

# Senate Bill 795

Sponsored by Senators WHITSETT, MORRISETTE, JOHNSON, Representative ROBLAN; Senators FERRIOLI, VERGER, Representatives BARNHART, BOONE, BOQUIST, GARRARD

## 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 applicant for energy facility site certificate to obtain land use approval from local government. Modifies provisions relating to exception process if local government fails to concur with Energy Facility Siting Council decision. Requires council to direct State Department of Energy to review environmental impact of proposed facility. Allows site certificate to be granted if facility meets council's recommended guidelines for energy generation, conservation and regional consumption. Specifies factors council must consider in adopting guidelines. Requires disclosure of financial ability and criminal history by applicant. Directs Energy Facility Siting Council to adopt standards requiring site certificate applicants to submit certain seismic risk information.

Creates Task Force on Regional Energy Policy and specifies duties and powers of task force. Sunsets task force on date of convening of next regular biennial legislative session.

## A BILL FOR AN ACT

1  
2 Relating to energy facility siting; creating new provisions; and amending ORS 469.310, 469.330,  
3 469.350, 469.360, 469.370, 469.373, 469.401, 469.441, 469.501, 469.503 and 469.504.

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

5 **SECTION 1.** ORS 469.310 is amended to read:

6 469.310. In the interests of the public health and the welfare of the people of this state, it is the  
7 declared public policy of this state that the siting, construction and operation of energy facilities  
8 shall be accomplished in a manner consistent with protection of the public health and safety and in  
9 compliance with the energy policy and air, water, solid waste, land use and other environmental  
10 protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.563, 469.590 to  
11 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum ex-  
12 tent permitted by the United States Constitution and to establish in cooperation with the federal  
13 government a comprehensive system for the siting, monitoring and regulating of the location, con-  
14 struction and operation of all energy facilities in this state. [*It is furthermore the policy of this state,*  
15 *notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS 469.020, that the need for*  
16 *new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competi-*  
17 *tion in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring*  
18 *determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in*  
19 *ORS 469.503.*]

20 **SECTION 2.** ORS 469.330 is amended to read:

21 469.330. (1) Each applicant for a site certificate shall submit to the Energy Facility Siting  
22 Council a notice of intent to file an application for a site certificate. The notice of intent must  
23 provide information:

24 (a) About the proposed site and the characteristics of the facility sufficient for the preparation  
25 of the State Department of Energy's project order; **and**

26 (b) **Documenting the applicant's technical expertise, the applicant's history in energy fa-**

**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 **cility construction and operation and the financial backing for the facility construction. The**  
 2 **applicant's history shall provide information about any fines or penalties, including criminal**  
 3 **penalties, assessed against the applicant that pertain to the siting, construction or operation**  
 4 **of an energy facility.**

5 (2) The council shall cause public notice to be given upon receipt of a notice of intent by the  
 6 council. The public notice shall provide a description of the proposed site and facility in sufficient  
 7 detail to inform the public of the location and proposed use of the site.

8 (3) Following review of the notice of intent and any public comments received in response to the  
 9 notice of intent, the department may hold a preapplication conference with state agencies and local  
 10 governments that have regulatory or advisory responsibility with respect to the facility. After the  
 11 preapplication conference, the department shall issue a project order establishing the statutes, ad-  
 12 ministrative rules, council standards, local ordinances, application requirements and study require-  
 13 ments for the site certificate application. A project order is not a final order.

14 (4) A project order issued under subsection (3) of this section may be amended at any time by  
 15 either the department or the council.

16 **SECTION 3.** ORS 469.360 is amended to read:

17 469.360. (1) The Energy Facility Siting Council shall evaluate each site certificate application.  
 18 As part of its evaluation, the council:

19 (a) May commission an independent study by an independent contractor, state agency, local  
 20 government or any other person, of any aspect of the proposed facility within its statutory authority  
 21 to review.

22 (b) **Shall direct the State Department of Energy to review, in a process that includes**  
 23 **provisions for public hearings and comment and for consideration of the public comment:**

24 (A) **The environmental impact of the proposed facility;**

25 (B) **Any adverse environmental effects that cannot be avoided if the facility is sited;**

26 (C) **Alternatives to the proposed facility, including modifications to the facility that would**  
 27 **lessen any adverse environmental effects;**

28 (D) **The relationship between the local, short-term benefits of siting the proposed facility**  
 29 **and the maintenance and enhancement of the long-term productivity of the environment; and**

30 (E) **Any matter that the council determines essential to the adequate appraisal of the**  
 31 **effects of the proposed facility on the environment.**

32 (2) The council [*may*] **shall** compensate a state agency or local government for expenses related  
 33 to:

34 (a) Review of the notice of intent, **an application for land use approval, the site certificate**  
 35 **application or a request for an expedited review;**

36 (b) The state agency's or local government's participation in a council proceeding; and

37 (c) The performance of specific studies necessary to complete the council's statutory evaluation  
 38 of the application.

39 [(2)] (3) The council may enter into a contract under subsection (1) of this section only after the  
 40 council makes a determination that the council is unable to fully evaluate the application without  
 41 assistance and identifies specific issues to be addressed and only pursuant to a written contract or  
 42 agreement with the independent contractor, state agency, local government or other person. The  
 43 council shall compensate the independent contractor, state agency, local government or other person  
 44 only to the extent the costs are directly related to issues identified by the council.

45 [(3)] (4) The council shall provide funding to state agencies, cities or counties required to con-

1 tract with another entity to complete comments and recommendations pursuant to ORS 469.350.

2 [(4)] (5) In addition to compensating state agencies and local governments pursuant to [*sub-*  
3 *section*] **subsections (1) and (2)** of this section, the council may provide funding to the Department  
4 of Environmental Quality for the department to conduct modeling and provide technical assistance  
5 to expedite preparation, submission and review of applications for permits under ORS 468A.040 re-  
6 quired for energy facilities.

7 **SECTION 4.** ORS 469.370 is amended to read:

8 469.370. (1) Based on its review of the application and the comments and recommendations on  
9 the application from state agencies and local governments, the State Department of Energy shall  
10 prepare and issue a draft proposed order on the application.

11 (2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold  
12 one or more public hearings on the application for a site certificate in the affected area and else-  
13 where, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days  
14 before the hearing **to interested parties and to businesses and residences within a four-mile**  
15 **radius of the facility.** The notice shall, at a minimum:

16 (a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;

17 (b) Include a description of the facility and the facility's general location;

18 (c) Include the name of an agency representative to contact and the telephone number where  
19 additional information may be obtained;

20 (d) State that copies of the application and draft proposed order are available for inspection at  
21 no cost and will be provided at a reasonable cost; and

22 (e) State that failure to raise an issue in person or in writing prior to the close of the record  
23 of the public hearing with sufficient specificity to afford the decision maker an opportunity to re-  
24 spond to the issue precludes consideration of the issue in a contested case.

25 (3) Any issue that may be the basis for a contested case shall be raised not later than the close  
26 of the record at or following the final public hearing prior to issuance of the department's proposed  
27 order. Such issues shall be raised with sufficient specificity to afford the council, the department  
28 and the applicant an adequate opportunity to respond to each issue. A statement of this requirement  
29 shall be made at the commencement of any public hearing on the application.

30 (4) After reviewing the application, the draft proposed order and any testimony given at the  
31 public hearing and after consulting with other agencies, the department shall issue a proposed order  
32 recommending approval or rejection of the application. The department shall issue public notice of  
33 the proposed order, that shall include notice of a contested case hearing specifying a deadline for  
34 requests to participate as a party or limited party and a date for the prehearing conference.

35 (5) Following receipt of the proposed order from the department, the council shall conduct a  
36 contested case hearing on the application for a site certificate in accordance with the applicable  
37 provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be  
38 a party to the contested case. The council may permit any other person to become a party to the  
39 contested case in support of or in opposition to the application only if the person appeared in person  
40 or in writing at the public hearing on the site certificate application. Issues that may be the basis  
41 for a contested case shall be limited to those raised on the record of the public hearing under sub-  
42 section (3) of this section, unless:

43 (a) The department failed to follow the requirements of subsection (2) or (3) of this section; or

44 (b) The action recommended in the proposed order, including any recommended conditions of the  
45 approval, differs materially from that described in the draft proposed order, in which case only new

1 issues related to such differences may be raised.

2 (6) If no person requests party status to challenge the department's proposed order, the proposed  
3 order shall be forwarded to the council and the contested case hearing shall be concluded.

4 (7) At the conclusion of the contested case, the council shall issue a final order, either approving  
5 or rejecting the application based upon the standards adopted under ORS 469.501 and any additional  
6 statutes, rules or local ordinances determined to be applicable to the facility by the project order,  
7 as amended. The council shall make its decision by the affirmative vote of at least four members  
8 approving or rejecting any application for a site certificate. The council may amend or reject the  
9 proposed order, so long as the council provides public notice of its hearing to adopt a final order,  
10 and provides an opportunity for the applicant and any party to the contested case to comment on  
11 material changes to the proposed order, including material changes to conditions of approval re-  
12 sulting from the council's review. The council's order shall be considered a final order for purposes  
13 of appeal.

14 (8) Rejection or approval of an application, together with any conditions that may be attached  
15 to the certificate, shall be subject to judicial review as provided in ORS 469.403.

16 (9) The council shall either approve or reject an application for a site certificate:

17 (a) Within 24 months after filing an application for a nuclear installation, or for a thermal power  
18 plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more  
19 than 200,000 kilowatts;

20 (b) Within nine months after filing of an application for a site certificate for a combustion tur-  
21 bine power plant, a geothermal-fueled power plant or an underground storage facility for natural  
22 gas;

23 (c) Within six months after filing an application for a site certificate for an energy facility, if  
24 the application is:

25 (A) To expand an existing industrial facility to include an energy facility;

26 (B) To expand an existing energy facility to achieve a nominal electric generating capacity of  
27 between 25 and 50 megawatts; or

28 (C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

29 (d) Within 12 months after filing an application for a site certificate for any other energy facil-  
30 ity.

31 (10) At the request of the applicant, the council shall allow expedited processing of an applica-  
32 tion for a site certificate for an energy facility with an average electric generating capacity of less  
33 than 100 megawatts. No notice of intent shall be required. Following approval of a request for ex-  
34 pedited review, the department shall issue a project order, which may be amended at any time. The  
35 council shall either approve or reject an application for a site certificate within six months after  
36 filing the site certificate application if there are no intervenors in the contested case conducted  
37 under subsection (5) of this section. If there are intervenors in the contested case, the council shall  
38 either approve or reject an application within nine months after filing the site certificate applica-  
39 tion. For purposes of this subsection, the generating capacity of a thermal power plant is the  
40 nameplate rating of the electrical generator proposed to be installed in the plant.

41 (11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this  
42 section shall not result in the automatic issuance or denial of a site certificate.

43 (12) The council shall specify in the site certificate a date by which construction of the facility  
44 must begin.

45 (13) For a facility that is subject to and has been or will be reviewed by a federal agency under

1 the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its  
 2 site certificate review, to the maximum extent feasible, in a manner that is consistent with and does  
 3 not duplicate the federal agency review, **except when reviewing the environmental effects of the**  
 4 **facility pursuant to ORS 469.360.** [*Such*] The coordination shall include, but need not be limited  
 5 to:

6 (a) Elimination of duplicative application, study and reporting requirements;

7 (b) Council use of information generated and documents prepared for the federal agency review;

8 (c) Development with the federal agency and reliance on a joint record to address applicable  
 9 council standards;

10 (d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame  
 11 consistent with the federal agency review; and

12 (e) To the extent consistent with applicable state standards, establishment of conditions in any  
 13 site certificate that are consistent with the conditions established by the federal agency.

14 **SECTION 5.** ORS 469.503 is amended to read:

15 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine  
 16 that the preponderance of the evidence on the record supports the following conclusions:

17 (1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or  
 18 the overall public benefits of the facility outweigh the damage to the resources protected by the  
 19 standards the facility does not meet.

20 (2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any  
 21 applicable carbon dioxide emissions standard adopted by the council or enacted by statute. [*Base*  
 22 *load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other*  
 23 *fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule*  
 24 *pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the*  
 25 *means by which an applicant may comply with the applicable standard.*] **The emissions standards**  
 26 **and means for compliance with the applicable standards are as follows:**

27 (a) **For base load gas plants,** the net carbon dioxide emissions rate of the proposed base load  
 28 gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric  
 29 power output, with carbon dioxide emissions and net electric power output measured on a new and  
 30 clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide  
 31 emissions standard for base load gas plants if the council finds that the most efficient stand-alone  
 32 combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demon-  
 33 strated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt  
 34 hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission  
 35 standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net  
 36 electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide  
 37 emissions standard at 17 percent below this rate.

38 (b) **For fossil-fueled power plants other than base load gas plants,** the council shall adopt  
 39 carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide  
 40 emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide  
 41 emissions standards, the council shall consider and balance at least the following principles, the  
 42 findings on which shall be contained in the rulemaking record:

43 (A) Promote facility fuel efficiency;

44 (B) Promote efficiency in the resource mix;

45 (C) Reduce net carbon dioxide emissions;

1 (D) Promote cogeneration that reduces net carbon dioxide emissions;

2 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding  
3 carbon dioxide emissions;

4 (F) Minimize transaction costs;

5 (G) Include an alternative process that separates decisions on the form and implementation of  
6 offsets from the final decision on granting a site certificate;

7 (H) Allow either the applicant or third parties to implement offsets;

8 (I) Be attainable and economically achievable for various types of power plants;

9 (J) Promote public participation in the selection and review of offsets;

10 (K) Promote prompt implementation of offset projects;

11 (L) Provide for monitoring and evaluation of the performance of offsets; and

12 (M) Promote reliability of the regional electric system.

13 (c) The council shall determine whether the applicable carbon dioxide emissions standard is met  
14 by first determining the gross carbon dioxide emissions that are reasonably likely to result from the  
15 operation of the proposed energy facility. Such determination shall be based on the proposed design  
16 of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted  
17 carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions  
18 reduction necessary to meet the applicable standard, the applicant may elect to use any of subpar-  
19 agraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the  
20 amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's  
21 offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide  
22 emissions standard. If the council or a court on judicial review concludes that the applicant has  
23 not demonstrated compliance with the applicable carbon dioxide emissions standard under subpara-  
24 graphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed  
25 to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or  
26 a court shall find compliance based on such agreement.

27 (A) The facility will sequentially produce electrical and thermal energy from the same fuel  
28 source, and the thermal energy will be used to displace another source of carbon dioxide emissions  
29 that would have otherwise continued to occur, in which case the council shall adopt site certificate  
30 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

31 (B) The applicant or a third party will implement particular offsets, in which case the council  
32 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall  
33 not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide  
34 emissions be achieved. The council shall determine the quantity of carbon dioxide emissions re-  
35 duction that is reasonably likely to result from each of the proposed offsets based on the criteria in  
36 sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall  
37 not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide  
38 emissions reduction in another regulatory setting. In addition, the fact that an applicant or other  
39 parties involved with an offset may derive benefits from the offset other than the reduction of car-  
40 bon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

41 (i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction  
42 will be achieved by the offset;

43 (ii) The ability of the council to determine the actual quantity of carbon dioxide emissions re-  
44 duction resulting from the offset, taking into consideration any proposed measurement, monitoring  
45 and evaluation of mitigation measure performance; and

1 (iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence  
2 of the offsets.

3 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to  
4 produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide  
5 emissions standard, in which case the funds shall be used as specified in paragraph (d) of this sub-  
6 section. Unless modified by the council as provided below, the payment of 57 cents shall be deemed  
7 to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the  
8 offset funds using the monetary offset rate and the level of emissions reduction required to meet the  
9 applicable standard. If a site certificate is approved based on this subparagraph, the council may  
10 not adjust the amount of such offset funds based on the actual performance of offsets. After three  
11 years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of  
12 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based  
13 on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the stand-  
14 ard will be economically achievable with the modified rate for natural gas-fired power plants. Fol-  
15 lowing the initial three-year period, the council may increase or decrease the monetary offset rate  
16 no more than 50 percent in any two-year period.

17 (D) Any other means that the council adopts by rule for demonstrating compliance with any  
18 applicable carbon dioxide emissions standard.

19 (d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or  
20 in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organiza-  
21 tion. The applicant may identify an organization that has applied for, but has not received, an ex-  
22 emption from federal income taxation, but the council may not find that the organization is a  
23 qualified organization unless the organization is exempt from federal taxation under section 501(c)(3)  
24 of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate  
25 holder shall provide a bond or comparable security in a form reasonably acceptable to the council  
26 to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this  
27 paragraph. Such security shall be provided by the date specified in the site certificate, which shall  
28 be no later than the commencement of construction of the facility. The site certificate shall require  
29 that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the  
30 council finds that no qualified organization exists, in which case the site certificate shall require  
31 that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

32 (A) The site certificate holder shall disburse the offset funds and any other funds required by  
33 sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

34 (i) When the site certificate holder receives written notice from the qualified organization cer-  
35 tifying that the qualified organization is contractually obligated to pay any funds to implement off-  
36 sets using the offset funds, the site certificate holder shall make the requested amount available to  
37 the qualified organization unless the total of the amount requested and any amounts previously re-  
38 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall  
39 be made available. The qualified organization shall use at least 80 percent of the offset funds for  
40 contracts to implement offsets. The qualified organization may use up to 20 percent of the offset  
41 funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

42 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-  
43 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first  
44 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount  
45 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount

1 compensates the qualified organization for its costs of selecting offsets and contracting for the im-  
2 plementation of offsets.

3 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-  
4 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by  
5 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization  
6 the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this  
7 subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified  
8 organization be a basis for revocation of the site certificate or any other enforcement action by the  
9 council with respect to the site certificate holder.

10 (B) If the council finds there is no qualified organization, the site certificate holder shall select  
11 one or more offsets to be implemented pursuant to criteria established by the council. The site cer-  
12 tificate holder shall give written notice of its selections to the council and to any person requesting  
13 notice. On petition by the State Department of Energy, or by any person adversely affected or  
14 aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the  
15 council may review such selection. The petition must be received by the council within 30 days of  
16 the date the notice of selection is placed in the United States mail, with first-class postage prepaid.  
17 The council shall approve the site certificate holder's selection unless it finds that the selection is  
18 not consistent with criteria established by the council. The site certificate holder shall contract to  
19 implement the selected offsets within 18 months after commencing construction of the facility unless  
20 good cause is shown requiring additional time. The contracts shall obligate the expenditure of at  
21 least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the  
22 offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement  
23 the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set  
24 forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular  
25 types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not  
26 require the site certificate holder to select particular offsets, and shall allow the site certificate  
27 holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other  
28 provision of this section, the site certificate holder's financial liability for implementation, monitor-  
29 ing, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount  
30 of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct  
31 by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a  
32 basis for revocation of the site certificate or any other enforcement action by the council with re-  
33 spect to the site certificate holder.

34 (C) Every qualified organization that has received funds under this paragraph shall, at five-year  
35 intervals beginning on the date of receipt of such funds, provide the council with the information  
36 the council requests about the qualified organization's performance. The council shall evaluate the  
37 information requested and, based on such information, shall make any recommendations to the  
38 Legislative Assembly that the council deems appropriate.

39 (e) As used in this subsection:

40 (A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output  
41 as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60  
42 percent humidity.

43 (B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for  
44 periods during which an alternative fuel may be used and when such alternative fuel use shall not  
45 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and



1 where the applicant requests and the council adopts no condition in the site certificate for the  
2 generating facility that would limit hours of operation other than restrictions on the use of alter-  
3 native fuel. The council shall assume a 100-percent capacity factor for such plants and a 30-year  
4 life for the plants for purposes of determining gross carbon dioxide emissions.

5 (C) "Fossil-fueled power plant" means a generating facility that produces electric power from  
6 natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

7 (D) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A),  
8 (B) and (D).

9 (E) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the pro-  
10 posed energy facility measured on a new and clean basis.

11 (F) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy  
12 facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of  
13 cogeneration or offsets.

14 (G) "New and clean basis" means the average carbon dioxide emissions rate per hour and net  
15 electric power output of the energy facility, without degradation, as determined by a 100-hour test  
16 at full power completed during the first 12 months of commercial operation of the energy facility,  
17 with the results adjusted for the average annual site condition for temperature, barometric pressure  
18 and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide  
19 per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of  
20 distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate  
21 of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by  
22 rule set carbon dioxide emissions rates for other fuels.

23 (H) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300  
24 (11)(a)(C) and (E) to (I).

25 (I) "Offset" means an action that will be implemented by the applicant, a third party or through  
26 the qualified organization to avoid, sequester or displace emissions of carbon dioxide.

27 (J) "Offset funds" means the amount of funds determined by the council to satisfy the applicable  
28 carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

29 (K) "Qualified organization" means an entity that:

30 (i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as  
31 amended and in effect on December 31, 1996;

32 (ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do  
33 business in the State of Oregon;

34 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to  
35 this section are used for offsets that will result in the direct reduction, elimination, sequestration  
36 or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are  
37 made by a body composed of seven voting members of which three are appointed by the council,  
38 three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental  
39 nonprofit organization named by the body, and one is appointed by the applicants for site certificates  
40 that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that  
41 require nonvoting membership on the decision-making body for holders of site certificates that have  
42 provided funds not yet disbursed under paragraph (d)(A) of this subsection;

43 (iv) Has made available on an annual basis, beginning after the first year of operation, a signed  
44 opinion of an independent certified public accountant stating that the qualified organization's use  
45 of funds pursuant to this statute conforms with generally accepted accounting procedures except

1 that the qualified organization shall have one year to conform with generally accepted accounting  
2 principles in the event of a nonconforming audit;

3 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least  
4 60 percent of the offset funds to implement offsets within two years after the commencement of  
5 construction of the facility; and

6 (vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this  
7 subsection.

8 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and  
9 rules for which the decision on compliance has been delegated by the federal government to a state  
10 agency other than the council, the facility complies with all other Oregon statutes and administra-  
11 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-  
12 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative  
13 rules, other than those involving federally delegated programs, would result in conflicting conditions  
14 in the site certificate, the council may resolve the conflict consistent with the public interest. A  
15 resolution may not result in the waiver of any applicable state statute.

16 (4) The facility complies with the statewide planning goals adopted by the Land Conservation  
17 and Development Commission.

18 **(5) The facility meets recommended guidelines for energy generation, conservation and**  
19 **consumption in the region. In adopting the recommended guidelines, the council shall con-**  
20 **sider the benefits of using renewable energy resources instead of fossil fuel resources and**  
21 **prioritize siting approval for projects that generate energy by sources other than fossil fuels.**

22 **SECTION 6.** ORS 469.504 is amended to read:

23 469.504. (1) [*A proposed facility shall be found in*] **An applicant may demonstrate** compliance  
24 with the statewide planning goals [*under*] **for purposes of ORS 469.503 (4) if:**

25 (a) [*The facility has received*] **The applicant receives** local land use approval **for the facility**  
26 under the acknowledged comprehensive plan and land use regulations of the affected local govern-  
27 ment; [*or*]

28 [*(b) The Energy Facility Siting Council determines that:*]

29 [*(A) The facility complies with applicable substantive criteria from the affected local government's*  
30 *acknowledged comprehensive plan and land use regulations that are required by the statewide planning*  
31 *goals and in effect on the date the application is submitted, and with any Land Conservation and De-*  
32 *velopment Commission administrative rules and goals and any land use statutes that apply directly to*  
33 *the facility under ORS 197.646;]*

34 [*(B) For an energy facility or a related or supporting facility that must be evaluated against the*  
35 *applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does*  
36 *not comply with one or more of the applicable substantive criteria but does otherwise comply with the*  
37 *applicable statewide planning goals, or that an exception to any applicable statewide planning goal is*  
38 *justified under subsection (2) of this section; or]*

39 [*(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant*  
40 *to subsection (5) of this section, that the proposed facility complies with the applicable statewide plan-*  
41 *ning goals or that an exception to any applicable statewide planning goal is justified under subsection*  
42 *(2) of this section.]*

43 **(b) After public hearings to gather information on the applicable substantive criteria**  
44 **from the acknowledged comprehensive plan and land use regulations of the affected local**  
45 **government, a special advisory group established under ORS 469.480 reports to the Energy**

1 **Facility Siting Council that the facility complies with the applicable substantive criteria; or**

2 (c) **For a facility that is a pipeline or transmission line that is located in two or more**  
 3 **local government jurisdictions, or a wind power generation project, after public hearings to**  
 4 **gather information on the applicable substantive criteria from the acknowledged compre-**  
 5 **hensive plans and land use regulations of the affected local governments, a special advisory**  
 6 **group established under ORS 469.480 reports to the council regarding the information gath-**  
 7 **ered during the hearing process and the council determines that:**

8 (A) **The facility complies with the applicable substantive criteria from the acknowledged**  
 9 **comprehensive plans and land use regulations; or**

10 (B) **Compliance with the statewide planning goals may be achieved by taking an exception**  
 11 **to the applicable goal, but only after the significant environmental, economic, social and en-**  
 12 **ergy consequences anticipated as a result of the facility are identified and the adverse effects**  
 13 **of the facility are mitigated in accordance with rules of the council applicable to the siting**  
 14 **of the facility.**

15 (2) **The council may find goal compliance for a facility that does not otherwise comply with one**  
 16 **or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding**  
 17 **the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process**  
 18 **or any rules of the Land Conservation and Development Commission pertaining to an exception**  
 19 **process goal, the council may take an exception to a goal if, after a joint public hearing held by**  
 20 **the council and a special advisory group and after a determination by the affected local**  
 21 **government concurring in the decision, the council finds:**

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

24 (b) **The land subject to the exception is irrevocably committed as described by the rules of the**  
 25 **Land Conservation and Development Commission to uses not allowed by the applicable goal because**  
 26 **existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-**  
 27 **ticable; or**

28 (c) **The following standards are met:**

29 (A) **Reasons justify why the state policy embodied in the applicable goal should not apply;**

30 (B) **The significant environmental, economic, social and energy consequences anticipated as a**  
 31 **result of the proposed facility have been identified and adverse impacts will be mitigated in ac-**  
 32 **cordance with rules of the council applicable to the siting of the proposed facility; and**

33 (C) **The proposed facility is compatible with other adjacent uses or will be made compatible**  
 34 **through measures designed to reduce adverse impacts.**

35 (3) **If the affected local government fails to concur with the decision of the council to**  
 36 **take an exception to a goal under subsection (2) of this section and the council determines**  
 37 **that an exception is necessary, the affected local government and the council shall meet to**  
 38 **determine whether the parties can resolve the issues that block the affected local govern-**  
 39 **ment from concurring in the decision. If the council and the affected local government are**  
 40 **unable to resolve the issues, the parties shall have the issues resolved by binding arbitration.**

41 [(3)] (4) **If compliance with applicable substantive local criteria and applicable statutes and state**  
 42 **administrative rules would result in conflicting conditions in the site certificate or amended site**  
 43 **certificate, the council shall resolve the conflict consistent with the public interest. A resolution**  
 44 **may not result in a waiver of any applicable state statute.**

45 [(4) *An applicant for a site certificate shall elect whether to demonstrate compliance with the*

1 statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the  
2 election on or before the date specified by the council by rule.]

3 [(5) Upon request by the State Department of Energy, the special advisory group established under  
4 ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable sub-  
5 stantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not re-  
6 commend applicable substantive criteria within the time established in the department's request, the  
7 council may either determine and apply the applicable substantive criteria under subsection (1)(b) of  
8 this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C)  
9 of this section. If the special advisory group recommends applicable substantive criteria for an energy  
10 facility described in ORS 469.300 or a related or supporting facility that does not pass through more  
11 than one local government jurisdiction or more than three zones in any one jurisdiction, the council  
12 shall apply the criteria recommended by the special advisory group. If the special advisory group re-  
13 commends applicable substantive criteria for an energy facility as defined in ORS 469.300 (11)(a)(C) to  
14 (E) or a related or supporting facility that passes through more than one jurisdiction or more than  
15 three zones in any one jurisdiction, the council shall review the recommended criteria and determine  
16 whether to evaluate the proposed facility against the applicable substantive criteria recommended by the  
17 special advisory group, against the statewide planning goals or against a combination of the applicable  
18 substantive criteria and statewide planning goals. In making its determination, the council shall consult  
19 with the special advisory group and shall consider:]

20 [(a) The number of jurisdictions and zones in question;]

21 [(b) The degree to which the applicable substantive criteria reflect local government consideration  
22 of energy facilities in the planning process; and]

23 [(c) The level of consistency of the applicable substantive criteria from the various zones and ju-  
24 risdictions.]

25 [(6)] (5) The council is not subject to ORS 197.180 and a state agency may not require an ap-  
26 plicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

27 [(7)] (6) On or before its next periodic review, each affected local government shall amend its  
28 comprehensive plan and land use regulations as necessary to reflect the decision of the council  
29 pertaining to a site certificate or amended site certificate.

30 [(8)] (7) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local  
31 government's land use approval of a proposed facility [*under subsection (1)(a) of this section*] and the  
32 special advisory group's [*recommendation of applicable substantive criteria*] **report** under subsection  
33 [(5)] (1) of this section shall be subject to judicial review only as provided in ORS 469.403. If the  
34 applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection  
35 shall apply only to proposed projects for which the land use approval of the local government occurs  
36 after the date a notice of intent or an application for expedited processing is submitted to the State  
37 Department of Energy.

38 [(9)] (8) The State Department of Energy, in cooperation with other state agencies, shall provide,  
39 to the extent possible, technical assistance and information about the siting process to local gov-  
40 ernments that request such assistance or that anticipate having a facility proposed in their juris-  
41 diction.

42 **SECTION 7.** ORS 469.373 is amended to read:

43 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,  
44 an applicant may apply under the provisions of this section for expedited review of an application  
45 for a site certificate for an energy facility if the energy facility:

1 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine  
2 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup  
3 power generation;

4 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-  
5 hensive plan, land use regulation or federal land use plan, and is located:

6 (A) At or adjacent to an existing energy facility; or

7 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and

8 (ii) In an area currently zoned or designated for industrial use;

9 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new  
10 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;

11 or

12 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in  
13 the locating of associated transmission lines or new natural gas pipelines outside of existing rights  
14 of way;

15 (d) Requires no new water right or water right transfer;

16 (e) Provides funds to a qualified organization in an amount determined by the council to be  
17 sufficient to produce any required reduction in carbon dioxide emissions as specified in ORS 469.503  
18 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by  
19 the energy facility for the life of the energy facility; and

20 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing  
21 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment  
22 permit, if needed, within the expedited review process time frame and has written confirmation from  
23 the wastewater facility permit holder that the additional wastewater load will be accommodated by  
24 the facility without resulting in a significant thermal **or contaminant** increase in the facility  
25 effluent or without requiring any changes to the wastewater facility National Pollutant Discharge  
26 Elimination System permit;

27 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-  
28 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-  
29 idence from the municipal corporation that:

30 (i) The municipal corporation has included, or intends to include, the process wastewater load  
31 from the energy facility in an application for a National Pollutant Discharge Elimination System  
32 permit; and

33 (ii) All conditions required of the energy facility to allow the discharge of process wastewater  
34 from the energy facility will be satisfied; or

35 (C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-  
36 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-  
37 charge can likely be permitted within the expedited review process time frame and that the  
38 discharge will not require:

39 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water  
40 general permit for construction activities; or

41 (ii) A change in any effluent limit or discharge location under an existing National Pollutant  
42 Discharge Elimination System or water pollution control facility permit.

43 (2) An applicant seeking expedited review under this section shall submit documentation to the  
44 State Department of Energy, prior to the submission of an application for a site certificate, that  
45 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this

1 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-  
2 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

3 (3) If the department determines that the energy facility preliminarily qualifies for expedited  
4 review, the applicant may submit an application for expedited review. Within 30 days after the date  
5 that the application for expedited review is submitted, the department shall determine whether the  
6 application is complete. If the department determines that the application is complete, the applica-  
7 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-  
8 mination. If the department determines that the application is not complete, the department shall  
9 notify the applicant of the deficiencies in the application and shall deem the application filed on the  
10 date that the department determines that the application is complete. The department or the  
11 council may request additional information from the applicant at any time.

12 (4) The State Department of Energy shall send a copy of a filed application **for review and**  
13 **comment** to the Department of Environmental Quality, [*the Water Resources Department,*] the State  
14 Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the State  
15 Department of Agriculture, the Department of Land Conservation and Development, the Public  
16 Utility Commission and any other state agency, city, county or political subdivision of the state that  
17 has regulatory or advisory responsibility with respect to the proposed energy facility. The State  
18 Department of Energy shall send with the copy of the filed application a notice specifying that:

19 (a) In the event the council issues a site certificate for the energy facility, the site certificate  
20 will bind the state and all counties, cities and political subdivisions in the state as to the approval  
21 of the site, the construction of the energy facility and the operation of the energy facility, and that  
22 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site  
23 certificate must be issued as required by ORS 469.401 (3); and

24 (b) The comments and recommendations of state agencies, counties, cities and political subdivi-  
25 sions concerning whether the proposed energy facility complies with any statute, rule or local  
26 ordinance that the state agency, county, city or political subdivision would normally administer in  
27 determining whether a permit, license or certificate required for the construction or operation of the  
28 energy facility should be approved will be considered only if the comments and recommendations  
29 are received by the department within a reasonable time after the date the application and notice  
30 of the application are sent by the department.

31 (5) Within 90 days after the date that the application was filed, the department shall issue a  
32 draft proposed order setting forth:

33 (a) A description of the proposed energy facility;

34 (b) A list of the permits, licenses and certificates that are addressed in the application and that  
35 are required for the construction or operation of the proposed energy facility;

36 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-  
37 proval of any permit, license or certificate addressed in the application and that are required for the  
38 construction or operation of the proposed energy facility; and

39 (d) Proposed findings specifying how the proposed energy facility complies with the applicable  
40 standards and criteria for approval of a site certificate.

41 (6) The council shall review the application for site certification in the manner set forth in  
42 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council  
43 determines that the facility, with any required conditions to the site certificate, will comply with:

44 (a) The requirements for expedited review as specified in this section;

45 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and

1 (L) to (o); **and**

2 (c) The requirements of ORS 469.503 (3) **and (5)**.]; *and*]

3 [(d) *The requirements of ORS 469.504 (1)(b).*]

4 (7) Following submission of an application for a site certificate, the council shall hold a public  
 5 informational meeting on the application. Following the issuance of the proposed order, the council  
 6 shall hold at least one public hearing on the application. The public hearing shall be held in the area  
 7 affected by the energy facility **and shall provide an opportunity for the public and affected local**  
 8 **governments to present written evidence, arguments or testimony regarding the**  
 9 **application.** The council shall mail notice of the hearing at least 20 days prior to the hearing. The  
 10 notice shall comply with the notice requirements of ORS 197.763 (2) and shall include, but need not  
 11 be limited to, the following:

12 (a) A description of the energy facility and the general location of the energy facility;

13 (b) The name of a department representative to contact and the telephone number at which  
 14 people may obtain additional information;

15 (c) A statement that copies of the application and proposed order are available for inspection  
 16 at no cost and will be provided at reasonable cost; and

17 (d) A statement that the record for public comment on the application will close at the conclu-  
 18 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of  
 19 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the  
 20 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the  
 21 council's decision.

22 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present  
 23 additional written evidence, arguments or testimony regarding the application. In the alternative,  
 24 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the  
 25 application. If the applicant requests an opportunity to present written evidence, arguments or tes-  
 26 timony, the council shall leave the record open for that purpose only for a period not to exceed 14  
 27 days after the date of the hearing. Following the close of the record, the department shall prepare  
 28 a draft final order for the council. If the applicant requests a contested case hearing, the council  
 29 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-  
 30 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,  
 31 and the application shall be considered under the same contested case procedures used for a non-  
 32 expedited application for a site certificate.

33 (9) The council shall make its decision based on the record and the draft final order prepared  
 34 by the department. The council shall, within six months of the date that the application is deemed  
 35 filed:

36 (a) Grant the application;

37 (b) Grant the application with conditions;

38 (c) Deny the application; or

39 (d) Return the application to the site certification process required by ORS 469.320.

40 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS  
 41 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-  
 42 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an  
 43 application based on those standards.

44 (11) Judicial review of the approval or rejection of a site certificate by the council under this  
 45 section shall be as provided in ORS 469.403.

1        **SECTION 8.** ORS 469.441 is amended to read:

2        469.441. (1) All expenses incurred by the Energy Facility Siting Council and the State Department of Energy under ORS 469.360 (1) **and (2)** and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the department or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption, a request for a pipeline described in ORS 469.405 (3) or a request for an expedited review must submit under ORS 469.421 at the time of submitting the notice of intent, request for exemption, request for pipeline or request for expedited review. The fee schedule shall be designed to recover the council's actual costs of evaluating the notice of intent, request for exemption, request for pipeline or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and department to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, request for exemption, request for pipeline or request for expedited review is submitted, whether the notice of intent, request for exemption, request for pipeline or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

19        (2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the department shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute.

26        **SECTION 9.** (1) **There is created the Task Force on Regional Energy Policy consisting of nine voting members appointed by the Director of the State Department of Energy. The director shall appoint members in the following manner:**

29        **(a) One member to represent the Public Utility Commission;**

30        **(b) One member to represent consumer-owned utilities;**

31        **(c) One member to represent investor-owned utilities;**

32        **(d) One member from the Oregon delegation to the Northwest Power and Conservation Council;**

34        **(e) Four members from nongovernmental entities that have a program focus on renewable energy or the environment;**

36        **(f) One member with experience in energy policy to represent the general public; and**

37        **(g) One nonvoting member to represent the State Department of Energy.**

38        **(2) The task force shall:**

39        **(a) Discuss and formulate recommendations on long-term regional energy policies as those policies relate to and are relevant to energy facility siting in Oregon;**

41        **(b) Recommend administrative rules to the department relating to the implementation of ORS 469.503 (5) and the prioritizing of siting approval for projects using renewable energy resources instead of fossil fuel resources; and**

43        **(c) Recommend administrative rules to the department that would create a standard for renewable energy development.**



1       **(3) A majority of the members of the task force constitutes a quorum for the transaction**  
2 **of business.**

3       **(4) Official action by the task force requires the approval of a majority of the members**  
4 **of the task force.**

5       **(5) The task force shall elect one of its members to serve as chairperson.**

6       **(6) If there is a vacancy for any cause, the director shall make an appointment to become**  
7 **immediately effective.**

8       **(7) The task force shall meet at times and places specified by the call of the chairperson**  
9 **or of a majority of the members of the task force.**

10       **(8) The task force may adopt rules necessary for the operation of the task force.**

11       **(9) The task force shall submit a report, including recommendations for legislation re-**  
12 **lating to the duties of the task force under subsection (2)(a) of this section, to an interim**  
13 **committee related to the environment or land use as appropriate no later than October 1,**  
14 **2008.**

15       **(10) The department shall provide staff support to the task force.**

16       **(11) Members of the task force are not entitled to compensation or reimbursement for**  
17 **expenses and serve as volunteers on the task force.**

18       **(12) All agencies of state government, as defined in ORS 174.111, are directed to assist**  
19 **the task force in the performance of its duties and, to the extent permitted by laws relating**  
20 **to confidentiality, to furnish such information and advice as the members of the task force**  
21 **consider necessary to perform their duties.**

22       **SECTION 10.** **Section 9 of this 2007 Act is repealed on the date of the convening of the**  
23 **next regular biennial legislative session.**

24       **SECTION 11.** **The amendments to ORS 469.503 by section 5 of this 2007 Act become op-**  
25 **erative January 1, 2010, and apply to applications for a site certificate submitted to the En-**  
26 **ergy Facility Siting Council on or after January 1, 2010.**

27       **SECTION 12.** **ORS 469.501 is amended to read:**

28       469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction,  
29 operation and retirement of facilities. The standards may address but need not be limited to the  
30 following subjects:

31       (a) The organizational, managerial and technical expertise of the applicant to construct and  
32 operate the proposed facility.

33       (b) Seismic hazards, **including requiring applicants for site certificates to submit, as part**  
34 **of the application under ORS 469.350, adequate characterization of the site as to seismic risk**  
35 **to the proposed facility during maximum credible and probable seismic events.**

36       (c) Areas designated for protection by the state or federal government, including but not limited  
37 to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

38       (d) The financial ability and qualifications of the applicant.

39       (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threat-  
40 ened and endangered fish, wildlife or plant species.

41       (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or deter-  
42 mined by the State Historic Preservation Officer to be eligible for listing on, the National Register  
43 of Historic Places or the Oregon State Register of Historic Properties.

44       (g) Protection of public health and safety, including necessary safety devices and procedures.

45       (h) The accumulation, storage, disposal and transportation of nuclear waste.

1 (i) Impacts of the facility on recreation, scenic and aesthetic values.

2 (j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

3 (k) Ability of the communities in the affected area to provide sewers and sewage treatment,  
 4 water, storm water drainage, solid waste management, housing, traffic safety, police and fire pro-  
 5 tection, health care and schools.

6 (L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the  
 7 state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans  
 8 when adopting a need standard or in determining whether an applicable need standard has been met.  
 9 The council shall not adopt a standard requiring a showing of need or cost-effectiveness for gener-  
 10 ating facilities as defined in ORS 469.503.

11 (m) Compliance with the statewide planning goals adopted by the Land Conservation and De-  
 12 velopment Commission as specified by ORS 469.503.

13 (n) Soil protection.

14 (o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate  
 15 change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard  
 16 as provided for by ORS 469.503 (2).

17 (2) The council may adopt exemptions from any need standard adopted under subsection (1)(L)  
 18 of this section if the exemption is consistent with the state’s energy policy set forth in ORS 469.010  
 19 and 469.310.

20 (3) The council may issue a site certificate for a facility that does not meet one or more of the  
 21 standards adopted under subsection (1) of this section if the council determines that the overall  
 22 public benefits of the facility outweigh the damage to the resources protected by the standards the  
 23 facility does not meet.

24 (4) Notwithstanding subsection (1) of this section, the council may not impose any standard de-  
 25 veloped under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for  
 26 an energy facility producing power from wind, solar or geothermal energy. However, the council  
 27 may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b),  
 28 (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

29 **SECTION 13.** ORS 469.350 is amended to read:

30 469.350. (1) Applications for site certificates shall be made to the Energy Facility Siting Council  
 31 in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

32 (2) Copies of the notice of intent and of the application shall be sent for comment and recom-  
 33 mendation within specified deadlines established by the council to the Department of Environmental  
 34 Quality, [*the Water Resources Commission,*] the State Fish and Wildlife Commission, the Water Re-  
 35 sources Director, the State Geologist, the State Forestry Department, the Public Utility Commission  
 36 of Oregon, the State Department of Agriculture, the Department of Land Conservation and Devel-  
 37 opment, any other state agency that has regulatory or advisory responsibility with respect to the  
 38 facility and any city or county affected by the application.

39 (3) Any state agency, city or county that is requested by the council to comment and make  
 40 recommendations under this section shall respond to the council by the specified deadline. If a state  
 41 agency, city or county determines that it cannot respond to the council by the specified deadline  
 42 because the state agency, city or county lacks sufficient resources to review and comment on the  
 43 application, the state agency, city or county shall contract with another entity to assist in preparing  
 44 a response. A state agency, city or county that enters into a contract to assist in preparing a re-  
 45 sponse may request funding to pay for that contract from the council pursuant to ORS 469.360.

1 (4) The State Department of Energy shall notify the applicant whether the application is com-  
 2 plete. When the department determines an application is complete, the department shall notify the  
 3 applicant and provide notice to the public.

4 **SECTION 14.** ORS 469.401 is amended to read:

5 469.401. (1) Upon approval, the site certificate or any amended site certificate with any condi-  
 6 tions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the  
 7 council and by the applicant. The certificate or amended certificate shall authorize the applicant to  
 8 construct, operate and retire the facility subject to the conditions set forth in the site certificate  
 9 or amended site certificate. The duration of the site certificate or amended site certificate shall be  
 10 the life of the facility.

11 (2) The site certificate or amended site certificate shall contain conditions for the protection of  
 12 the public health and safety, for the time for completion of construction, and to ensure compliance  
 13 with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or  
 14 amended site certificate shall require both parties to abide by local ordinances and state law and  
 15 the rules of the council in effect on the date the site certificate or amended site certificate is exe-  
 16 cuted, except that upon a clear showing of a significant threat to the public health, safety or the  
 17 environment that requires application of later-adopted laws or rules, the council may require com-  
 18 pliance with such later-adopted laws or rules. For a permit addressed in the site certificate or  
 19 amended site certificate, the site certificate or amended site certificate shall provide for facility  
 20 compliance with applicable state and federal laws adopted in the future to the extent that such  
 21 compliance is required under the respective state agency statutes and rules.

22 (3) Subject to the conditions set forth in the site certificate or amended site certificate, any  
 23 certificate or amended certificate signed by the chairperson of the council shall bind the state and  
 24 all counties and cities and political subdivisions in this state, **other than the Water Resources**  
 25 **Commission**, as to the approval of the site and the construction and operation of the facility. After  
 26 issuance of the site certificate or amended site certificate, any affected state agency, county, city  
 27 and political subdivision, **other than the Water Resources Department**, shall, upon submission  
 28 by the applicant of the proper applications and payment of the proper fees, but without hearings or  
 29 other proceedings, promptly issue the permits, licenses and certificates addressed in the site certif-  
 30 icate or amended site certificate, subject only to conditions set forth in the site certificate or  
 31 amended site certificate. After the site certificate or amended site certificate is issued, the only is-  
 32 sue to be decided in an administrative or judicial review of a state agency or local government  
 33 permit for which compliance with governing law was considered and determined in the site certif-  
 34 icate or amended site certificate proceeding shall be whether the permit is consistent with the terms  
 35 of the site certificate or amended site certificate. Each state or local government agency that issues  
 36 a permit, license or certificate shall continue to exercise enforcement authority over the permit, li-  
 37 cense or certificate.

38 (4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state  
 39 agency or local government over matters that are not included in and governed by the site certif-  
 40 icate or amended site certificate. Such matters include but are not limited to employee health and  
 41 safety, building code compliance, wage and hour or other labor regulations, local government fees  
 42 and charges or other design or operational issues that do not relate to siting the facility.

43 **SECTION 15.** The amendments to ORS 469.350 and 469.401 by sections 13 and 14 of this  
 44 **2007 Act apply to applications for site certificates submitted to the Energy Facility Siting**  
 45 **Council on or after the effective date of this 2007 Act.**

