

Senate Bill 771

Sponsored by Senator FERRIOLI

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 local government to adopt exception to statewide land use goal without demonstrating that statutory standards for exception have been met for use that is necessary for employer of 10 or more employees under specified circumstance. Requires employer in Willamette Valley seeking exception to provide green-collar jobs at family wage. Requires employer outside Willamette Valley seeking exception to provide family wage. Defines terms.

A BILL FOR AN ACT

1
2 Relating to exception to land use goals; amending ORS 197.732.

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

4 **SECTION 1.** ORS 197.732 is amended to read:

5 197.732. (1) As used in this section:

6 (a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts
7 of any type with adjacent uses.

8 (b) "Exception" means a comprehensive plan provision, including an amendment to an acknowl-
9 edged comprehensive plan, that:

10 (A) Is applicable to specific properties or situations and does not establish a planning or zoning
11 policy of general applicability;

12 (B) Does not comply with some or all goal requirements applicable to the subject properties or
13 situations; and

14 (C) Complies with standards under subsection (2) of this section.

15 (c) "Family wage" means compensation for each hour of work time that the employee is
16 gainfully employed, computed at a rate equal to or greater than twice the minimum wage
17 established in ORS 653.025.

18 (d) "Green-collar jobs" means manual, management and intellectual labor positions that
19 provide a family wage and career track opportunities and either:

20 (A) Contribute directly to preserving or improving environmental quality; or

21 (B) Are performed in a business whose products and services directly improve environ-
22 mental quality.

23 (e) "The Willamette Valley" has the meaning given that term in ORS 215.010.

24 (2) Except as provided in subsections (3) and (4) of this section, a local government may
25 adopt an exception to a goal if:

26 (a) The land subject to the exception is physically developed to the extent that it is no longer
27 available for uses allowed by the applicable goal;

28 (b) The land subject to the exception is irrevocably committed as described by Land Conserva-
29 tion and Development Commission rule to uses not allowed by the applicable goal because existing
30 adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;

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 or

2 (c) The following standards are met:

3 (A) Reasons justify why the state policy embodied in the applicable goals should not apply;

4 (B) Areas that do not require a new exception cannot reasonably accommodate the use;

5 (C) The long term environmental, economic, social and energy consequences resulting from the
6 use at the proposed site with measures designed to reduce adverse impacts are not significantly
7 more adverse than would typically result from the same proposal being located in areas requiring
8 a goal exception other than the proposed site; and

9 (D) The proposed uses are compatible with other adjacent uses or will be so rendered through
10 measures designed to reduce adverse impacts.

11 **(3) A local government in the Willamette Valley may adopt an exception to a goal for a**
12 **use that is authorized by the goal, but cannot comply with the approval standards for that**
13 **type of use, and that is necessary for an employer that employs 10 or more individuals in**
14 **green-collar jobs without finding that the standards of subsection (2) of this section have**
15 **been met. Notwithstanding subsection (6) of this section, the local government approving**
16 **or denying the proposed exception under this subsection shall set forth findings of fact re-**
17 **quired for an exception under this subsection, but need not set forth a statement of reasons**
18 **that demonstrate that the standards of subsection (2) of this section have or have not been**
19 **met.**

20 **(4) A local government outside the Willamette Valley may adopt an exception to a goal**
21 **for a use that is authorized by the goal, but cannot comply with the approval standards for**
22 **that type of use, and that is necessary for an employer that employs 10 or more individuals**
23 **at a family wage without finding that the standards of subsection (2) of this section have**
24 **been met. Notwithstanding subsection (6) of this section, the local government approving**
25 **or denying the proposed exception under this subsection shall set forth findings of fact re-**
26 **quired for an exception under this subsection, but need not set forth a statement of reasons**
27 **that demonstrate that the standards of subsection (2) of this section have or have not been**
28 **met.**

29 ~~[(3)]~~ **(5)** The commission shall adopt rules establishing:

30 (a) That an exception **under subsection (2) of this section** may be adopted to allow a use au-
31 thorized by a statewide planning goal that cannot comply with the approval standards for that type
32 of use;

33 (b) Under what circumstances particular reasons may or may not be used to justify an exception
34 under subsection (2)(c)(A) of this section; and

35 (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2)
36 of this section.

37 ~~[(4)]~~ **(6)** A local government approving or denying a proposed exception shall set forth findings
38 of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this
39 section have or have not been met.

40 ~~[(5)]~~ **(7)** Each notice of a public hearing on a proposed exception shall specifically note that a
41 goal exception is proposed and shall summarize the issues in an understandable manner.

42 ~~[(6)]~~ **(8)** Upon review of a decision approving or denying an exception:

43 (a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for
44 which there is substantial evidence in the record of the local government proceedings resulting in
45 approval or denial of the exception; **and**

1 (b) **When subsection (2) of this section applies**, the board upon petition, or the commission,
2 shall:

3 **(A)** Determine whether the local government's findings and reasons demonstrate that the stan-
4 dards of subsection (2) of this section have or have not been met; and

5 [[c)] **(B)** [*The board or commission shall*] Adopt a clear statement of reasons that sets forth the
6 basis for the determination that the standards of subsection (2) of this section have or have not been
7 met.

8 [[7)] **(9)** The commission shall by rule establish the standards required to justify an exception
9 to the definition of "needed housing" authorized by ORS 197.303.

10 [[8)] **(10)** An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replace-
11 ment Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

12

Senate Bill 764

Sponsored by Senator FERRIOLI

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**.

Requires agency to include comparative analysis of costs and benefits of rule in notice of proposed rulemaking. Requires agency to appoint advisory committee if association or group of 10 or more individuals objects to comparative analysis of costs and benefits stated in notice.

A BILL FOR AN ACT

1
2 Relating to administrative rules; amending ORS 183.333 and 183.335.

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

4 **SECTION 1.** ORS 183.335 is amended to read:

5 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
6 of its intended action:

7 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
8 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

9 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

10 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
11 subsection (8) of this section; and

12 (d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons
13 specified in subsection (15) of this section.

14 (2)(a) The notice required by subsection (1) of this section must include:

15 (A) A caption of not more than 15 words that reasonably identifies the subject matter of the
16 agency's intended action. The agency shall include the caption on each separate notice, statement,
17 certificate or other similar document related to the intended action.

18 (B) An objective, simple and understandable statement summarizing the subject matter and
19 purpose of the intended action in sufficient detail to inform a person that the person's interests may
20 be affected, and the time, place and manner in which interested persons may present their views on
21 the intended action.

22 (b) The agency shall include with the notice of intended action given under subsection (1) of this
23 section:

24 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
25 promulgation of the rule;

26 (B) A citation of the statute or other law the rule is intended to implement;

27 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the
28 need;

29 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
30 the agency in considering the need for and in preparing the rule, and a statement of the location
31 at which those documents are available for public inspection. The list may be abbreviated if neces-

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 sary, and if so abbreviated there shall be identified the location of a complete list;

2 (E) A statement of fiscal impact identifying state agencies, units of local government and the
3 public that may be economically affected by the adoption, amendment or repeal of the rule and an
4 estimate of that economic impact on state agencies, units of local government and the public. In
5 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
6 able information to project any significant economic effect of that action on businesses which shall
7 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
8 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
9 scribed in ORS 183.534;

10 (F) **A comparative analysis of the costs and benefits of the proposed rule including:**

11 (i) **A comparison of the cost to enforce the rule to the cost of enforcing other rules;**

12 (ii) **A determination of the cost of achieving the specified outcome of the rule;**

13 (iii) **A comparison of the cost of enforcing compliance with the rule to the cost of vol-**
14 **untary compliance with the rule by individuals and businesses; and**

15 (iv) **A determination of the ability of the agency to absorb the cost of enforcing compli-**
16 **ance with the rule if the agency's budget is reduced by 10 percent;**

17 [~~F~~] (G) If an advisory committee is not appointed under the provisions of ORS 183.333, an ex-
18 planation as to why no advisory committee was used to assist the agency in drafting the rule; and

19 [~~G~~] (H) A request for public comment on whether other options should be considered for
20 achieving the rule's substantive goals while reducing the negative economic impact of the rule on
21 business.

22 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
23 section from publication in the bulletin referred to in ORS 183.360.

24 (d) When providing notice of an intended action under subsection (1)(c) of this section, the
25 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an
26 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall
27 show all changes to the rule by striking through material to be deleted and underlining all new
28 material, or by any other method that clearly shows all new and deleted material.

29 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
30 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
31 request received from 10 persons or from an association having not less than 10 members before the
32 earliest date that the rule could become effective after the giving of notice pursuant to subsection
33 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
34 notice of the hearing at least 21 days before the hearing to the person who has requested the
35 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
36 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
37 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
38 consider fully any written or oral submission.

39 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
40 and the rule for which the hearing is to be conducted applies only to a limited geographical area
41 within this state, or affects only a limited geographical area within this state, the hearing shall be
42 conducted within the geographical area at the place most convenient for the majority of the resi-
43 dents within the geographical area. At least 14 days before a hearing conducted under this para-
44 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
45 in a newspaper of general circulation published within the geographical area that is affected by the

1 rule or to which the rule applies. If a newspaper of general circulation is not published within the
2 geographical area that is affected by the rule or to which the rule applies, the publication shall be
3 made in the newspaper of general circulation published closest to the geographical area.

4 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
5 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
6 in the proposed adoption, amendment or repeal of any rule to written submissions.

7 (d) If requested by at least five persons before the earliest date that the rule could become ef-
8 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall
9 provide a statement that identifies the objective of the rule and a statement of how the agency will
10 subsequently determine whether the rule is in fact accomplishing that objective.

11 (e) An agency that receives data or views concerning proposed rules from interested persons
12 shall maintain a record of the data or views submitted. The record shall contain:

13 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
14 amend or repeal a rule.

15 (B) A recording or summary of oral submissions received at hearings held for the purpose of
16 receiving those submissions.

17 (C) Any public comment received in response to the request made under subsection [(2)(b)(G)]
18 (2)(b)(H) of this section and the agency's response to that comment.

19 (D) Any statements provided by the agency under paragraph (d) of this subsection.

20 (4) Upon request of an interested person received before the earliest date that the rule could
21 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
22 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
23 requesting person an opportunity to submit data, views or arguments concerning the proposed
24 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
25 to subsection (5) of this section.

26 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
27 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
28 practicable, if the agency prepares:

29 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
30 the public interest or the interest of the parties concerned and the specific reasons for its findings
31 of prejudice;

32 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
33 promulgation of the rule;

34 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
35 need;

36 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
37 the agency in considering the need for and in preparing the rule, and a statement of the location
38 at which those documents are available for public inspection; and

39 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
40 183.534.

41 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
42 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
43 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
44 (4) of this section.

45 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary

1 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

2 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
3 prior notice or hearing if the amendment is solely for the purpose of:

4 (a) Changing the name of an agency by reason of a name change prescribed by law;

5 (b) Changing the name of a program, office or division within an agency as long as the change
6 in name does not have a substantive effect on the functions of the program, office or division;

7 (c) Correcting spelling;

8 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
9 meaning of the rule;

10 (e) Correcting statutory or rule references; or

11 (f) Correcting addresses or telephone numbers referred to in the rules.

12 (8)(a) Any person may request in writing that an agency send to the person copies of the
13 agency's notices of intended action issued under subsection (1) of this section. The person must
14 provide an address where the person elects to receive notices. The address provided may be a postal
15 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
16 address.

17 (b) A request under this subsection must indicate that the person requests one of the following:

18 (A) The person may request that the agency mail paper copies of the proposed rule and other
19 information required by subsection (2) of this section to the postal mailing address.

20 (B) If the agency posts notices of intended action on a website, the person may request that the
21 agency mail the information required by subsection (2)(a) of this section to the postal mailing ad-
22 dress with a reference to the website where electronic copies of the proposed rule and other infor-
23 mation required by subsection (2) of this section are posted.

24 (C) The person may request that the agency electronically mail the information required by
25 subsection (2)(a) of this section to the electronic mailing address, and either provide electronic
26 copies of the proposed rule and other information required by subsection (2) of this section or pro-
27 vide a reference to a website where electronic copies of the proposed rule and other information
28 required by subsection (2) of this section are posted.

29 (c) Upon receipt of any request under this subsection, the agency shall acknowledge the request,
30 establish a mailing list and maintain a record of all mailings made pursuant to the request. Agen-
31 cies may establish procedures for establishing the mailing lists and keeping the mailing lists current.
32 Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of
33 the lists.

34 (d) Members of the Legislative Assembly who receive notices under subsection (15) of this sec-
35 tion may request that an agency furnish paper copies of the notices.

36 (9) This section does not apply to rules establishing an effective date for a previously effective
37 rule or establishing a period during which a provision of a previously effective rule will apply.

38 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to
39 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
40 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
41 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
42 279C.800 to 279C.870 relating to public contracts and purchasing.

43 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted
44 in substantial compliance with the provisions of this section in effect on the date that the notice
45 required under subsection (1) of this section is delivered to the Secretary of State for the purpose

1 of publication in the bulletin referred to in ORS 183.360.

2 (b) In addition to all other requirements with which rule adoptions must comply, a rule is not
3 valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS
4 183.715.

5 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with
6 subsection (2)(a)(A) of this section.

7 (12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph
8 (b) of this subsection, an agency may correct its failure to substantially comply with the require-
9 ments of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long
10 as the noncompliance did not substantially prejudice the interests of persons to be affected by the
11 rule.

12 (b) An agency may use an amended filing to correct a failure to include **or to correct** a fiscal
13 impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section,
14 **or a comparative analysis of the costs and benefits of the rule, as required by subsection**
15 **(2)(b)(F) of this section,** [*to correct an inaccurate fiscal impact statement,*] only if the agency devel-
16 oped the fiscal impact statement **or comparative analysis** with the assistance of an advisory com-
17 mittee [*or fiscal impact advisory committee*] appointed under ORS 183.333.

18 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
19 agency need not be based upon or supported by an evidentiary record.

20 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
21 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
22 agency or person unless the extension applies equally to all interested agencies and persons. An
23 agency shall not consider any submission made by another agency after the final deadline has
24 passed.

25 (15) The notices required under subsections (1) and (3) of this section must be given by the
26 agency to the following persons:

27 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
28 within two years before notice is given under subsection (1) of this section, notice shall be given to
29 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
30 cochairs of all committees that reported the bill out, except for those committees whose sole action
31 on the bill was referral to another committee.

32 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
33 passed within two years before notice is given under subsection (1) of this section, notice shall be
34 given to the chair or cochairs of any interim or session committee with authority over the subject
35 matter of the rule.

36 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
37 to the Speaker of the House of Representatives and to the President of the Senate who are in office
38 on the date the notice is given.

39 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
40 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
41 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
42 with the legislation from which the proposed adoption, amendment or repeal results.

43 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
44 to the agency proposing the adoption, amendment or repeal.

45 **SECTION 2.** ORS 183.333 is amended to read:

1 183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that
2 whenever possible the public be involved in the development of public policy by agencies and in the
3 drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-
4 mum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-
5 visory committee that will represent the interests of persons likely to be affected by the rule, or use
6 any other means of obtaining public views that will assist the agency in drafting the rule.

7 (2) Any agency in its discretion may develop a list of interested parties and inform those parties
8 of any issue that may be the subject of rulemaking and invite the parties to make comments on the
9 issue.

10 (3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)
11 of this section, the agency shall seek the committee's recommendations on whether the rule will
12 have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
13 nificant adverse impact on small businesses. If the committee indicates that the rule will have a
14 significant adverse impact on small businesses, the agency shall seek the committee's recommen-
15 dations on compliance with ORS 183.540.

16 (4) An agency shall consider an advisory committee's recommendations provided under sub-
17 section (3) of this section in preparing the statement of fiscal impact required by ORS 183.335
18 (2)(b)(E).

19 (5) If an agency does not appoint an advisory committee for consideration of a permanent rule
20 under subsection (1) of this section and 10 or more persons likely to be affected by the rule object
21 to the agency's [*statement of fiscal impact as required by*] **notice with respect to** ORS 183.335
22 (2)(b)(E) **or (F)**, or an association with at least 10 members likely to be affected by the rule objects
23 to [*the statement*] **those portions of the notice**, the agency shall appoint [*a fiscal impact*] **an** advi-
24 sory committee to provide recommendations on whether the rule will have a fiscal impact and what
25 the extent of that impact will be **or recommendations on the comparative costs and benefits**
26 **of the rule**. An objection under this subsection must be made not later than 14 days after the no-
27 tice required by ORS 183.335 (1) is given. If the agency determines that the [*statement*] **notice** does
28 not adequately reflect the rule's fiscal impact **or the comparative costs and benefits of the**
29 **rule**, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a)
30 by at least 20 days. The agency shall include any recommendations from the committee in the record
31 maintained by the agency for the rule.

32 (6) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with
33 a judgment or a settlement of a judicial proceeding.

34 (7) If an agency is required by law to appoint an advisory committee under this section, the
35 agency may not appoint an officer, employee or other agent of the agency to serve as a member of
36 the advisory committee.

37