

# DRAFT

## SUMMARY

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 2021 regular legislative session.

## A BILL FOR AN ACT

1  
2 Relating to energy facility siting; creating new provisions; and amending  
3 ORS 469.310, 469.330, 469.350, 469.360, 469.370, 469.373, 469.401, 469.501,  
4 469.503 and 469.504.

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

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

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

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

13 469.330. (1) Each applicant for a site certificate shall submit to the Energy  
14 Facility Siting Council a notice of intent to file an application for a site  
15 certificate. The notice of intent must provide information:

16 (a) About the proposed site and the characteristics of the facility suffi-  
17 cient for the preparation of the State Department of Energy's project order;  
18 **and**

19 (b) **Documenting the applicant's technical expertise, the applicant's**  
20 **history in energy facility construction and operation and the financial**  
21 **backing for the facility construction. The applicant's history shall**  
22 **provide information about any fines or penalties, including criminal**  
23 **penalties, assessed against the applicant that pertain to the siting,**  
24 **construction or operation of an energy facility.**

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

29 (3) Following review of the notice of intent and any public comments re-  
30 ceived in response to the notice of intent, the department may hold a pre-  
31 application conference with state agencies and local governments that have

1 regulatory or advisory responsibility with respect to the facility. After the  
2 preapplication conference, the department shall issue a project order estab-  
3 lishing the statutes, administrative rules, council standards, local ordi-  
4 nances, application requirements and study requirements for the site  
5 certificate application. A project order is not a final order.

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

8 **SECTION 3.** ORS 469.350 is amended to read:

9 469.350. (1) Applications for site certificates shall be made to the Energy  
10 Facility Siting Council in a form prescribed by the council and accompanied  
11 by the fee required by ORS 469.421.

12 (2) Copies of the notice of intent and of the application shall be sent for  
13 comment and recommendation within specified deadlines established by the  
14 council to the Department of Environmental Quality, [*the Water Resources*  
15 *Commission,*] the State Fish and Wildlife Commission, the Water Resources  
16 Director, the State Geologist, the State Forestry Department, the Public  
17 Utility Commission of Oregon, the State Department of Agriculture, the De-  
18 partment of Land Conservation and Development, the Oregon Department  
19 of Aviation, any other state agency that has regulatory or advisory respon-  
20 sibility with respect to the facility and any city or county affected by the  
21 application.

22 (3) Any state agency, city or county that is requested by the council to  
23 comment and make recommendations under this section shall respond to the  
24 council by the specified deadline. If a state agency, city or county determines  
25 that it cannot respond to the council by the specified deadline because the  
26 state agency, city or county lacks sufficient resources to review and comment  
27 on the application, the state agency, city or county shall contract with an-  
28 other entity to assist in preparing a response. A state agency, city or county  
29 that enters into a contract to assist in preparing a response may request  
30 funding to pay for that contract from the council pursuant to ORS 469.360.

31 (4) The State Department of Energy shall notify the applicant whether the

1 application is complete. When the department determines an application is  
2 complete, the department shall notify the applicant and provide notice to the  
3 public.

4 **SECTION 4.** ORS 469.360 is amended to read:

5 469.360. (1)(a) The Energy Facility Siting Council shall evaluate each  
6 notice of intent, site certificate application or request for expedited review.

7 **(b) As part of its evaluation, the council shall direct the State De-**  
8 **partment of Energy to review, in a process that includes provisions for**  
9 **public hearings and comment and for consideration of the public**  
10 **comment:**

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

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

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

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

19 **(E) Any matter that the council determines essential to the ade-**  
20 **quate appraisal of the effects of the proposed facility on the environ-**  
21 **ment.**

22 (2) Pursuant to a written contract or agreement, the council may com-  
23 pensate a state agency or a local government affected by the application for  
24 expenses directly related to participation by the compensated agency or local  
25 government in the following evaluation activities:

26 (a) Consultation initiated by an applicant after payment of the fee under  
27 ORS 469.421 (2) for the notice of intent or request for expedited review but  
28 prior to submittal of the notice or request;

29 (b) Review of the notice of intent, **an application for land use approval,**  
30 **the site certificate** application or a request for an expedited review; and

31 (c) Participation in a council proceeding, excluding legal expenses of the

1 agency or local government incurred as a result of participation by the state  
2 agency or local government as a party in a contested case conducted by the  
3 council pursuant to ORS 469.370 (5).

4 (3) Compensation for consultation expenses under subsection (2)(a) of this  
5 section shall be limited to the expenses established in an estimate provided  
6 by the council and agreed to by the applicant. The applicant may request  
7 that the estimate be revised to allow for additional consultation activities  
8 at any time prior to submitting the notice of intent.

9 (4) Pursuant to a written agreement, the council may compensate a tribe  
10 identified by the Commission on Indian Services as affected by the applica-  
11 tion for expenses directly related to the tribe's review of a notice of intent,  
12 site certificate application or request for expedited review.

13 (5) As part of its evaluation, the council also may commission an inde-  
14 pendent study by an independent contractor, state agency, local government  
15 or any other person, of any aspect of the proposed facility within its statu-  
16 tory authority to review. The council may commission an independent study  
17 under this subsection only after the council makes a determination that the  
18 council is unable to fully evaluate the application without assistance and  
19 identifies specific issues to be addressed and only pursuant to a written  
20 contract or agreement with the independent contractor, state agency, local  
21 government or other person. The council shall compensate the independent  
22 contractor, state agency, local government or other person only to the extent  
23 the costs are directly related to issues identified by the council.

24 (6) The council shall provide funding to state agencies, cities or counties  
25 required to contract with another entity to complete comments and recom-  
26 mendations pursuant to ORS 469.350.

27 (7) In addition to compensating state agencies, tribes and local govern-  
28 ments pursuant to this section, the council may provide funding to the De-  
29 partment of Environmental Quality for the department to conduct modeling  
30 and provide technical assistance to expedite preparation, submission and re-  
31 view of applications for permits under ORS 468A.040 required for energy fa-

1 cilities.

2 **SECTION 5.** ORS 469.370 is amended to read:

3 469.370. (1) Based on its review of the application and the comments and  
4 recommendations on the application from state agencies and local govern-  
5 ments, the State Department of Energy shall prepare and issue a draft pro-  
6 posed order on the application.

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

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

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

16 (c) Include the name of an agency representative to contact and the tele-  
17 phone number where additional information may be obtained;

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

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

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

1 (4) After reviewing the application, the draft proposed order and any  
2 testimony given at the public hearing and after consulting with other agen-  
3 cies, the department shall issue a proposed order recommending approval or  
4 rejection of the application. The department shall issue public notice of the  
5 proposed order, that shall include notice of a contested case hearing speci-  
6 fying a deadline for requests to participate as a party or limited party and  
7 a date for the prehearing conference.

8 (5) Following receipt of the proposed order from the department, the  
9 council shall conduct a contested case hearing on the application for a site  
10 certificate in accordance with the applicable provisions of ORS chapter 183  
11 and any procedures adopted by the council. The applicant shall be a party  
12 to the contested case. The council may permit any other person to become  
13 a party to the contested case in support of or in opposition to the application  
14 only if the person appeared in person or in writing at the public hearing on  
15 the site certificate application. Issues that may be the basis for a contested  
16 case shall be limited to those raised on the record of the public hearing un-  
17 der subsection (3) of this section, unless:

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

20 (b) The action recommended in the proposed order, including any recom-  
21 mended conditions of the approval, differs materially from that described in  
22 the draft proposed order, in which case only new issues related to such dif-  
23 ferences may be raised.

24 (6) If no person requests party status to challenge the department's pro-  
25 posed order, the proposed order shall be forwarded to the council and the  
26 contested case hearing shall be concluded.

27 (7) At the conclusion of the contested case, the council shall issue a final  
28 order, either approving or rejecting the application based upon the standards  
29 adopted under ORS 469.501 and any additional statutes, rules or local ordi-  
30 nances determined to be applicable to the facility by the project order, as  
31 amended. The council shall make its decision by the affirmative vote of at

1 least four members approving or rejecting any application for a site certifi-  
2 cate. The council may amend or reject the proposed order, so long as the  
3 council provides public notice of its hearing to adopt a final order, and  
4 provides an opportunity for the applicant and any party to the contested case  
5 to comment on material changes to the proposed order, including material  
6 changes to conditions of approval resulting from the council's review. The  
7 council's order shall be considered a final order for purposes of appeal.

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

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

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

16 (b) Within nine months after filing of an application for a site certificate  
17 for a combustion turbine power plant, a geothermal-fueled power plant or an  
18 underground storage facility for natural gas;

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

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

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

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

26 (d) Within 12 months after filing an application for a site certificate for  
27 any other energy facility.

28 (10) At the request of the applicant, the council shall allow expedited  
29 processing of an application for a site certificate for an energy facility with  
30 an average electric generating capacity of less than 100 megawatts. No no-  
31 tice of intent shall be required. Following approval of a request for expe-



1 dited review, the department shall issue a project order, which may be  
2 amended at any time. The council shall either approve or reject an applica-  
3 tion for a site certificate within six months after filing the site certificate  
4 application if there are no intervenors in the contested case conducted under  
5 subsection (5) of this section. If there are intervenors in the contested case,  
6 the council shall either approve or reject an application within nine months  
7 after filing the site certificate application. For purposes of this subsection,  
8 the generating capacity of a thermal power plant is the nameplate rating of  
9 the electrical generator proposed to be installed in the plant.

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

13 (12) The council shall specify in the site certificate a date by which con-  
14 struction of the facility must begin.

15 (13) For a facility that is subject to and has been or will be reviewed by  
16 a federal agency under the National Environmental Policy Act, 42 U.S.C.  
17 Section 4321, et seq., the council shall conduct its site certificate review, to  
18 the maximum extent feasible, in a manner that is consistent with and does  
19 not duplicate the federal agency review, **except when reviewing the envi-**  
20 **ronmental effects of the facility pursuant to ORS 469.360.** [*Such*] **The**  
21 coordination shall include, but need not be limited to:

22 (a) Elimination of duplicative application, study and reporting require-  
23 ments;

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

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

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

30 (e) To the extent consistent with applicable state standards, establishment  
31 of conditions in any site certificate that are consistent with the conditions

1 established by the federal agency.

2 **SECTION 6.** ORS 469.373 is amended to read:

3 469.373. (1) Notwithstanding the expedited review process established  
4 pursuant to ORS 469.370, an applicant may apply under the provisions of this  
5 section for expedited review of an application for a site certificate for an  
6 energy facility if the energy facility:

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

10 (b) Is a permitted or conditional use allowed under an applicable local  
11 acknowledged comprehensive plan, land use regulation or federal land use  
12 plan, and is located:

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

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

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

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

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

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

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

29 (f)(A) Discharges process wastewater to a wastewater treatment facility  
30 that has an existing National Pollutant Discharge Elimination System per-  
31 mit, can obtain an industrial pretreatment permit, if needed, within the ex-

1 pedited review process time frame and has written confirmation from the  
2 wastewater facility permit holder that the additional wastewater load will  
3 be accommodated by the facility without resulting in a significant thermal  
4 **or contaminant** increase in the facility effluent or without requiring any  
5 changes to the wastewater facility National Pollutant Discharge Elimination  
6 System permit;

7 (B) Plans to discharge process wastewater to a wastewater treatment fa-  
8 cility owned by a municipal corporation that will accommodate the  
9 wastewater from the energy facility and supplies evidence from the municipal  
10 corporation that:

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

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

16 (C) Obtains a National Pollutant Discharge Elimination System or water  
17 pollution control facility permit for process wastewater disposal, supplies  
18 evidence to support a finding that the discharge can likely be permitted  
19 within the expedited review process time frame and that the discharge will  
20 not require:

21 (i) A new National Pollutant Discharge Elimination System permit, ex-  
22 cept for a storm water general permit for construction activities; or

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

26 (2) An applicant seeking expedited review under this section shall submit  
27 documentation to the State Department of Energy, prior to the submission  
28 of an application for a site certificate, that demonstrates that the energy  
29 facility meets the qualifications set forth in subsection (1) of this section.  
30 The department shall determine, within 14 days of receipt of the documen-  
31 tation, on a preliminary, nonbinding basis, whether the energy facility qual-

1 ifies for expedited review.

2 (3) If the department determines that the energy facility preliminarily  
3 qualifies for expedited review, the applicant may submit an application for  
4 expedited review. Within 30 days after the date that the application for ex-  
5 pedited review is submitted, the department shall determine whether the ap-  
6 plication is complete. If the department determines that the application is  
7 complete, the application shall be deemed filed on the date that the depart-  
8 ment sends the applicant notice of its determination. If the department de-  
9 termines that the application is not complete, the department shall notify the  
10 applicant of the deficiencies in the application and shall deem the applica-  
11 tion filed on the date that the department determines that the application  
12 is complete. The department or the council may request additional infor-  
13 mation from the applicant at any time.

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

24 (a) In the event the council issues a site certificate for the energy facility,  
25 the site certificate will bind the state and all counties, cities and political  
26 subdivisions in the state as to the approval of the site, the construction of  
27 the energy facility and the operation of the energy facility, and that after  
28 the issuance of a site certificate, all permits, licenses and certificates ad-  
29 dressed in the site certificate must be issued as required by ORS 469.401 (3);  
30 and

31 (b) The comments and recommendations of state agencies, counties, cities

1 and political subdivisions concerning whether the proposed energy facility  
2 complies with any statute, rule or local ordinance that the state agency,  
3 county, city or political subdivision would normally administer in determin-  
4 ing whether a permit, license or certificate required for the construction or  
5 operation of the energy facility should be approved will be considered only  
6 if the comments and recommendations are received by the department within  
7 a reasonable time after the date the application and notice of the application  
8 are sent by the department.

9 (5) Within 90 days after the date that the application was filed, the de-  
10 partment shall issue a draft proposed order setting forth:

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

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

15 (c) A list of the statutes, rules and local ordinances that are the standards  
16 and criteria for approval of any permit, license or certificate addressed in  
17 the application and that are required for the construction or operation of the  
18 proposed energy facility; and

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

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

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

26 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a),

27 (c) to (e), (g), (h) and (L) to (o); **and**

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

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

30 (7) Following submission of an application for a site certificate, the  
31 council shall hold a public informational meeting on the application. Fol-

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

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

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

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

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

22 (8) Prior to the conclusion of the hearing, the applicant may request an  
23 opportunity to present additional written evidence, arguments or testimony  
24 regarding the application. In the alternative, prior to the conclusion of the  
25 hearing, the applicant may request a contested case hearing on the applica-  
26 tion. If the applicant requests an opportunity to present written evidence,  
27 arguments or testimony, the council shall leave the record open for that  
28 purpose only for a period not to exceed 14 days after the date of the hearing.  
29 Following the close of the record, the department shall prepare a draft final  
30 order for the council. If the applicant requests a contested case hearing, the  
31 council may grant the request if the applicant has shown good cause for a

1 contested case hearing. If a request for a contested case hearing is granted,  
2 subsections (9) to (11) of this section do not apply, and the application shall  
3 be considered under the same contested case procedures used for a nonexpe-  
4 dited application for a site certificate.

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

8 (a) Grant the application;

9 (b) Grant the application with conditions;

10 (c) Deny the application; or

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

13 (10) If the application is granted, the council shall issue a site certificate  
14 pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this  
15 section, the council may impose conditions based on standards adopted under  
16 ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based  
17 on those standards.

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

20 **SECTION 7.** ORS 469.401 is amended to read:

21 469.401. (1) Upon approval, the site certificate or any amended site cer-  
22 tificate with any conditions prescribed by the Energy Facility Siting Council  
23 shall be executed by the chairperson of the council and by the applicant. The  
24 certificate or amended certificate shall authorize the applicant to construct,  
25 operate and retire the facility subject to the conditions set forth in the site  
26 certificate or amended site certificate. The duration of the site certificate  
27 or amended site certificate shall be the life of the facility.

28 (2) The site certificate or amended site certificate shall contain conditions  
29 for the protection of the public health and safety, for the time for completion  
30 of construction, and to ensure compliance with the standards, statutes and  
31 rules described in ORS 469.501 and 469.503. The site certificate or amended

1 site certificate shall require both parties to abide by local ordinances and  
2 state law and the rules of the council in effect on the date the site certificate  
3 or amended site certificate is executed, except that upon a clear showing of  
4 a significant threat to the public health, safety or the environment that re-  
5 quires application of later-adopted laws or rules, the council may require  
6 compliance with such later-adopted laws or rules. For a permit addressed in  
7 the site certificate or amended site certificate, the site certificate or amended  
8 site certificate shall provide for facility compliance with applicable state and  
9 federal laws adopted in the future to the extent that such compliance is re-  
10 quired under the respective state agency statutes and rules.

11 (3) Subject to the conditions set forth in the site certificate or amended  
12 site certificate, any certificate or amended certificate signed by the chair-  
13 person of the council shall bind the state and all counties and cities and  
14 political subdivisions in this state, **other than the Water Resources**  
15 **Commission**, as to the approval of the site and the construction and oper-  
16 ation of the facility. After issuance of the site certificate or amended site  
17 certificate, any affected state agency, county, city and political subdivision,  
18 **other than the Water Resources Department**, shall, upon submission by  
19 the applicant of the proper applications and payment of the proper fees, but  
20 without hearings or other proceedings, promptly issue the permits, licenses  
21 and certificates addressed in the site certificate or amended site certificate,  
22 subject only to conditions set forth in the site certificate or amended site  
23 certificate. After the site certificate or amended site certificate is issued, the  
24 only issue to be decided in an administrative or judicial review of a state  
25 agency or local government permit for which compliance with governing law  
26 was considered and determined in the site certificate or amended site certif-  
27 icate proceeding shall be whether the permit is consistent with the terms of  
28 the site certificate or amended site certificate. Each state or local govern-  
29 ment agency that issues a permit, license or certificate shall continue to  
30 exercise enforcement authority over the permit, license or certificate.

31 (4) Nothing in ORS chapter 469 shall be construed to preempt the juris-



1 diction of any state agency or local government over matters that are not  
2 included in and governed by the site certificate or amended site certificate.  
3 Such matters include but are not limited to employee health and safety,  
4 building code compliance, wage and hour or other labor regulations, local  
5 government fees and charges or other design or operational issues that do  
6 not relate to siting the facility.

7 **SECTION 8.** ORS 469.501 is amended to read:

8 469.501. (1) The Energy Facility Siting Council shall adopt standards for  
9 the siting, construction, operation and retirement of facilities. The standards  
10 may address but need not be limited to the following subjects:

11 (a) The organizational, managerial and technical expertise of the appli-  
12 cant to construct and operate the proposed facility.

13 (b) Seismic hazards, **including requiring applicants for site certifi-**  
14 **icates to submit, as part of the application under ORS 469.350, ade-**  
15 **quate characterization of the site as to seismic risk to the proposed**  
16 **facility during maximum credible and probable seismic events.**

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

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

21 (e) Effects of the facility, taking into account mitigation, on fish and  
22 wildlife, including threatened and endangered fish, wildlife or plant species.

23 (f) Impacts of the facility on historic, cultural or archaeological resources  
24 listed on, or determined by the State Historic Preservation Officer to be el-  
25 igible for listing on, the National Register of Historic Places or the Oregon  
26 State Register of Historic Properties.

27 (g) Protection of public health and safety, including necessary safety de-  
28 vices and procedures.

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

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

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

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

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

12 (m) Compliance with the statewide planning goals adopted by the Land  
13 Conservation and Development Commission as specified by ORS 469.503.

14 (n) Soil protection.

15 (o) For energy facilities that emit carbon dioxide, the impacts of those  
16 emissions on climate change. For fossil-fueled power plants, as defined in  
17 ORS 469.503, the council shall apply a standard as provided for by ORS  
18 469.503 (2).

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

22 (3)(a) The council may issue a site certificate for a facility that does not  
23 meet one or more of the applicable standards adopted under subsection (1)  
24 of this section if the council determines that the overall public benefits of  
25 the facility outweigh any adverse effects on a resource or interest protected  
26 by the applicable standards the facility does not meet.

27 (b) The council by rule shall specify the criteria by which the council  
28 makes the determination described in paragraph (a) of this subsection.

29 (4) Notwithstanding subsection (1) of this section, the council may not  
30 impose any standard developed under subsection (1)(b), (f), (j) or (k) of this  
31 section to approve or deny an application for an energy facility producing

1 power from wind, solar or geothermal energy. However, the council may, to  
2 the extent it determines appropriate, apply any standards adopted under  
3 subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site  
4 certificate issued for any energy facility.

5 **SECTION 9.** ORS 469.503 is amended to read:

6 469.503. In order to issue a site certificate, the Energy Facility Siting  
7 Council shall determine that the preponderance of the evidence on the record  
8 supports the following conclusions:

9 (1) The facility complies with the applicable standards adopted by the  
10 council pursuant to ORS 469.501 or the overall public benefits of the facility  
11 outweigh any adverse effects on a resource or interest protected by the ap-  
12 plicable standards the facility does not meet.

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

22 (a) **For base load gas plants,** the net carbon dioxide emissions rate of  
23 the proposed base load gas plant shall not exceed 0.70 pounds of carbon  
24 dioxide emissions per kilowatt hour of net electric power output, with carbon  
25 dioxide emissions and net electric power output measured on a new and clean  
26 basis. Notwithstanding the foregoing, the council may by rule modify the  
27 carbon dioxide emissions standard for base load gas plants if the council  
28 finds that the most efficient stand-alone combined cycle, combustion turbine,  
29 natural gas-fired energy facility that is commercially demonstrated and op-  
30 erating in the United States has a net heat rate of less than 7,200 Btu per  
31 kilowatt hour higher heating value adjusted to ISO conditions. In modifying

1 the carbon dioxide emission standard, the council shall determine the rate  
2 of carbon dioxide emissions per kilowatt hour of net electric output of such  
3 energy facility, adjusted to ISO conditions, and reset the carbon dioxide  
4 emissions standard at 17 percent below this rate.

5 (b) **For fossil-fueled power plants other than base load gas plants,**  
6 the council shall adopt **by rule** carbon dioxide emissions standards [*for other*  
7 *types of fossil-fueled power plants. Such carbon dioxide emissions standards*  
8 *shall be promulgated by rule*]. In adopting or amending [*such*] carbon dioxide  
9 emissions standards **pursuant to this paragraph**, the council shall consider  
10 and balance at least the following principles, the findings on which shall be  
11 contained in the rulemaking record:

12 (A) Promote facility fuel efficiency;

13 (B) Promote efficiency in the resource mix;

14 (C) Reduce net carbon dioxide emissions;

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

16 (E) Promote innovative technologies and creative approaches to mitigat-  
17 ing, reducing or avoiding carbon dioxide emissions;

18 (F) Minimize transaction costs;

19 (G) Include an alternative process that separates decisions on the form  
20 and implementation of offsets from the final decision on granting a site cer-  
21 tificate;

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

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

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

26 (K) Promote prompt implementation of offset projects;

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

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

30 (c) The council shall determine whether the applicable carbon dioxide  
31 emissions standard is met by first determining the gross carbon dioxide

1 emissions that are reasonably likely to result from the operation of the pro-  
2 posed energy facility. Such determination shall be based on the proposed  
3 design of the energy facility. The council shall adopt site certificate condi-  
4 tions to ensure that the predicted carbon dioxide emissions are not exceeded  
5 on a new and clean basis. For any remaining emissions reduction necessary  
6 to meet the applicable standard, the applicant may elect to use any of sub-  
7 paragraphs (A) to (D) of this paragraph, or any combination thereof. The  
8 council shall determine the amount of carbon dioxide or other greenhouse  
9 gas emissions reduction that is reasonably likely to result from the  
10 applicant's offsets and whether the resulting net carbon dioxide emissions  
11 meet the applicable carbon dioxide emissions standard. For purposes of de-  
12 termining the net carbon dioxide emissions, the council shall by rule estab-  
13 lish the global warming potential of each greenhouse gas based on a  
14 generally accepted scientific method, and convert any greenhouse gas emis-  
15 sions to a carbon dioxide equivalent. Unless otherwise provided by the  
16 council by rule, the global warming potential of methane is 23 times that of  
17 carbon dioxide, and the global warming potential of nitrous oxide is 296  
18 times that of carbon dioxide. If the council or a court on judicial review  
19 concludes that the applicant has not demonstrated compliance with the ap-  
20 plicable carbon dioxide emissions standard under subparagraphs (A), (B) or  
21 (D) of this paragraph, or any combination thereof, and the applicant has  
22 agreed to meet the requirements of subparagraph (C) of this paragraph for  
23 any deficiency, the council or a court shall find compliance based on such  
24 agreement.

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

30 (B) The applicant or a third party will implement particular offsets, in  
31 which case the council may adopt site certificate conditions ensuring that

1 the proposed offsets are implemented but shall not require that predicted  
2 levels of avoidance, displacement or sequestration of greenhouse gas emis-  
3 sions be achieved. The council shall determine the quantity of greenhouse  
4 gas emissions reduction that is reasonably likely to result from each of the  
5 proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this  
6 subparagraph. In making this determination, the council shall not allow  
7 credit for offsets that have already been allocated or awarded credit for  
8 greenhouse gas emissions reduction in another regulatory setting. In addi-  
9 tion, the fact that an applicant or other parties involved with an offset may  
10 derive benefits from the offset other than the reduction of greenhouse gas  
11 emissions is not, by itself, a basis for withholding credit for an offset.

12 (i) The degree of certainty that the predicted quantity of greenhouse gas  
13 emissions reduction will be achieved by the offset;

14 (ii) The ability of the council to determine the actual quantity of  
15 greenhouse gas emissions reduction resulting from the offset, taking into  
16 consideration any proposed measurement, monitoring and evaluation of mit-  
17 igation measure performance; and

18 (iii) The extent to which the reduction of greenhouse gas emissions would  
19 occur in the absence of the offsets.

20 (C) The applicant or a third party agrees to provide funds in an amount  
21 deemed sufficient to produce the reduction in greenhouse gas emissions nec-  
22 essary to meet the applicable carbon dioxide emissions standard, in which  
23 case the funds shall be used as specified in paragraph (d) of this subsection.  
24 Unless modified by the council as provided below, the payment of 57 cents  
25 shall be deemed to result in a reduction of one ton of carbon dioxide emis-  
26 sions. The council shall determine the offset funds using the monetary offset  
27 rate and the level of emissions reduction required to meet the applicable  
28 standard. If a site certificate is approved based on this subparagraph, the  
29 council may not adjust the amount of such offset funds based on the actual  
30 performance of offsets. After three years from June 26, 1997, the council  
31 may by rule increase or decrease the monetary offset rate of 57 cents per ton

1 of carbon dioxide emissions. Any change to the monetary offset rate shall  
2 be based on empirical evidence of the cost of offsets and the council's finding  
3 that the standard will be economically achievable with the modified rate for  
4 natural gas-fired power plants. Following the initial three-year period, the  
5 council may increase or decrease the monetary offset rate no more than 50  
6 percent in any two-year period.

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

9 (d) If the applicant elects to meet the applicable carbon dioxide emissions  
10 standard in whole or in part under paragraph (c)(C) of this subsection, the  
11 applicant shall identify the qualified organization. The applicant may iden-  
12 tify an organization that has applied for, but has not received, an exemption  
13 from federal income taxation, but the council may not find that the organ-  
14 ization is a qualified organization unless the organization is exempt from  
15 federal taxation under section 501(c)(3) of the Internal Revenue Code as  
16 amended and in effect on December 31, 1996. The site certificate holder shall  
17 provide a bond or comparable security in a form reasonably acceptable to the  
18 council to ensure the payment of the offset funds and the amount required  
19 under subparagraph (A)(ii) of this paragraph. Such security shall be provided  
20 by the date specified in the site certificate, which shall be no later than the  
21 commencement of construction of the facility. The site certificate shall re-  
22 quire that the offset funds be disbursed as specified in subparagraph (A) of  
23 this paragraph, unless the council finds that no qualified organization exists,  
24 in which case the site certificate shall require that the offset funds be dis-  
25 bursed as specified in subparagraph (B) of this paragraph.

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

29 (i) When the site certificate holder receives written notice from the  
30 qualified organization certifying that the qualified organization is  
31 contractually obligated to pay any funds to implement offsets using the offset

1 funds, the site certificate holder shall make the requested amount available  
2 to the qualified organization unless the total of the amount requested and  
3 any amounts previously requested exceeds the offset funds, in which case  
4 only the remaining amount of the offset funds shall be made available. The  
5 qualified organization shall use at least 80 percent of the offset funds for  
6 contracts to implement offsets. The qualified organization shall assess off-  
7 sets for their potential to qualify in, generate credits in or reduce obligations  
8 in other regulatory settings. The qualified organization may use up to 20  
9 percent of the offset funds for monitoring, evaluation, administration and  
10 enforcement of contracts to implement offsets.

11 (ii) At the request of the qualified organization and in addition to the  
12 offset funds, the site certificate holder shall pay the qualified organization  
13 an amount equal to 10 percent of the first \$500,000 of the offset funds and  
14 4.286 percent of any offset funds in excess of \$500,000. This amount shall not  
15 be less than \$50,000 unless a lesser amount is specified in the site certificate.  
16 This amount compensates the qualified organization for its costs of selecting  
17 offsets and contracting for the implementation of offsets.

18 (iii) Notwithstanding any provision to the contrary, a site certificate  
19 holder subject to this subparagraph shall have no obligation with regard to  
20 offsets, the offset funds or the funds required by sub-subparagraph (ii) of this  
21 subparagraph other than to make available to the qualified organization the  
22 total amount required under paragraph (c) of this subsection and sub-  
23 subparagraph (ii) of this subparagraph, nor shall any nonperformance,  
24 negligence or misconduct on the part of the qualified organization be a basis  
25 for revocation of the site certificate or any other enforcement action by the  
26 council with respect to the site certificate holder.

27 (B) If the council finds there is no qualified organization, the site certifi-  
28 cate holder shall select one or more offsets to be implemented pursuant to  
29 criteria established by the council. The site certificate holder shall give  
30 written notice of its selections to the council and to any person requesting  
31 notice. On petition by the State Department of Energy, or by any person



1 adversely affected or aggrieved by the site certificate holder's selection of  
2 offsets, or on the council's own motion, the council may review such se-  
3 lection. The petition must be received by the council within 30 days of the  
4 date the notice of selection is placed in the United States mail, with first-  
5 class postage prepaid. The council shall approve the site certificate holder's  
6 selection unless it finds that the selection is not consistent with criteria es-  
7 tablished by the council. The site certificate holder shall contract to imple-  
8 ment the selected offsets within 18 months after commencing construction  
9 of the facility unless good cause is shown requiring additional time. The  
10 contracts shall obligate the expenditure of at least 85 percent of the offset  
11 funds for the implementation of offsets. No more than 15 percent of the offset  
12 funds may be spent on monitoring, evaluation and enforcement of the con-  
13 tract to implement the selected offsets. The council's criteria for selection  
14 of offsets shall be based on the criteria set forth in paragraphs (b)(C) and  
15 (c)(B) of this subsection and may also consider the costs of particular types  
16 of offsets in relation to the expected benefits of such offsets. The council's  
17 criteria shall not require the site certificate holder to select particular off-  
18 sets, and shall allow the site certificate holder a reasonable range of choices  
19 in selecting offsets. In addition, notwithstanding any other provision of this  
20 section, the site certificate holder's financial liability for implementation,  
21 monitoring, evaluation and enforcement of offsets pursuant to this subsection  
22 shall be limited to the amount of any offset funds not already contractually  
23 obligated. Nonperformance, negligence or misconduct by the entity or enti-  
24 ties implementing, monitoring or evaluating the selected offset shall not be  
25 a basis for revocation of the site certificate or any other enforcement action  
26 by the council with respect to the site certificate holder.

27 (C) Every qualified organization that has received funds under this para-  
28 graph shall, at five-year intervals beginning on the date of receipt of such  
29 funds, provide the council with the information the council requests about  
30 the qualified organization's performance. The council shall evaluate the in-  
31 formation requested and, based on such information, shall make any recom-

1 mendations to the Legislative Assembly that the council deems appropriate.

2 (e) As used in this subsection:

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

6 (B) "Base load gas plant" means a generating facility that is fueled by  
7 natural gas, except for periods during which an alternative fuel may be used  
8 and when such alternative fuel use shall not exceed 10 percent of expected  
9 fuel use in Btu, higher heating value, on an average annual basis, and where  
10 the applicant requests and the council adopts no condition in the site cer-  
11 tificate for the generating facility that would limit hours of operation other  
12 than restrictions on the use of alternative fuel. The council shall assume a  
13 100 percent capacity factor for such plants and a 30-year life for the plants  
14 for purposes of determining gross carbon dioxide emissions.

15 (C) "Carbon dioxide equivalent" means the global warming potential of  
16 a greenhouse gas reflected in units of carbon dioxide.

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

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

22 (F) "Global warming potential" means the determination of the atmo-  
23 spheric warming resulting from the release of a unit mass of a particular  
24 greenhouse gas in relation to the warming resulting from the release of the  
25 equivalent mass of carbon dioxide.

26 (G) "Greenhouse gas" means carbon dioxide, methane and nitrous oxide.

27 (H) "Gross carbon dioxide emissions" means the predicted carbon dioxide  
28 emissions of the proposed energy facility measured on a new and clean basis.

29 (I) "Net carbon dioxide emissions" means gross carbon dioxide emissions  
30 of the proposed energy facility, less carbon dioxide or other greenhouse gas  
31 emissions avoided, displaced or sequestered by any combination of

1 cogeneration or offsets.

2 (J) “New and clean basis” means the average carbon dioxide emissions  
3 rate per hour and net electric power output of the energy facility, without  
4 degradation, as determined by a 100-hour test at full power completed during  
5 the first 12 months of commercial operation of the energy facility, with the  
6 results adjusted for the average annual site condition for temperature,  
7 barometric pressure and relative humidity and use of alternative fuels, and  
8 using a rate of 117 pounds of carbon dioxide per million Btu of natural gas  
9 fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate  
10 fuel, if such fuel use is proposed by the applicant. The council may by rule  
11 adjust the rate of pounds of carbon dioxide per million Btu for natural gas  
12 or distillate fuel. The council may by rule set carbon dioxide emissions rates  
13 for other fuels.

14 (K) “Nongenerating facility” means those energy facilities that are de-  
15 fined in ORS 469.300 (11)(a)(C) and (E) to (I).

16 (L) “Offset” means an action that will be implemented by the applicant,  
17 a third party or through the qualified organization to avoid, sequester or  
18 displace emissions.

19 (M) “Offset funds” means the amount of funds determined by the council  
20 to satisfy the applicable carbon dioxide emissions standard pursuant to par-  
21 agraph (c)(C) of this subsection.

22 (N) “Qualified organization” means an entity that:

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

25 (ii) Either is incorporated in the State of Oregon or is a foreign corpo-  
26 ration authorized to do business in the State of Oregon;

27 (iii) Has in effect articles of incorporation that require that offset funds  
28 received pursuant to this section are used for offsets that require that deci-  
29 sions on the use of the offset funds are made by a decision-making body  
30 composed of seven voting members of which three are appointed by the  
31 council, three are Oregon residents appointed by the Bullitt Foundation or

1 an alternative environmental nonprofit organization named by the body, and  
2 one is appointed by the applicants for site certificates that are subject to  
3 paragraph (d) of this subsection and the holders of such site certificates, and  
4 that require nonvoting membership on the body for holders of site certifi-  
5 cates that have provided funds not yet disbursed under paragraph (d)(A) of  
6 this subsection;

7 (iv) Has made available on an annual basis, beginning after the first year  
8 of operation, a signed opinion of an independent certified public accountant  
9 stating that the qualified organization's use of funds pursuant to this statute  
10 conforms with generally accepted accounting procedures except that the  
11 qualified organization shall have one year to conform with generally ac-  
12 cepted accounting principles in the event of a nonconforming audit;

13 (v) Has to the extent applicable, except for good cause, entered into con-  
14 tracts obligating at least 60 percent of the offset funds to implement offsets  
15 within two years after the commencement of construction of the facility; and

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

18 (3) Except as provided in ORS 469.504 for land use compliance and except  
19 for those statutes and rules for which the decision on compliance has been  
20 delegated by the federal government to a state agency other than the council,  
21 the facility complies with all other Oregon statutes and administrative rules  
22 identified in the project order, as amended, as applicable to the issuance of  
23 a site certificate for the proposed facility. If compliance with applicable  
24 Oregon statutes and administrative rules, other than those involving feder-  
25 ally delegated programs, would result in conflicting conditions in the site  
26 certificate, the council may resolve the conflict consistent with the public  
27 interest. A resolution may not result in the waiver of any applicable state  
28 statute.

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

31 **(5) The facility meets recommended guidelines for energy gener-**

1 **ation, conservation and consumption in the region. In adopting the**  
2 **recommended guidelines, the council shall consider the benefits of**  
3 **using renewable energy resources instead of fossil fuel resources and**  
4 **prioritize siting approval for projects that generate energy by sources**  
5 **other than fossil fuels.**

6 **SECTION 10.** ORS 469.504 is amended to read:

7 469.504. (1) *[A proposed facility shall be found in]* **An applicant may**  
8 **demonstrate** compliance with the statewide planning goals *[under]* **for**  
9 **purposes of** ORS 469.503 (4) if:

10 (a) *[The facility has received]* **The applicant receives** local land use ap-  
11 **proval for the facility** under the acknowledged comprehensive plan and land  
12 use regulations of the affected local government; *[or]*

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

14 *[(A) The facility complies with applicable substantive criteria from the af-*  
15 *ected local government's acknowledged comprehensive plan and land use reg-*  
16 *ulations that are required by the statewide planning goals and in effect on the*  
17 *date the application is submitted, and with any Land Conservation and De-*  
18 *velopment Commission administrative rules and goals and any land use stat-*  
19 *utes that apply directly to the facility under ORS 197.646;]*

20 *[(B) For an energy facility or a related or supporting facility that must be*  
21 *evaluated against the applicable substantive criteria pursuant to subsection (5)*  
22 *of this section, that the proposed facility does not comply with one or more of*  
23 *the applicable substantive criteria but does otherwise comply with the appli-*  
24 *cable statewide planning goals, or that an exception to any applicable state-*  
25 *wide planning goal is justified under subsection (2) of this section; or]*

26 *[(C) For a facility that the council elects to evaluate against the statewide*  
27 *planning goals pursuant to subsection (5) of this section, that the proposed*  
28 *facility complies with the applicable statewide planning goals or that an ex-*  
29 *ception to any applicable statewide planning goal is justified under subsection*  
30 *(2) of this section.]*

31 **(b) After public hearings to gather information on the applicable**

1 **substantive criteria from the acknowledged comprehensive plan and**  
2 **land use regulations of the affected local government, a special advi-**  
3 **sory group established under ORS 469.480 reports to the Energy Facil-**  
4 **ity Siting Council that the facility complies with the applicable**  
5 **substantive criteria; or**

6 **(c) For a facility that is a pipeline or transmission line that is lo-**  
7 **cated in two or more local government jurisdictions, or a wind power**  
8 **generation project, after public hearings to gather information on the**  
9 **applicable substantive criteria from the acknowledged comprehensive**  
10 **plans and land use regulations of the affected local governments, a**  
11 **special advisory group established under ORS 469.480 reports to the**  
12 **council regarding the information gathered during the hearing process**  
13 **and the council determines that:**

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

17 **(B) Compliance with the statewide planning goals may be achieved**  
18 **by taking an exception to the applicable goal, but only after the sig-**  
19 **nificant environmental, economic, social and energy consequences**  
20 **anticipated as a result of the facility are identified and the adverse**  
21 **effects of the facility are mitigated in accordance with rules of the**  
22 **council applicable to the siting of the facility.**

23 **(2) The council may find goal compliance for a facility that does not**  
24 **otherwise comply with one or more statewide planning goals by taking an**  
25 **exception to the applicable goal. Notwithstanding the requirements of ORS**  
26 **197.732, the statewide planning goal pertaining to the exception process or**  
27 **any rules of the Land Conservation and Development Commission pertaining**  
28 **to an exception process goal, the council may take an exception to a goal**  
29 **if, after a joint public hearing held by the council and a special advi-**  
30 **sory group and after a determination by the affected local government**  
31 **concurring in the decision, the council finds:**

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

3 (b) The land subject to the exception is irrevocably committed as de-  
4 scribed by the rules of the Land Conservation and Development Commission  
5 to uses not allowed by the applicable goal because existing adjacent uses and  
6 other relevant factors make uses allowed by the applicable goal impractica-  
7 ble; or

8 (c) The following standards are met:

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

11 (B) The significant environmental, economic, social and energy conse-  
12 quences anticipated as a result of the proposed facility have been identified  
13 and adverse impacts will be mitigated in accordance with rules of the council  
14 applicable to the siting of the proposed facility; and

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

17 **(3) If the affected local government fails to concur with the decision**  
18 **of the council to take an exception to a goal under subsection (2) of**  
19 **this section and the council determines that an exception is necessary,**  
20 **the affected local government and the council shall meet to determine**  
21 **whether the parties can resolve the issues that block the affected local**  
22 **government from concurring in the decision. If the council and the**  
23 **affected local government are unable to resolve the issues, the parties**  
24 **shall have the issues resolved by binding arbitration.**

25 [(3)] (4) If compliance with applicable substantive local criteria and ap-  
26 plicable statutes and state administrative rules would result in conflicting  
27 conditions in the site certificate or amended site certificate, the council shall  
28 resolve the conflict consistent with the public interest. A resolution may not  
29 result in a waiver of any applicable state statute.

30 [(4) *An applicant for a site certificate shall elect whether to demonstrate*  
31 *compliance with the statewide planning goals under subsection (1)(a) or (b) of*

1 *this section. The applicant shall make the election on or before the date spec-*  
2 *ified by the council by rule.]*

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

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

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

28 *[(c) The level of consistency of the applicable substantive criteria from the*  
29 *various zones and jurisdictions.]*

30 **[(6)] (5)** The council is not subject to ORS 197.180 and a state agency may  
31 not require an applicant for a site certificate to comply with any rules or



1 programs adopted under ORS 197.180.

2 [(7)] (6) On or before its next periodic review, each affected local gov-  
3 ernment shall amend its comprehensive plan and land use regulations as  
4 necessary to reflect the decision of the council pertaining to a site certificate  
5 or amended site certificate.

6 [(8)] (7) Notwithstanding ORS 34.020 or 197.825 or any other provision of  
7 law, the affected local government's land use approval of a proposed facility  
8 [*under subsection (1)(a) of this section*] and the special advisory group's [*rec-*  
9 *ommendation of applicable substantive criteria*] **report** under subsection [(5)]  
10 (1) of this section shall be subject to judicial review only as provided in ORS  
11 469.403. If the applicant elects to comply with subsection (1)(a) of this sec-  
12 tion, the provisions of this subsection shall apply only to proposed projects  
13 for which the land use approval of the local government occurs after the date  
14 a notice of intent or an application for expedited processing is submitted to  
15 the State Department of Energy.

16 [(9)] (8) The State Department of Energy, in cooperation with other state  
17 agencies, shall provide, to the extent possible, technical assistance and in-  
18 formation about the siting process to local governments that request such  
19 assistance or that anticipate having a facility proposed in their jurisdiction.

20 **SECTION 11. (1) There is created the Task Force on Regional En-**  
21 **ergy Policy consisting of nine voting members appointed by the Di-**  
22 **rector of the State Department of Energy. The director shall appoint**  
23 **members in the following manner:**

- 24 (a) **One member to represent the Public Utility Commission;**  
25 (b) **One member to represent consumer-owned utilities;**  
26 (c) **One member to represent investor-owned utilities;**  
27 (d) **One member from the Oregon delegation to the Northwest**  
28 **Power and Conservation Council;**  
29 (e) **Four members from nongovernmental entities that have a pro-**  
30 **gram focus on renewable energy or the environment;**  
31 (f) **One member with experience in energy policy to represent the**

1 **general public; and**

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

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

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

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

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

14 **(3) A majority of the members of the task force constitutes a quo-**  
15 **rum for the transaction of business.**

16 **(4) Official action by the task force requires the approval of a ma-**  
17 **jority of the members of the task force.**

18 **(5) The task force shall elect one of its members to serve as chair-**  
19 **person.**

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

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

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

27 **(9) The task force shall submit a report, including recommendations**  
28 **for legislation relating to the duties of the task force under subsection**  
29 **(2)(a) of this section, to an interim committee of the Legislative As-**  
30 **sembly related to the environment or land use, as appropriate, no later**  
31 **than October 1, 2020.**

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

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

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

9       **SECTION 12.** **Section 11 of this 2019 Act is repealed on the date of**  
10 **the convening of the 2021 regular session of the Legislative Assembly**  
11 **as specified in ORS 171.010.**

12       **SECTION 13.** **The amendments to ORS 469.503 by section 9 of this**  
13 **2019 Act become operative January 1, 2022, and apply to applications**  
14 **for a site certificate submitted to the Energy Facility Siting Council**  
15 **on or after January 1, 2022.**

16       **SECTION 14.** **The amendments to ORS 469.350 and 469.401 by**  
17 **sections 3 and 7 of this 2019 Act apply to applications for site certifi-**  
18 **icates submitted to the Energy Facility Siting Council on or after the**  
19 **effective date of this 2019 Act.**

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