



Oregon

John A. Kitzhaber, M.D., Governor



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04/22/2013 - Hearing Room C

To: Senate Committee on Environment and Natural Resources
Senator Dingfelder, Chair

From: Oregon Department of Energy
Todd R. Cornett, Siting Division Administrator

Re: HB 2105-A Relating to the Energy Facility Siting Council

The Energy Facility Siting Council is a 7 member board appointed by the Governor and has responsibility to review and approve or deny all "Energy Facilities" as they are defined in ORS 469.300(11). Council members are chosen to represent geographic and professional diversity within the state. The Siting Division of the Oregon Department of Energy provides staff support to the Energy Facility Siting Council.

The Energy Facility Siting Council process is a standards based process where an applicant is obligated to receive an approval if they can prove they meet all applicable standards. It is also a consolidated review process whereby all other state and local agency standards are folded into the review authority of the Energy Facility Siting Council. This consolidation reduces regulatory duplication, expedites the review process, ensures consistent decision making, and eliminates multiple appeal paths. This process also provides greater clarity and predictability than the energy review processes of other states which is evidenced by the frequent inquiries we receive.

While we believe we have the right system, it is far from perfect and there are numerous opportunities for improvement. ODOE Siting staff has taken a systematic approach to analyzing the site certificate application process in an effort to make it more predictable, efficient, timely, inclusive and transparent for all and numerous positive changes have already been instituted. HB 2105-A provides us the opportunity to continue strengthening the process by studying important issues and reaching out to all stakeholders.

HB 2105-A
Senate Committee on Environment and Natural Resources
ODOE Siting Staff Analysis of Section 1 Subsections (1)(a) – (g)
04/22/2013

“(a) Means to encourage consistency between the standards for the siting of facilities of the federal government and local governments with those specified in ORS 469.300 to 469.563.

- ODOE Siting staff already has a statutory mandate to work cooperatively with federal agencies to limit duplication and ensure efficient review of joint state and federal projects.
- The Cascade Crossing and Boardman to Hemingway which are joint state and federal reviews have highlighted how currently these processes really do not work well together.
- In the Energy Facility Siting Council Process city and or county land use standards and comprehensive plan policies are already incorporated into the review standards.
- There is a however a lot of local variation of standards related to energy. It will be worth seeing a similar baseline of energy standards can be established.

“(b) A mechanism to enhance the participation of local governments during the facility siting process when the standards for the siting of facilities of local governments are consistent with those specified in ORS 469.300 to 469.563.

- Local government land use ordinances and comprehensive plan policies are incorporated as Energy Facility Siting Council standards if the facility is located in their jurisdiction.
- Local governments are automatically appointed as a Special Advisory Group, receive information, are requested to provide input at multiple times and can request reimbursement for the time they spend.
- However, it is clear there is still a lot of confusion as to their role in the process. There are numerous things ODOE Siting staff has already identified to better enhance their participation and further study is needed.

“(c) Means to encourage public participation in the design and siting of facilities.

- Most people who participate in the Energy Facility Siting Council process do so one time. The process is long, there is a lot of detailed and complex information and it is overall very confusing. ODOE Siting Staff have already identified numerous opportunities to better enhance their understanding and comfort in the process to encourage their participation. However, further study is needed.

“(d) The definition of ‘energy facility’ specified in ORS 469.300 and recommendations to clarify the definition for purposes of determining which public body, as defined in ORS 174.109, has authority relating to the siting of facilities.

- Forum shopping has previously been a concern. The standard for Energy Facility Siting Council to review a wind facility is 105 MW. There are a lot of 104 MW County approved facilities.
- While there is the need to have local variation of standards that reflect the desire of each community, there is also the opportunity to have minimum thresholds which are consistent among local governments. This would justify raising the jurisdictional thresholds for local governments allowing them to review larger facilities.

“(e) Means to ensure constructive and effective participation by local governments, state agencies and federally recognized Indian tribes in the siting of facilities.

- State agencies, local governments and recognized Indian Tribes are all obligated to receive information at various stages of the Energy Facility Siting Council process. State Agencies are actually obligated to participate. For local governments and state agencies, they can get reimbursement for their participation.
- However, there is still confusion and a lack of clarity by those who participate as to their role in the process. ODOE staff has begun working on this and we believe it is already better but there is still a lot of work to do on our part and further study is needed.

“(f) Means to ensure the efficient and cost-effective recovery of fees expended in the review of applications for site certificates.

- Applications are fee based. Applicant fees are for the Department’s costs and state and local agency costs. ODOE staff has identified some potential concerns in the fee structure we would like to further evaluate to be confident application costs are fully borne by the applicant.

“(g) Any other matters deemed relevant by the department.

- This catch all section will give ODOE staff the ability to evaluate other issues we think are significant that we would like to bring to the attention of the legislature.