

A-Engrossed House Bill 4076

Ordered by the House February 16
Including House Amendments dated February 16

Sponsored by Representative LIVELY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Specifies a reason why EFSC may take an exception to goal compliance. (Flesch Readability Score: 60.7).

[Digest: Makes ODOE do a study on energy and submit a report on its findings. (Flesch Readability Score: 65.7).]

[Requires the State Department of Energy to study energy. Directs the department to submit findings to the interim committees of the Legislative Assembly related to energy not later than September 15, 2027.]

[Sunsets on January 2, 2028.]

Requires the Energy Facility Siting Council to find that reasons justify why the state policy in applicable statewide planning goals should not apply to a proposed energy facility if the council finds that the proposed energy facility will deliver electricity to the electric grid using an existing energy facility's surplus interconnection and does not require associated transmission lines more than two miles from the existing energy facility. Defines "surplus interconnection."

A BILL FOR AN ACT

1
2 Relating to energy; amending ORS 469.504.

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

4 **SECTION 1.** ORS 469.504 is amended to read:

5 469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals
6 under ORS 469.503 (4) if:

7 (a) The facility has received local land use approval under the acknowledged comprehensive
8 plan and land use regulations of the affected local government; or

9 (b) The Energy Facility Siting Council determines that:

10 (A) The facility complies with applicable substantive criteria from the affected local
11 government's acknowledged comprehensive plan and land use regulations that are required by the
12 statewide planning goals and in effect on the date the application is submitted, and with any Land
13 Conservation and Development Commission administrative rules and goals and any land use statutes
14 that apply directly to the facility under ORS 197.646;

15 (B) For an energy facility or a related or supporting facility that must be evaluated against the
16 applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility
17 does not comply with one or more of the applicable substantive criteria but does otherwise comply
18 with the applicable statewide planning goals, or that an exception to any applicable statewide
19 planning goal is justified under subsection (2) of this section; or

20 (C) For a facility that the council elects to evaluate against the statewide planning goals pur-
21 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-

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 wide planning goals or that an exception to any applicable statewide planning goal is justified under
2 subsection (2) of this section.

3 (2)(a) The council may find goal compliance for a facility that does not otherwise comply with
4 one or more statewide planning goals by taking an exception to the applicable goal.
5 Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the
6 exception process or any rules of the Land Conservation and Development Commission pertaining
7 to an exception process goal, the council may take an exception to a goal if the council finds:

8 [(a)] (A) The land subject to the exception is physically developed to the extent that the land
9 is no longer available for uses allowed by the applicable goal;

10 [(b)] (B) The land subject to the exception is irrevocably committed as described by the rules
11 of the Land Conservation and Development Commission to uses not allowed by the applicable goal
12 because existing adjacent uses and other relevant factors make uses allowed by the applicable goal
13 impracticable; or

14 [(c)] (C) The following standards are met:

15 [(A)] (i) Reasons justify why the state policy embodied in the applicable goal should not apply;

16 [(B)] (ii) The significant environmental, economic, social and energy consequences anticipated
17 as a result of the proposed facility have been identified and adverse impacts will be mitigated in
18 accordance with rules of the council applicable to the siting of the proposed facility; and

19 [(C)] (iii) The proposed facility is compatible with other adjacent uses or will be made compat-
20 ible through measures designed to reduce adverse impacts.

21 **(b)(A) The council shall find that the standards under paragraph (a)(C)(i) of this sub-**
22 **section are met if the council finds that the proposed energy facility:**

23 **(i) Will deliver electricity to the electric grid utilizing an existing energy facility's surplus**
24 **interconnection; and**

25 **(ii) Does not require associated transmission lines more than two miles from the site**
26 **boundaries of the existing energy facility.**

27 **(B) As used in subparagraph (A) of this paragraph, "surplus interconnection" means any**
28 **capacity at the point of interconnection under an existing energy facility's interconnection**
29 **agreement that is not being utilized and does not exceed the original interconnection capac-**
30 **ity of the existing energy facility.**

31 (3) If compliance with applicable substantive local criteria and applicable statutes and state
32 administrative rules would result in conflicting conditions in the site certificate or amended site
33 certificate, the council shall resolve the conflict consistent with the public interest. A resolution
34 may not result in a waiver of any applicable state statute.

35 (4) An applicant for a site certificate shall elect whether to demonstrate compliance with the
36 statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the
37 election on or before the date specified by the council by rule.

38 (5) Upon request by the State Department of Energy, the special advisory group established
39 under ORS 469.480 shall recommend to the council, within the time stated in the request, the ap-
40 plicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group
41 does not recommend applicable substantive criteria within the time established in the department's
42 request, the council may either determine and apply the applicable substantive criteria under sub-
43 section (1)(b) of this section or determine compliance with the statewide planning goals under sub-
44 section (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable
45 substantive criteria for an energy facility described in ORS 469.300 or a related or supporting fa-

1 cility that does not pass through more than one local government jurisdiction or more than three
2 zones in any one jurisdiction, the council shall apply the criteria recommended by the special advi-
3 sory group. If the special advisory group recommends applicable substantive criteria for an energy
4 facility as defined in ORS 469.300 (12)(a)(C) to (E) or a related or supporting facility that passes
5 through more than one jurisdiction or more than three zones in any one jurisdiction, the council
6 shall review the recommended criteria and determine whether to evaluate the proposed facility
7 against the applicable substantive criteria recommended by the special advisory group, against the
8 statewide planning goals or against a combination of the applicable substantive criteria and state-
9 wide planning goals. In making its determination, the council shall consult with the special advisory
10 group and shall consider:

11 (a) The number of jurisdictions and zones in question;

12 (b) The degree to which the applicable substantive criteria reflect local government consider-
13 ation of energy facilities in the planning process; and

14 (c) The level of consistency of the applicable substantive criteria from the various zones and
15 jurisdictions.

16 (6) The council is not subject to ORS 197.180 and a state agency may not require an applicant
17 for a site certificate to comply with any rules or programs adopted under ORS 197.180.

18 (7) On or before its next periodic review, each affected local government shall amend its com-
19 prehensive plan and land use regulations as necessary to reflect the decision of the council per-
20 taining to a site certificate or amended site certificate.

21 (8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local
22 government's land use approval of a proposed facility under subsection (1)(a) of this section and the
23 special advisory group's recommendation of applicable substantive criteria under subsection (5) of
24 this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant
25 elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply
26 only to proposed projects for which the land use approval of the local government occurs after the
27 date a notice of intent or an application for expedited processing is submitted to the State Depart-
28 ment of Energy.

29 (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to
30 the extent possible, technical assistance and information about the siting process to local govern-
31 ments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

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