

# B-Engrossed House Bill 4076

Ordered by the Senate February 27  
Including House Amendments dated February 16 and Senate Amendments  
dated February 27

Sponsored by Representative LIVELY (Presession 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).

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."

**Allows a local government to justify a reason for an exception to a statewide land use planning goal relating to agricultural lands for the development of a renewable energy facility if an exception is required under rules of the Land Conservation and Development Commission, the county adopts certain findings and the proposed facility will deliver electricity to the electric grid using an existing energy facility's unused interconnection capacity and does not require associated transmission lines more than two miles from the existing energy facility.**

**Takes effect on the 91st day following adjournment sine die.**

## A BILL FOR AN ACT

1  
2 Relating to energy; amending ORS 215.446 and 469.504; and prescribing an effective date.

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-

**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 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-  
2 wide planning goals or that an exception to any applicable statewide planning goal is justified under  
3 subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **SECTION 2.** ORS 215.446 is amended to read:

34 215.446. (1) As used in this section:

35 (a) "Average electric generating capacity" has the meaning given that term in ORS 469.300.

36 (b) "Energy generation area" has the meaning given that term in ORS 469.300.

37 (c) "Renewable energy facility" means:

38 (A) A solar photovoltaic power generation facility using:

39 (i) More than 100 acres but not more than 240 acres located on high-value farmland as defined  
40 in ORS 195.300;

41 (ii) More than 100 acres but not more than 2,560 acres located on land that is predominantly  
42 cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes  
43 I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources  
44 Conservation Service of the United States Department of Agriculture; or

45 (iii) More than 320 acres but not more than 3,840 acres located on any other land.

1 (B) An electric power generating plant with an average electric generating capacity of at least  
2 35 megawatts but less than 50 megawatts if the power is produced from geothermal energy at a  
3 single plant or within a single energy generation area.

4 (C) An electric power generating plant with an average electric generating capacity of at least  
5 35 megawatts but less than 100 megawatts if the power is produced from wind energy at a single  
6 energy facility or within a single energy generation area.

7 (2) An application for a land use permit to establish a renewable energy facility must be made  
8 under ORS 215.416. An applicant must demonstrate to the satisfaction of the county that the  
9 renewable energy facility meets the standards under subsection (3) of this section.

10 (3) In order to issue a permit, the county shall require that the applicant:

11 (a)(A) Consult with the State Department of Fish and Wildlife, prior to submitting a final appli-  
12 cation to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is  
13 necessary;

14 (B) Conduct a habitat assessment of the proposed development site;

15 (C) Develop a mitigation plan to address significant fish and wildlife habitat impacts consistent  
16 with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes  
17 of implementing ORS 496.012; and

18 (D) Follow administrative rules adopted by the State Fish and Wildlife Commission and rules  
19 adopted by the Land Conservation and Development Commission to implement the Oregon Sage-  
20 Grouse Action Plan and Executive Order 15-18.

21 (b) Demonstrate that the construction and operation of the renewable energy facility, taking into  
22 account mitigation, will not result in significant adverse impacts to historic, cultural and  
23 archaeological resources that are:

24 (A) Listed on the National Register of Historic Places under the National Historic Preservation  
25 Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

26 (B) Inventoried in a local comprehensive plan; or

27 (C) Evaluated as a significant or important archaeological object or archaeological site, as those  
28 terms are defined in ORS 358.905.

29 (c) Demonstrate that the site for a renewable energy facility, taking into account mitigation, can  
30 be restored adequately to a useful, nonhazardous condition following permanent cessation of con-  
31 struction or operation of the facility and that the applicant has a reasonable likelihood of obtaining  
32 financial assurances in a form and amount satisfactory to the county to secure restoration of the  
33 site to a useful, nonhazardous condition.

34 (d) Meet the general and specific standards for a renewable energy facility adopted by the En-  
35 ergy Facility Siting Council under ORS 469.470 (2) and 469.501 that the county determines are ap-  
36 plicable.

37 (e) Provide the financial assurances described in paragraph (c) of this subsection in the form and  
38 at the time specified by the county.

39 (f) For a renewable energy facility that is a solar photovoltaic power generation facility using  
40 the number of acres described in subsection (4) of this section, provide a decommissioning plan to  
41 accomplish the restoration of the site to a useful, nonhazardous condition as described in paragraph  
42 (c) of this subsection. A decommissioning plan provided under this paragraph must include bonding  
43 or other security as the financial assurances described in paragraph (c) of this subsection.

44 (g) For a renewable energy facility that is an electric power generating plant with an average  
45 electric generating capacity of at least 50 megawatts but less than 100 megawatts that produces the

1 power from wind energy at a single energy facility or within a single energy generation area, pro-  
2 vide a decommissioning plan to accomplish the restoration of the site to a useful, nonhazardous  
3 condition as described in paragraph (c) of this subsection. A decommissioning plan provided under  
4 this paragraph must include bonding or other security as the financial assurances described in par-  
5 agraph (c) of this subsection.

6 (4) The requirements in subsection (3)(f) of this section apply to a solar photovoltaic power  
7 generation facility using:

8 (a) More than 160 acres but not more than 240 acres located on high-value farmland as defined  
9 in ORS 195.300;

10 (b) More than 1,280 acres but not more than 2,560 acres located on land that is predominantly  
11 cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes  
12 I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources  
13 Conservation Service of the United States Department of Agriculture; or

14 (c) More than 1,920 acres but not more than 3,840 acres located on any other land.

15 (5) Upon receipt of a reasonable cost estimate from the state agency or tribe, the applicant and  
16 county may jointly enter into a cost reimbursement agreement administered by the county with:

17 (a) The State Department of Fish and Wildlife to receive comments under subsection (3)(a) of  
18 this section.

19 (b) The State Historic Preservation Officer or any affected federally recognized Indian tribe to  
20 receive comments under subsection (3)(b) of this section.

21 (c) The State Department of Energy to receive comments under subsection (3)(c) and (d) of this  
22 section as well as comments regarding other matters as the county may require.

23 (6) A county that receives an application for a permit under this section shall, upon receipt of  
24 the application, provide notice to persons listed in subsection (7) of this section. The notice must  
25 include, at a minimum:

26 (a) A description of the proposed renewable energy facility;

27 (b) A description of the lots or parcels subject to the permit application;

28 (c) The dates, times and locations where public comments or public testimony on the permit  
29 application can be submitted; and

30 (d) The contact information for the governing body of the county and the applicant.

31 (7) The notice required under subsection (6) of this section must be delivered to:

32 (a) The State Department of Fish and Wildlife;

33 (b) The State Department of Energy;

34 (c) The State Historic Preservation Officer;

35 (d) The Oregon Department of Aviation;

36 (e) The United States Department of Defense; and

37 (f) Federally recognized Indian tribes that may be affected by the application.

38 **(8) If an exception is required under rules of the Land Conservation and Development**  
39 **Commission to allow the development of a renewable energy facility, a local government may**  
40 **justify a reason for an exception to a statewide land use planning goal relating to agricultural**  
41 **lands under ORS 197.732 (2)(c)(A), if:**

42 (a) **The facility will deliver electricity to the electric grid utilizing the capacity of an ex-**  
43 **isting energy facility's point of interconnection that is under the existing energy facility's**  
44 **interconnection agreement and is not being utilized and the electricity to be delivered does**  
45 **not exceed the original interconnection capacity of the existing energy facility;**

1       **(b) The facility does not require associated transmission lines more than two miles from**  
2 **the site boundaries of the existing energy facility; and**

3       **(c) The county adopts findings addressing:**

4       **(A) The availability of nonresource lands suitable for the proposed use;**

5       **(B) The availability and use of existing infrastructure, access and rights of way;**

6       **(C) Public health and safety;**

7       **(D) Compatibility with surrounding agricultural and rural uses;**

8       **(E) A mitigation plan to address potential impacts to surrounding land uses, farm prac-**  
9 **tices and water resulting from the construction or operation of the facility; and**

10       **(F) Compliance with local, state or federal requirements.**

11       **SECTION 3. This 2026 Act takes effect on the 91st day after the date on which the 2026**  
12 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

13