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 application for energy facility site certificate or amended site certificate submitted to Energy Facility Siting Council to be approved by board of county commissioners for each county in which area affected by application is located.

A BILL FOR AN ACT
Relating to the Energy Facility Siting Council siting process; amending ORS 469.360, 469.370, 469.373 and 469.403.

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

SECTION 1. ORS 469.370 is amended to read:

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

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:

(a) Comply with the requirements of ORS 197.797 (2), with respect to the persons notified;

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

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

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

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

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

(4) After the conclusion of the public hearing or hearings, and before the department may issue a proposed order, the board of county commissioners for each county in which the area affected by the application is located shall vote to reject or approve the application. If a board votes to reject the application, the council shall issue a final order rejecting the application based upon the board’s vote. The council may not continue with the evaluation
process until each board holds a vote to reject or approve the application.

(5) If all boards vote to approve the application, and after reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the department shall issue a proposed order recommending approval or rejection of the application. The department shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

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

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

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

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

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

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

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

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

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

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

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

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or
To add injection or withdrawal capacity to an existing underground gas storage facility; or
(d) Within 12 months after filing an application for a site certificate for any other energy facil-
ity.

([10]) (11) At the request of the applicant, the council shall allow expedited processing of an
application for a site certificate for an energy facility with an average electric generating capacity
of less than 100 megawatts. No notice of intent shall be required. Following approval of a request
for expedited review, the department shall issue a project order, which may be amended at any time.
Following issuance of the project order, the board of county commissioners for each county
in which the area affected by the application is located shall vote to reject or approve the
application. If a board votes to reject the application, the council shall issue a final order
rejecting the application based upon the board’s vote. The council shall either approve or reject
an application for a site certificate within six months after filing the site certificate application if
there are no intervenors in the contested case conducted under subsection [(5)] (6) of this section.
If there are intervenors in the contested case, the council shall either approve or reject an appli-
cation within nine months after filing the site certificate application. For purposes of this sub-
section, the generating capacity of a thermal power plant is the nameplate rating of the electrical
generator proposed to be installed in the plant.

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

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

([13]) (14) For a facility that is subject to and has been or will be reviewed by a federal agency
under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall
conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent
with and does not duplicate the federal agency review. Such coordination shall include, but need
not be limited to:
(a) Elimination of duplicative application, study and reporting requirements;
(b) Council use of information generated and documents prepared for the federal agency review;
(c) Development with the federal agency and reliance on a joint record to address applicable
council standards;
(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame
consistent with the federal agency review; and
(e) To the extent consistent with applicable state standards, establishment of conditions in any
site certificate that are consistent with the conditions established by the federal agency.

SECTION 2. ORS 469.373 is amended to read:
469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
an applicant may apply under the provisions of this section for expedited review of an application
for a site certificate for an energy facility if the energy facility:
(a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
power generation;
(b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
hensive plan, land use regulation or federal land use plan, and is located:
(A) At or adjacent to an existing energy facility; or
(B)(i) At, adjacent to or in close proximity to an existing industrial use; and
(ii) In an area currently zoned or designated for industrial use;

(c) Has been approved by a vote of the board of county commissioners for each county in which the area affected by the application is located;

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

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

[(d)] (e) Requires no new water right or water right transfer;

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

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

(B) Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:

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

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

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

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

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

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

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

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

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

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

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

(a) A description of the proposed energy facility;

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

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

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

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

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

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

(c) The requirements of ORS 469.503 (3); and

(d) The requirements of ORS 469.504 (1)(b).

(7) Following submission of an application for a site certificate, the council shall hold a public informational meeting on the application. Following the issuance of the proposed order, the council
shall hold at least one public hearing on the application. The public hearing shall be held in the area
affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior
to the hearing. The notice shall comply with the notice requirements of ORS 197.797 (2) and shall
include, but need not be limited to, the following:

(a) A description of the energy facility and the general location of the energy facility;
(b) The name of a department representative to contact and the telephone number at which
people may obtain additional information;
(c) A statement that copies of the application and proposed order are available for inspection
at no cost and will be provided at reasonable cost; and
(d) A statement that the record for public comment on the application will close at the conclu-
sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
issue, will preclude consideration of the issue, by the council or by a court on judicial review of the
council’s decision.

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

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

(a) Grant the application;
(b) Grant the application with conditions;
(c) Deny the application; or
(d) Return the application to the site certification process required by ORS 469.320.

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

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

SECTION 3. ORS 469.403 is amended to read:

469.403. (1) Any party to a contested case proceeding may apply for rehearing within 30 days
from the date the approval or rejection is served. The date of service shall be the date on which the
Energy Facility Siting Council delivered or mailed its approval or rejection in accordance with ORS
183.470. The application for rehearing shall set forth specifically the ground upon which the appli-
cation is based. No objection to the council’s approval or rejection of an application for a site cer-
tificate or a site certificate amendment shall be considered on rehearing without good cause shown
unless the basis for the objection is urged with reasonable specificity before the council in the site
certificate or amended site certificate process. Upon such application, the council shall have the
power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless
the council acts upon the application for rehearing within 30 days after the application is filed, the
application shall be considered denied. The filing of an application for rehearing shall not, unless
specifically ordered by the council, operate as a stay of the site certificate or amended site certif-
icate for the facility.

(2) An applicant or any party to a contested case proceeding on a site certificate or amended
site certificate application may appeal the council’s approval or rejection of the site certificate or
amended site certificate application. Issues on appeal shall be limited to any vote by a board of
county commissioners to reject an application or those raised by the parties to the contested
case proceeding before the council.

(3) Jurisdiction for judicial review of the council’s approval or rejection of an application for a
site certificate or amended site certificate is conferred upon the Supreme Court. Proceedings for
review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within
60 days after the date of service of the council’s final order or within 30 days after the date the
petition for rehearing is denied or deemed denied. Date of service shall be the date on which the
council delivered or mailed its order in accordance with ORS 183.470.

(4) The filing of a petition for judicial review may not stay the order, except that a party to the
contested case may apply to the Supreme Court for a stay upon a showing that there is a colorable
claim of error and that:

(a) The petitioner will suffer irreparable injury; or

(b) Construction of the energy facility will result in irreparable harm to resources protected by
applicable council standards or applicable agency or local government standards.

(5) If the Supreme Court grants a stay pursuant to subsection (4) of this section, the court:

(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of
$5,000.

(b) May grant a stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme
Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Su-
preme Court shall give priority on its docket to such a petition for review and shall render a deci-
sion within six months of the filing of the petition for review.

(7) The following periods of delay shall be excluded from the six-month period within which the
court must render a decision under subsection (6) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the
court’s own motion or at the request of one of the parties, if the court granted the continuance on
the basis of findings that the ends of justice served by granting the continuance outweigh the best
interests of the public and the other parties in having a decision within six months.

(8) No period of delay resulting from a continuance granted by the Supreme Court under sub-
section (7)(b) of this section shall be excluded from the six-month period unless the court sets forth,
in the record, either orally or in writing, its reasons for finding that the ends of justice served by
granting the continuance outweigh the best interests of the public and the other parties in having
a decision within six months. The factors the court shall consider in determining whether to grant
a continuance under subsection (7)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a
continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties involved or the
existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration
of the issues within the six-month period.

(9) No continuance under subsection (7)(b) of this section shall be granted because of general
congestion of the court calendar or lack of diligent preparation or attention to the case by any
member of the court or any party.

SECTION 4. ORS 469.360 is amended to read:

469.360. (1) The Energy Facility Siting Council shall evaluate each notice of intent, site certif-
icate application or request for expedited review.

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

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

(b) Review of the notice of intent, the application or a request for an expedited review; and

(c) Participation in a council proceeding, excluding legal expenses of the agency or local gov-
ernment incurred as a result of participation by the state agency or local government as a party in
a contested case conducted by the council pursuant to ORS 469.370 [(5)] (6).

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

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

(5) As part of its evaluation, the council also may commission an independent study by an in-
dependent contractor, state agency, local government or any other person, of any aspect of the
proposed facility within its statutory authority to review. The council may commission an inde-
dependent study under this subsection only after the council makes a determination that the council
is unable to fully evaluate the application without assistance and identifies specific issues to be
addressed and only pursuant to a written contract or agreement with the independent contractor,
state agency, local government or other person. The council shall compensate the independent con-
tractor, state agency, local government or other person only to the extent the costs are directly
related to issues identified by the council.

(6) The council shall provide funding to state agencies, cities or counties required to contract
with another entity to complete comments and recommendations pursuant to ORS 469.350.

(7) In addition to compensating state agencies, tribes and local governments pursuant to this
section, the council may provide funding to the Department of Environmental Quality for the de-
partment to conduct modeling and provide technical assistance to expedite preparation, submission
and review of applications for permits under ORS 468A.040 required for energy facilities.