

House Bill 3134

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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 State Department of Energy to determine locations for certain energy transmission and distribution facilities. Specifies requirements for energy transmission and distribution facility siting process.

Establishes Energy Transmission and Distribution Facilities Siting Authority. Specifies duties of authority.

Specifies process for review of decisions related to energy transmission and distribution facilities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to siting of electric transmission systems; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds that:**

5 (1) **There is a serious and urgent need to construct and operate additional energy trans-**
6 **mission and distribution facilities in this state to meet Oregon's renewable portfolio stan-**
7 **dards.**

8 (2) **Immediate energy transmission and distribution facility planning and siting requires**
9 **an expedited process. Existing energy transmission and distribution facility siting procedures**
10 **are inadequate to meet Oregon's renewable portfolio standards.**

11 **SECTION 2. (1) The State Department of Energy shall determine locations for energy**
12 **transmission and distribution facilities pursuant to sections 2 to 8 of this 2009 Act.**

13 (2) **The department shall establish, by rule, mandatory and desirable criteria to be used**
14 **in the nominations made under section 3 of this 2009 Act.**

15 **SECTION 3. When directed by executive order of the Governor to initiate the energy**
16 **transmission and distribution facility siting process established in sections 2 to 8 of this 2009**
17 **Act, the State Department of Energy shall:**

18 (1) **Nominate sites for the construction and operation of additional energy transmission**
19 **and distribution facilities in this state, based on the criteria adopted by the department**
20 **pursuant to section 2 of this 2009 Act, and the following criteria:**

21 (a) **The interest demonstrated by local jurisdictions in having a site selected for an en-**
22 **ergy transmission and distribution facility within their jurisdiction.**

23 (b) **The availability or the ability of the local jurisdictions to provide adequate**
24 **infrastructure to serve the facility.**

25 (c) **Natural features that allow design to promote compatibility with surroundings.**

26 (d) **The availability of or the ability to provide local support facilities.**

27 (e) **The cost to the state and local jurisdictions of developing the proposed facility.**

28 (2) **Publish an initial report stating the conclusions of the department with regard to**

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 each site nominated.

2 (3) Provide copies of the report to:

3 (a) Each of the county commissioners in the county where any of the nominated sites
4 are located;

5 (b) Each of the city council members where that site is located if any one of the sites is
6 in a city;

7 (c) Governmental agencies that may be called upon to provide services to the facility at
8 any of the sites, including police, fire, water, sewage, roads and public transit; and

9 (d) Any member of the public who requests a copy and pays a fee as set by the depart-
10 ment.

11 (4) Provide media notice regarding the process and the sites nominated, including but not
12 limited to publication in a newspaper of general circulation in the county or counties where
13 the sites are located.

14 **SECTION 4.** Before nominating sites pursuant to section 3 of this 2009 Act, the State
15 Department of Energy shall hold a meeting or multiple meetings with the elected local gov-
16 ernment officials involved to discuss the site selections, the onsite and offsite improvements
17 needed at each site and the site preferences of the local governments.

18 **SECTION 5.** (1) There is established an Energy Transmission and Distribution Facilities
19 Siting Authority. Subject to the approval of the Governor, the authority shall make energy
20 transmission and distribution facility site selection decisions as set forth in section 6 of this
21 2009 Act. The authority shall consist of five persons, to be appointed by the Governor and
22 to serve at the Governor's pleasure. The Governor shall appoint one of the members as
23 chairperson.

24 (2) A majority of the authority members constitutes a quorum for the transaction of
25 business. Members of the authority are entitled to compensation and expenses as provided
26 in ORS 292.495. Any vacancy shall be filled by the Governor.

27 (3) The authority shall:

28 (a) Direct the staff assigned to the authority by the State Department of Energy;

29 (b) Consult with the department, local government officials and others as the authority
30 considers necessary;

31 (c) Hold hearings; and

32 (d) Make decisions on the siting of energy transmission and distribution facilities.

33 **SECTION 6.** (1) Within 30 days after nomination of sites as set forth in section 3 of this
34 2009 Act, the Energy Transmission and Distribution Facilities Siting Authority shall hold a
35 hearing within the region where each nominated site is located to receive testimony from the
36 State Department of Energy, local government, and the public regarding the sites nominated
37 and conditions proposed for the sites.

38 (2) Not later than 10 days before the hearing held by the authority as required by sub-
39 section (1) of this section, any affected local government or any person may submit proposed
40 conditions to the authority. Each proposed condition shall:

41 (a) Be stated separately;

42 (b) Be in writing;

43 (c) Identify the site to which the condition, if approved, would attach;

44 (d) Be specific;

45 (e) Directly relate to any site or the site's proposed development, infrastructure, access,

1 or physical condition on or in the immediate vicinity of the site; and

2 (f) Be supported by a statement of the need or reasons for the condition.

3 (3) Within 45 days after nomination of the sites as set forth in section 3 of this 2009 Act,
 4 the authority shall select and rank in order of preference the number of sites that the Gov-
 5 ernor considers necessary or advisable for the construction and operation of energy trans-
 6 mission and distribution facilities, and specify site development conditions for each site,
 7 based on substantial evidence in the record as a whole and supported by findings that address
 8 only:

9 (a) The criteria specified by the department pursuant to section 2 of this 2009 Act and
 10 the criteria specified in section 3 of this 2009 Act.

11 (b) The reasons for not adopting any of the proposed conditions that were submitted in
 12 accordance with subsection (2) of this section for the selected sites.

13 (4) If one or more of the nominated sites meet the mandatory criteria established by the
 14 department pursuant to section 2 of this 2009 Act, the local jurisdiction demonstrates inter-
 15 est as described in subsection (5) of this section, and the authority selects a site that has
 16 not demonstrated interest as described under subsection (5) of this section, the authority
 17 shall make findings that demonstrate why the authority selected the site in which the local
 18 jurisdiction did not demonstrate interest.

19 (5) A local jurisdiction may demonstrate interest by presenting to the department a re-
 20 solution that sets forth the interest no later than 30 days after issuance of an executive or-
 21 der under section 3 of this 2009 Act.

22 **SECTION 7.** (1) As soon as practicable after making the siting decisions, the Energy
 23 Transmission and Distribution Facilities Siting Authority shall notify the Governor and shall
 24 make available for the Governor's review any documents or materials that the Governor
 25 may request.

26 (2) Within 15 days after receiving the notification required by subsection (1) of this sec-
 27 tion, the Governor shall approve or disapprove the sites as selected and ranked by the au-
 28 thority as the Governor considers necessary and advisable.

29 (3) If the Governor disapproves one or more of the sites, the Governor may direct the
 30 authority to make and rank an additional selection or selections, as appropriate, from the
 31 nominated sites and notify the Governor of the selection. Within 15 days after receiving any
 32 new selection, the Governor shall approve or disapprove the additional sites as selected and
 33 ranked by the authority as the Governor considers necessary or advisable.

34 **SECTION 8.** (1) Notwithstanding any other provision of law, including but not limited to
 35 statutes, ordinances, regulations and charter provisions, the decisions of the Energy Trans-
 36 mission and Distribution Facilities Siting Authority, if approved by the Governor, shall bind
 37 the state and all counties, cities and political subdivisions in this state as to the approval of
 38 the sites and the construction and operation of the proposed energy transmission and dis-
 39 tribution facilities. Affected state agencies, counties, cities and political subdivisions shall
 40 issue the appropriate permits, licenses and certificates and enter into any intergovernmental
 41 agreements as necessary for construction and operation of the facilities, subject only to the
 42 conditions of the siting decisions.

43 (2) Each state or local governmental agency that issues a permit, license or certificate
 44 shall continue to exercise enforcement authority over the permit, license or certificate.

45 (3) Nothing in sections 2 to 8 of this 2009 Act expands or alters the obligations of cities,

1 counties and political subdivisions to pay for infrastructure improvements for the proposed
 2 energy transmission and distribution facilities.

3 **SECTION 9.** (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825 or any other
 4 law, exclusive jurisdiction is conferred upon the Supreme Court for review of any decision
 5 relating to the establishment of, addition to, remodeling of or siting of an energy trans-
 6 mission and distribution facility, including the establishment of criteria under section 2 of
 7 this 2009 Act, the nomination of sites under section 3 of this 2009 Act and any actions under
 8 section 6 or 7 of this 2009 Act. A person or local government that is adversely affected by a
 9 decision specified in this subsection may file a petition with the Supreme Court pursuant to
 10 this subsection.

11 (2) The petition must be filed within 21 days after issuance of the specific decision on
 12 which the petition is based, except that a petition based on a decision to adopt criteria pur-
 13 suant to section 2 of this 2009 Act shall be filed within 21 days after the issuance of the cri-
 14 teria. A decision made pursuant to section 6 or 7 of this 2009 Act with respect to any site
 15 may be reviewed by the Supreme Court as provided in this section.

16 (3) The petition must state the nature of the decision the petitioner desires reviewed, in
 17 what manner the decision below rejected the position raised by the petitioner below and shall
 18 state, by supporting affidavit, the facts showing how the petitioner is adversely affected. In
 19 the case of a decision by the Energy Transmission and Distribution Facilities Siting Au-
 20 thority, the petitioner is adversely affected only when the petitioner can establish by clear
 21 and convincing evidence in the affidavit that:

22 (a) The petitioner participated before the authority;

23 (b) The petitioner will be within sight or sound of the facility or is affected economically
 24 in excess of \$5,000 in value; and

25 (c) The petitioner proposed conditions as required by section 6 (2) of this 2009 Act that
 26 were rejected by the authority.

27 (4) The petitioner must serve a copy of the petition by registered or certified mail on the
 28 State Department of Energy, the authority and the Attorney General.

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

34 (6) If the petition is for review of a decision made by the authority, the record shall in-
 35 clude only:

36 (a) The report of the authority.

37 (b) The conditions, if any, on the nomination.

38 (c) The transcript of the hearing before the authority.

39 (d) Evidence submitted by the petitioner to the authority.

40 (e) The transcript of the decision-making meeting of the authority.

41 (f) The authority's findings and decision.

42 (7) Notwithstanding subsection (6) of this section:

43 (a) On motion of the authority, the Supreme Court may limit the transcript to those
 44 matters in which the petitioner is interested as provided in subsection (3) of this section.

45 (b) On motion of any party to the judicial review, the Supreme Court may supplement

1 the record with additional materials from the hearing before the authority.

2 (8) Upon review, the Supreme Court may reverse or remand the decision if the Supreme
3 Court finds the department, the authority or the Governor:

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

5 (b) Made a decision not supported by substantial evidence.

6 (9) For purposes of this section and section 6 (3) of this 2009 Act, "substantial evidence"
7 means evidence that, taken in isolation, a reasonable mind could accept as adequate to sup-
8 port a conclusion. The substantiality of the evidence shall not be evaluated by considering
9 the whole record.

10 (10) Proceedings for review under this section shall be given priority over all other mat-
11 ters before the Supreme Court.

12 (11) In the event the Supreme Court determines that there are factual issues in the pe-
13 tition, the Supreme Court may appoint a special master to hear evidence and to prepare re-
14 commended findings of fact.

15 SECTION 10. This 2009 Act being necessary for the immediate preservation of the public
16 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
17 on its passage.

18 _____