



Oregon

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05/20/2013 - Hearing Room B

To: Senate Committee on Business and Transportation
Senator Lee Beyer, Chair

From: Todd R. Cornett, Energy Siting Division Administrator

Re: HB 2106-A Relating to the Energy Facility Siting Council

Introduction

This bill clarifies the existing statutory requirement regarding the circumstances under which the Energy Facility Siting Council (EFSC) may approve a site certificate that does not satisfy one or more applicable standards. It allows EFSC to approve a proposed facility that does not meet an applicable standard if the overall public benefits of the facility outweigh any adverse effects on a resource or interest to be protected by the applicable standard.

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.

Discussion

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. However, ORS 469.501(3) provides an alternative to the obligation of meeting a subset of the standards:

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

ORS 469.503(1) provides that in order to issue a site certificate, the Council must find that:

“The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

HB 2106-A Would Amend ORS 469.501(3) in the following way:

- (a)** *The council may issue a site certificate for a facility that does not meet one or more of the **applicable** standards adopted under subsection (1) of this section if the council determines that the overall benefits of the facility outweigh ~~the damage to the resources~~ **any adverse effects on a resource or interest** protected by the **applicable** standards the facility does not meet.*
- (b)** *The council by rule shall specify the criteria by which the council makes the determination described in paragraph (a) of this subsection.*

Effect of Amendments:

1. Clarify that it is the “applicable” standards that are relevant. – “Failure” to meet a standard that does not apply to a proposed facility does not trigger the balancing requirement. (Example: carbon standard for wind facilities.)
2. Change the language from a requirement to balance the benefits of the facility against “the damage to the resources” to a requirement to balance those benefits against “any adverse effect on a resource or interest” protected by the standards the facility does not meet.
 - a. Broadens the scope of the balancing: clarifies that inability to meet any applicable standards must be balanced against both the resources and interests that are protected by those applicable standards;
 - b. It requires an evaluation of “adverse effects” rather than “damage:” to the resources, as well as interests
3. Adds a requirement that the Council amend its rules to specify the criteria for determining when the balancing standard would be used to approve a site certificate that cannot meet one or more of the applicable standards.

Summary

HB 2106-A amends the Energy Facility Siting Council’s balancing standard that are located in ORS 469.501 and 469.503 to clarify circumstances in which the Council may approve site certification.

Existing "Balancing" Rule Language

OAR 345-22-0000

- (2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the Council standards through mitigation or avoidance of the damage to the protected resources. The applicant has the burden to show that the overall public benefits outweigh the damage to the resources, and the burden increases proportionately with the degree of damage to the resources. The Council shall weigh overall public benefits and damage to the resources as follows:
- (a) The Council shall evaluate the damage to the resources by considering factors including, but not limited to, the following:
 - (A) The uniqueness and significance of the resource that would be affected;
 - (B) The degree to which current or future development may damage the resource, if the proposed facility is not built;
 - (C) Proposed measures to reduce the damage by avoidance of impacts;
 - (D) The magnitude of the anticipated damage to the resource, taking into account any proposed mitigation.
 - (b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:
 - (A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;
 - (B) The degree to which the proposed facility promotes Oregon energy policy as described in ORS 469.010 by demonstrating or advancing new efficiency or renewable technology or by expanding electric generating capacity from renewable energy sources;
 - (C) Recommendations from any special advisory group designated by the Council under ORS 469.480;
 - (D) Evidence that the benefits are likely to occur only if the proposed facility is built;
 - (E) For facilities that are subject to a need standard, evidence underlying the Council's decision on compliance with the rules in OAR 345, division 23, except that the Council shall not find that need for a facility is sufficient, by itself, to outweigh damage to resources affected by the proposed facility.
- (3) Notwithstanding section (2) of this rule, the Council shall not apply the balancing determination to the following standards:
- (a) The organizational expertise standard described in OAR 345-022-0010;
 - (b) The land use standard described in OAR 345-022-0030;
 - (c) The retirement and financial assurance standard described in OAR 345-022-0050;
 - (d) The need standards described in OAR 345-023-0005;
 - (e) The standards for energy facilities that emit carbon dioxide described in OAR 345-024-0500 through 345-024-0720; or
 - (f) The protected areas standard described in OAR 345-022-0040, if the statutes or administrative rules governing the management of the protected area prohibit location of the proposed facility in that area.

