

HOUSE AMENDMENTS TO HOUSE BILL 4076

By COMMITTEE ON CLIMATE, ENERGY, AND ENVIRONMENT

February 16

1 In line 2 of the printed bill, before the period insert “; amending ORS 469.504”.

2 Delete lines 4 through 8 and insert:

3 “**SECTION 1.** ORS 469.504 is amended to read:

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

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

8 “(b) The Energy Facility Siting Council determines that:

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

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

19 “(C) For a facility that the council elects to evaluate against the statewide planning goals pur-
20 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-
21 wide planning goals or that an exception to any applicable statewide planning goal is justified under
22 subsection (2) of this section.

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

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

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

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

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

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

4 “[(C)] (iii) The proposed facility is compatible with other adjacent uses or will be made com-
5 patible through measures designed to reduce adverse impacts.

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

8 **“(i) Will deliver electricity to the electric grid utilizing an existing energy facility’s sur-
9 plus interconnection; and**

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

12 **“(B) As used in subparagraph (A) of this paragraph, ‘surplus interconnection’ means any
13 capacity at the point of interconnection under an existing energy facility’s interconnection
14 agreement that is not being utilized and does not exceed the original interconnection capac-
15 ity of the existing energy facility.**

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

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

23 “(5) Upon request by the State Department of Energy, the special advisory group established
24 under ORS 469.480 shall recommend to the council, within the time stated in the request, the ap-
25 plicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group
26 does not recommend applicable substantive criteria within the time established in the department’s
27 request, the council may either determine and apply the applicable substantive criteria under sub-
28 section (1)(b) of this section or determine compliance with the statewide planning goals under sub-
29 section (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable
30 substantive criteria for an energy facility described in ORS 469.300 or a related or supporting fa-
31 cility that does not pass through more than one local government jurisdiction or more than three
32 zones in any one jurisdiction, the council shall apply the criteria recommended by the special advi-
33 sory group. If the special advisory group recommends applicable substantive criteria for an energy
34 facility as defined in ORS 469.300 (12)(a)(C) to (E) or a related or supporting facility that passes
35 through more than one jurisdiction or more than three zones in any one jurisdiction, the council
36 shall review the recommended criteria and determine whether to evaluate the proposed facility
37 against the applicable substantive criteria recommended by the special advisory group, against the
38 statewide planning goals or against a combination of the applicable substantive criteria and state-
39 wide planning goals. In making its determination, the council shall consult with the special advisory
40 group and shall consider:

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

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

44 “(c) The level of consistency of the applicable substantive criteria from the various zones and
45 jurisdictions.

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

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

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

14 “(9) The State Department of Energy, in cooperation with other state agencies, shall provide,
15 to the extent possible, technical assistance and information about the siting process to local gov-
16 ernments that request such assistance or that anticipate having a facility proposed in their juris-
17 diction.”.

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