recovery and Environmental Review Council to designate up to five proposed actions per biennium as projects of statewide environmental significance.

Requires preparation of environmental impact statement for project of statewide environmental significance.

Allows associations and organizations to request contested case hearing on environmental impact statements required under Act.

Expands duties of Economic Recovery and Environmental Review Council. Removes sunset on Economic Recovery and Environmental Review Council and Economic Recovery and Environmental Review Council Fund.

## A BILL FOR AN ACT

1  
2 Relating to projects of statewide environmental significance; creating new provisions; amending ORS  
3 197.723 and 197.727 and sections 2, 3, 4, 5 and 13, chapter 564, Oregon Laws 2011; and repealing  
4 section 12, chapter 564, Oregon Laws 2011.

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

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

7 **(1) Protecting the environment in Oregon is a matter of statewide concern.**

8 **(2) The interrelationship of policies and practices in the management of the environment**  
9 **requires systematic efforts to enhance environmental quality and to control environmental**  
10 **pollution.**

11 **(3) Oregon's environment will be best protected if regulatory activities by the state are**  
12 **conducted so that enhanced consideration may be given to certain proposed actions that have**  
13 **the potential to cause particularly significant adverse environmental impacts.**

14 **SECTION 2. (1) As used in sections 1 to 5 of this 2014 Act, "state permitting agency"**  
15 **means all agencies of the executive department as defined in ORS 174.112.**

16 **(2) Projects of statewide environmental significance are major proposed actions that:**

17 **(a) Require at least one discretionary state permit from a state permitting agency;**

18 **(b) Will have a probable significant adverse impact on the environment or public health;**

19 **and**

20 **(c) Require enhanced consideration because the probable significant adverse impacts of**  
21 **the proposed action on the environment or public health are likely to:**

22 **(A) Be more significant than impacts caused by the types of actions generally permitted**  
23 **under the permit requirements that apply to the major proposed action; or**

24 **(B) Be difficult to evaluate absent the preparation of a detailed environmental impact**

**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 statement under section 4 of this 2014 Act.

2 (3) Projects of statewide environmental significance do not include proposals for:

3 (a) Facilities subject to site certification under the provisions of ORS 469.300 to 469.563,  
4 469.590 to 469.619, 469.930 and 469.992;

5 (b) Chemical process mining operations subject to ORS 517.952 to 517.989; and

6 (c) Actions subject to the standards of the Oregon Ocean Resources Management Pro-  
7 gram established under ORS 196.405 to 196.515.

8 **SECTION 3.** (1) Upon receipt of an application for a discretionary state permit for a  
9 proposed action, a state permitting agency may file with the Economic Recovery and Envi-  
10 ronmental Review Council a copy of the application and a nomination for enhanced consid-  
11 eration of the action. The nomination must include evidence that the proposed action meets  
12 the criteria for a project of statewide environmental significance as set forth in section 2 of  
13 this 2014 Act.

14 (2) The Economic Recovery and Environmental Review Council may require enhanced  
15 consideration for up to five projects of statewide environmental significance per biennium.  
16 For each nomination that the council receives under subsection (1) of this section, the  
17 council shall:

18 (a) Not later than five business days after the date the council receives the nomination,  
19 provide notice to the applicant for the discretionary state permit for a proposed action that  
20 the action has been nominated for enhanced consideration under sections 1 to 5 of this 2014  
21 Act and provide the applicant with an opportunity to comment on the nomination.

22 (b) Review the nomination, the application for a discretionary state permit accompanying  
23 the nomination and any comments received from the applicant in response to the notice of  
24 nomination to determine whether the proposed action meets the criteria for a project of  
25 statewide environmental significance as set forth in section 2 of this 2014 Act.

26 (c) Not later than 30 business days after the date the council receives the nomination,  
27 prepare and issue a written determination detailing whether the proposed action requires  
28 enhanced consideration as a project of statewide environmental significance and, for an  
29 action determined to be a project of statewide environmental significance, designating a lead  
30 agency responsible for conducting enhanced consideration of the project. A determination  
31 under this subsection is not a final order.

32 (3) The council shall designate the state permitting agency that nominated a proposed  
33 action under this section as the lead agency for conducting enhanced consideration if the  
34 action is determined to be a project of statewide environmental significance, unless the  
35 council determines that a different state permitting agency is best suited to serve as the lead  
36 agency for conducting enhanced consideration.

37 (4) The council may charge the applicant a fee calculated to recover the costs reasonably  
38 incurred to conduct enhanced consideration of projects of statewide environmental signif-  
39 icance, including the costs incurred by the lead agency, other state permitting agencies and  
40 local governments in the process of assisting the lead agency with enhanced consideration  
41 of the project. If the fee charged by the council includes costs incurred by the lead agency,  
42 another state permitting agency or a local government, the council shall pay or reimburse  
43 the lead agency, other state permitting agency or local government in the manner provided  
44 by ORS 469.360. The council may require the applicant to pay all or a portion of the fee before  
45 initiating the enhanced consideration process and may require progress payments as the

1 process proceeds. The fee required by this section is in addition to any fee or fees otherwise  
2 required for review of discretionary state permits required for the project. The council shall  
3 deposit moneys received under this section in the Economic Recovery and Environmental  
4 Review Council Fund established by section 5, chapter 564, Oregon Laws 2011.

5 **SECTION 4.** (1) A lead agency designated to conduct enhanced consideration of a project  
6 of statewide environmental significance under section 3 of this 2014 Act shall prepare a de-  
7 tailed environmental impact statement regarding:

8 (a) The environmental impact of the project;

9 (b) Any adverse environmental effects that cannot be avoided if the project is imple-  
10 mented;

11 (c) Alternatives to the project;

12 (d) The relationship between local short-term uses of the environment and the mainte-  
13 nance and enhancement of long-term productivity; and

14 (e) Any irreversible and irretrievable commitments of natural resources that are involved  
15 if the project is completed.

16 (2) Prior to preparing any detailed environmental impact statement, the lead agency  
17 shall:

18 (a) Consult with and obtain the comments of any public body, as defined in ORS 174.109,  
19 federal agency or tribal government that has jurisdiction by law or special expertise with  
20 respect to any environmental impact involved;

21 (b) Provide public notice of the project and the enhanced consideration process that in-  
22 cludes a description of the project in sufficient detail to inform the public of the location and  
23 proposed use of the project;

24 (c) Provide for a public hearing on the project in the land use jurisdiction in which the  
25 project would occur; and

26 (d) Consider the comments and views of the appropriate public bodies, federal agencies  
27 and tribal governments and the public and ensure that the comments accompany the pro-  
28 posal throughout any existing review processes and are made publicly available.

29 (3) Lead agencies shall, to the maximum extent practicable, conduct enhanced consider-  
30 ation under this section in a manner that is integrated with, does not interfere with re-  
31 quirements related to the timing of, and does not duplicate other project review  
32 requirements. Lead agencies are authorized to use, in whole or in part, existing environ-  
33 mental documents if the documents adequately address the environmental considerations set  
34 forth in subsection (1) of this section.

35 **SECTION 5.** (1) An association or organization has standing to request a contested case  
36 hearing under ORS chapter 183 on a detailed environmental impact statement issued under  
37 section 4 of this 2014 Act if:

38 (a) One or more members of the association or organization are adversely affected or  
39 aggrieved by the detailed environmental impact statement;

40 (b) The interests that the association or organization seeks to protect are germane to  
41 the purpose of the association or organization; and

42 (c) The nature of the claim and the relief requested do not require members of the as-  
43 sociation or organization who are adversely affected or aggrieved to participate in the con-  
44 tested case hearing.

45 (2) The Land Use Board of Appeals does not have jurisdiction to consider decisions, as-

1 **pects of decisions or actions taken under sections 1 to 5 of this 2014 Act.**

2 **SECTION 6.** Section 2, chapter 564, Oregon Laws 2011, is amended to read:

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

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

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

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

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

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

12 (d) "State permitting agencies" means the Department of Environmental Quality, the Depart-  
13 ment of State Lands and the Department of Transportation.

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

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

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

18 (c) Create permanent jobs in industrial uses.

19 (d) Involve a significant investment of capital in relation to the economy and population of the  
20 area directly impacted by the development.

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

23 (f) Do not require:

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

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

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

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

35 (4) The Economic Recovery **and Environmental** Review Council, established under section 3,  
36 **chapter 564, Oregon Laws 2011** [*of this 2011 Act*], may expedite the permitting of up to 10 indus-  
37 trial development projects of state significance per biennium through an expedited project review  
38 process in which the council reviews the proposed project to determine whether the project complies  
39 with the standards and criteria for applicable discretionary local permits and discretionary state  
40 permits. The expedited project review by the council must include:

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

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

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

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

4 (c) Review of the complete application.

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

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

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

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

17 (d) Apply the standards and criteria for each discretionary local permit and discretionary state  
18 permit required for the construction and operation of the proposed project and determine, within  
19 120 days after the date a complete application is filed and based on the record and the applicable  
20 law, whether the project complies with the applicable standards and criteria.

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

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

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

36 (9) Issuance of a project certificate:

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

39 (b) Satisfies requirements imposed on a state permitting agency by ORS 197.180 and adminis-  
40 trative rules implementing ORS 197.180.

41 (10) After the council issues a project certificate, state permitting agencies and local govern-  
42 ments shall:

43 (a) Issue discretionary local permits and discretionary state permits as required in the certif-  
44 icate; and

45 (b) Exercise enforcement authority over the permits, including conditions imposed in the certif-

1 icate.

2 (11) The council shall charge the applicant a fee calculated to recover the costs reasonably in-  
 3 curred to conduct expedited project review, including the costs incurred by state permitting agen-  
 4 cies and local governments that make recommendations to the council concerning whether the  
 5 proposed project complies with applicable standards and criteria. If the fee charged by the council  
 6 includes costs incurred by a state permitting agency or a local government, the council shall pay  
 7 or reimburse the state permitting agency or the local government in the manner provided by ORS  
 8 469.360. The council may require the applicant to pay all or a portion of the fee before initiation  
 9 of the expedited project review and may require progress payments as the review proceeds. The fee  
 10 required by this section is in lieu of any fee or fees otherwise required for review of a discretionary  
 11 local permit or a discretionary state permit addressed in the project certificate. The council shall  
 12 deposit moneys received under this section in the Economic Recovery **and Environmental** Review  
 13 Council Fund established under section 5, **chapter 564, Oregon Laws 2011** [*of this 2011 Act*].

14 (12) The Land Use Board of Appeals does not have jurisdiction to consider decisions, aspects  
 15 of decisions or actions taken under sections 1 to 5, **chapter 564, Oregon Laws 2011** [*of this 2011*  
 16 *Act*].

17 (13) A person who participated in the proceedings before the council may appeal a final order  
 18 of the council to the Court of Appeals. The appeal shall proceed in the manner provided by ORS  
 19 197.850, 197.855 and 197.860. However, notwithstanding ORS 197.850 (9) or any other provision of  
 20 law, the court shall reverse or remand the decision only if the court finds that:

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

23 (b) There is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d) or a basis for  
 24 modification or correction of an award as described in ORS 36.710; or

25 (c) The decision was unconstitutional.

26 **SECTION 7.** Section 3, chapter 564, Oregon Laws 2011, is amended to read:

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

29 (a) The Oregon Business Development Department.

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

31 (c) The Department of Transportation.

32 (d) The Department of Environmental Quality.

33 (e) The Department of State Lands.

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

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

39 (a) Review of a proposed industrial development project of state significance under section 2,  
 40 **chapter 564, Oregon Laws 2011** [*of this 2011 Act*].

41 **(b) Review of a nomination for enhanced consideration of a project of statewide envi-**  
 42 **ronmental significance under sections 1 to 5 of this 2014 Act.**

43 [(b)] (c) Designation of a regionally significant industrial area pursuant to [*section 7 of this 2011*  
 44 *Act*] **ORS 197.723.**

45 (4) Members of the council are not entitled to compensation, but at the discretion of the council

1 may be reimbursed, from funds available to the council, for actual and necessary travel and other  
2 expenses incurred by them in the performance of their official duties, in the manner and amount  
3 provided in ORS 292.495.

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

7 (6) A majority of the members of the council constitutes a quorum for the transaction of busi-  
8 ness.

9 **SECTION 8.** Section 4, chapter 564, Oregon Laws 2011, is amended to read:

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

14 (2) The Oregon Business Development Department shall provide administrative support and of-  
15 fice space for the council.

16 (3) The council may employ a program manager.

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

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

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

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

30 (8) In accordance with applicable provisions of ORS chapter 183, the council may adopt rules  
31 necessary for the administration of sections 1 to 5, **chapter 564, Oregon Laws 2011, and sections**  
32 **1 to 5 of this 2014 Act** [of this 2011 Act].

33 **SECTION 9.** Section 5, chapter 564, Oregon Laws 2011, is amended to read:

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

37 (2) Moneys in the Economic Recovery **and Environmental** Review Council Fund are contin-  
38 uously appropriated to the Economic Recovery **and Environmental** Review Council for the purpose  
39 of administering the provisions of [sections 1 to 7 of this 2011 Act] **ORS 197.722 and 197.723,**  
40 **sections 1 to 5, chapter 564, Oregon Laws 2011, and sections 1 to 5 of this 2014 Act.**

41 (3) The Economic Recovery **and Environmental** Review Council Fund consists of [moneys]:

42 (a) **Moneys** collected by the council from the fees authorized by section 2 (11), **chapter 564,**  
43 **Oregon Laws 2011** [of this 2011 Act].

44 (b) **Moneys collected by the council from the fees authorized by section 3 (4) of this 2014**  
45 **Act.**

1        *[(b)]* (c) Any other moneys appropriated to the council.

2        **SECTION 10. Section 12, chapter 564, Oregon Laws 2011, is repealed.**

3        **SECTION 11.** Section 13, chapter 564, Oregon Laws 2011, is amended to read:

4        **Sec. 13.** *[Sections 1 to 5 of this 2011 Act]* **Sections 1 and 2, chapter 564, Oregon Laws 2011,**  
5 are repealed on January 2 of the first even-numbered year after the Employment Department notifies  
6 the Economic Recovery **and Environmental** Review Council and the Office of the Legislative  
7 Counsel that the annual average unemployment rate for the most recent calendar year in Oregon  
8 is less than six percent.

9        **SECTION 12.** ORS 197.723 is amended to read:

10        197.723. (1) Within three years after June 28, 2011, in cooperation with local governments and  
11 private industry, the Economic Recovery **and Environmental** Review Council, by rule, shall desig-  
12 nate at least five and not more than 15 regionally significant industrial areas. The council shall base  
13 the designation of regionally significant industrial areas on the criteria in the definition of “re-  
14 gionally significant industrial area” and the judgment of the council concerning the relative impor-  
15 tance of the areas in terms of potential, long-term job creation.

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

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

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

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

27        (b) A local government may not adopt a provision of a comprehensive plan or land use regu-  
28 lation that allows new nonindustrial uses within the area that conflict with existing or planned in-  
29 dustrial uses.

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

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

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

37        (B) Clearly maintaining the important site characteristics and functions that led to the desig-  
38 nation of the site as a regionally significant industrial area.

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

41        (a) To protect public health or safety; or

42        (b) To implement federal law.

43        (6) If 50 percent of the developable land within a regionally significant industrial area has not  
44 been developed within 10 years after designation of the area, the council shall remove the desig-  
45 nation, unless landowners representing a majority of the land within the area request that the des-



1   ignation be continued.

2       (7) Within a regionally significant industrial area, a new industrial use or the expansion of an  
3 existing industrial use is eligible for an expedited industrial land use permit issued under ORS  
4 197.724 if the new or expanded use does not require a change to the acknowledged comprehensive  
5 plan or land use regulations.

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

10       (9) ORS 197.722 to 197.728 do not apply to land in the Willamette River Greenway Plan boundary  
11 between river mile 1 and river mile 11.

12       **SECTION 13.** ORS 197.727 is amended to read:

13       197.727. Each city and county with land use jurisdiction within a regionally significant industrial  
14 area designated by the Economic Recovery **and Environmental** Review Council may establish a fee  
15 for review of an application for an expedited industrial land use permit. The fee must be set at a  
16 level estimated to recover the full cost of processing an application, including the cost of appeals  
17 to a referee under ORS 197.726, based on the estimated cost of the use proposed in the application.

18