

House Bill 2792

Sponsored by COMMITTEE ON AGRICULTURE AND LAND USE (at the request of Representative Brian Clem)

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 **as introduced**.

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 ORS 469.310, 469.330,
3 469.350, 469.360, 469.370, 469.373, 469.401, 469.501, 469.503 and 469.504.

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

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

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

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

21 469.330. (1) Each applicant for a site certificate shall submit to the Energy Facility Siting
22 Council a notice of intent to file an application for a site certificate. The notice of intent must
23 provide information:

24 (a) About the proposed site and the characteristics of the facility sufficient for the preparation
25 of the State Department of Energy's project order; **and**

26 (b) **Documenting the applicant's technical expertise, the applicant's history in energy fa-**
27 **ility construction and operation and the financial backing for the facility construction. The**

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 **applicant's history shall provide information about any fines or penalties, including criminal**
 2 **penalties, assessed against the applicant that pertain to the siting, construction or operation**
 3 **of an energy facility.**

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

7 (3) Following review of the notice of intent and any public comments received in response to the
 8 notice of intent, the department may hold a preapplication conference with state agencies and local
 9 governments that have regulatory or advisory responsibility with respect to the facility. After the
 10 preapplication conference, the department shall issue a project order establishing the statutes, ad-
 11 ministrative rules, council standards, local ordinances, application requirements and study require-
 12 ments for the site certificate application. A project order is not a final order.

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

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

16 469.350. (1) Applications for site certificates shall be made to the Energy Facility Siting Council
 17 in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

18 (2) Copies of the notice of intent and of the application shall be sent for comment and recom-
 19 mendation within specified deadlines established by the council to the Department of Environmental
 20 Quality, [*the Water Resources Commission,*] the State Fish and Wildlife Commission, the Water Re-
 21 sources Director, the State Geologist, the State Forestry Department, the Public Utility Commission
 22 of Oregon, the State Department of Agriculture, the Department of Land Conservation and Devel-
 23 opment, the Oregon Department of Aviation, any other state agency that has regulatory or advisory
 24 responsibility with respect to the facility and any city or county affected by the application.

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

32 (4) The State Department of Energy shall notify the applicant whether the application is com-
 33 plete. When the department determines an application is complete, the department shall notify the
 34 applicant and provide notice to the public.

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

36 469.360. (1)(a) The Energy Facility Siting Council shall evaluate each notice of intent, site cer-
 37 tificate application or request for expedited review.

38 **(b) As part of its evaluation, the council shall direct the State Department of Energy to**
 39 **review, in a process that includes provisions for public hearings and comment and for con-**
 40 **sideration of the public comment:**

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

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

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

45 **(D) The relationship between the local, short-term benefits of siting the proposed facility**

1 **and the maintenance and enhancement of the long-term productivity of the environment; and**
 2 **(E) Any matter that the council determines essential to the adequate appraisal of the**
 3 **effects of the proposed facility on the environment.**

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

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

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

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

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

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

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

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

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

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

37 469.370. (1) Based on its review of the application and the comments and recommendations on
 38 the application from state agencies and local governments, the State Department of Energy shall
 39 prepare and issue a draft proposed order on the application.

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

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

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

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

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

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

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

14 (4) After reviewing the application, the draft proposed order and any testimony given at the
15 public hearing and after consulting with other agencies, the department shall issue a proposed order
16 recommending approval or rejection of the application. The department shall issue public notice of
17 the proposed order, that shall include notice of a contested case hearing specifying a deadline for
18 requests to participate as a party or limited party and a date for the prehearing conference.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (d) Within 12 months after filing an application for a site certificate for any other energy facil-
 14 ity.

15 (10) At the request of the applicant, the council shall allow expedited processing of an applica-
 16 tion for a site certificate for an energy facility with an average electric generating capacity of less
 17 than 100 megawatts. No notice of intent shall be required. Following approval of a request for ex-
 18 pedited review, the department shall issue a project order, which may be amended at any time. The
 19 council shall either approve or reject an application for a site certificate within six months after
 20 filing the site certificate application if there are no intervenors in the contested case conducted
 21 under subsection (5) of this section. If there are intervenors in the contested case, the council shall
 22 either approve or reject an application within nine months after filing the site certificate applica-
 23 tion. For purposes of this subsection, the generating capacity of a thermal power plant is the
 24 nameplate rating of the electrical generator proposed to be installed in the plant.

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

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

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

35 (a) Elimination of duplicative application, study and reporting requirements;

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

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

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

41 (e) To the extent consistent with applicable state standards, establishment of conditions in any
 42 site certificate that are consistent with the conditions established by the federal agency.

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

44 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
 45 an applicant may apply under the provisions of this section for expedited review of an application

1 for a site certificate for an energy facility if the energy facility:

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

5 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
 6 hensive plan, land use regulation or federal land use plan, and is located:

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

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

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

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

12 or

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

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

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

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

28 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
 29 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-
 30 idence from the municipal corporation that:

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

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

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

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

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

44 (2) An applicant seeking expedited review under this section shall submit documentation to the
 45 State Department of Energy, prior to the submission of an application for a site certificate, that

1 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
2 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
3 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (7) Following submission of an application for a site certificate, the council shall hold a public
6 informational meeting on the application. Following the issuance of the proposed order, the council
7 shall hold at least one public hearing on the application. The public hearing shall be held in the area
8 affected by the energy facility **and shall provide an opportunity for the public and affected local**
9 **governments to present written evidence, arguments or testimony regarding the**
10 **application.** The council shall mail notice of the hearing at least 20 days prior to the hearing. The
11 notice shall comply with the notice requirements of ORS 197.763 (2) and shall include, but need not
12 be limited to, the following:

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

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

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

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

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

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

37 (a) Grant the application;

38 (b) Grant the application with conditions;

39 (c) Deny the application; or

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

41 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS
42 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
43 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
44 application based on those standards.

45 (11) Judicial review of the approval or rejection of a site certificate by the council under this

1 section shall be as provided in ORS 469.403.

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

3 469.401. (1) Upon approval, the site certificate or any amended site certificate with any condi-
 4 tions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the
 5 council and by the applicant. The certificate or amended certificate shall authorize the applicant to
 6 construct, operate and retire the facility subject to the conditions set forth in the site certificate
 7 or amended site certificate. The duration of the site certificate or amended site certificate shall be
 8 the life of the facility.

9 (2) The site certificate or amended site certificate shall contain conditions for the protection of
 10 the public health and safety, for the time for completion of construction, and to ensure compliance
 11 with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or
 12 amended site certificate shall require both parties to abide by local ordinances and state law and
 13 the rules of the council in effect on the date the site certificate or amended site certificate is exe-
 14 cuted, except that upon a clear showing of a significant threat to the public health, safety or the
 15 environment that requires application of later-adopted laws or rules, the council may require com-
 16 pliance with such later-adopted laws or rules. For a permit addressed in the site certificate or
 17 amended site certificate, the site certificate or amended site certificate shall provide for facility
 18 compliance with applicable state and federal laws adopted in the future to the extent that such
 19 compliance is required under the respective state agency statutes and rules.

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

36 (4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state
 37 agency or local government over matters that are not included in and governed by the site certif-
 38 icate or amended site certificate. Such matters include but are not limited to employee health and
 39 safety, building code compliance, wage and hour or other labor regulations, local government fees
 40 and charges or other design or operational issues that do not relate to siting the facility.

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

42 469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction,
 43 operation and retirement of facilities. The standards may address but need not be limited to the
 44 following subjects:

45 (a) The organizational, managerial and technical expertise of the applicant to construct and

1 operate the proposed facility.

2 (b) Seismic hazards, **including requiring applicants for site certificates to submit, as part**
 3 **of the application under ORS 469.350, adequate characterization of the site as to seismic risk**
 4 **to the proposed facility during maximum credible and probable seismic events.**

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

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

8 (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threat-
 9 ened and endangered fish, wildlife or plant species.

10 (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or deter-
 11 mined by the State Historic Preservation Officer to be eligible for listing on, the National Register
 12 of Historic Places or the Oregon State Register of Historic Properties.

13 (g) Protection of public health and safety, including necessary safety devices and procedures.

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

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

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

17 (k) Ability of the communities in the affected area to provide sewers and sewage treatment,
 18 water, storm water drainage, solid waste management, housing, traffic safety, police and fire pro-
 19 tection, health care and schools.

20 (L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the
 21 state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans
 22 when adopting a need standard or in determining whether an applicable need standard has been met.
 23 The council shall not adopt a standard requiring a showing of need or cost-effectiveness for gener-
 24 ating facilities as defined in ORS 469.503.

25 (m) Compliance with the statewide planning goals adopted by the Land Conservation and De-
 26 velopment Commission as specified by ORS 469.503.

27 (n) Soil protection.

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

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

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

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

40 (4) Notwithstanding subsection (1) of this section, the council may not impose any standard de-
 41 veloped under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for
 42 an energy facility producing power from wind, solar or geothermal energy. However, the council
 43 may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b),
 44 (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

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

1 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
2 that the preponderance of the evidence on the record supports the following conclusions:

3 (1) The facility complies with the applicable standards adopted by the council pursuant to ORS
4 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or
5 interest protected by the applicable standards the facility does not meet.

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

13 (a) **For base load gas plants**, the net carbon dioxide emissions rate of the proposed base load
14 gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric
15 power output, with carbon dioxide emissions and net electric power output measured on a new and
16 clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide
17 emissions standard for base load gas plants if the council finds that the most efficient stand-alone
18 combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demon-
19 strated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt
20 hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission
21 standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net
22 electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide
23 emissions standard at 17 percent below this rate.

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

29 (A) Promote facility fuel efficiency;

30 (B) Promote efficiency in the resource mix;

31 (C) Reduce net carbon dioxide emissions;

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

33 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding
34 carbon dioxide emissions;

35 (F) Minimize transaction costs;

36 (G) Include an alternative process that separates decisions on the form and implementation of
37 offsets from the final decision on granting a site certificate;

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

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

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

41 (K) Promote prompt implementation of offset projects;

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

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

44 (c) The council shall determine whether the applicable carbon dioxide emissions standard is met
45 by first determining the gross carbon dioxide emissions that are reasonably likely to result from the

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

18 (A) The facility will sequentially produce electrical and thermal energy from the same fuel
19 source, and the thermal energy will be used to displace another source of carbon dioxide emissions
20 that would have otherwise continued to occur, in which case the council shall adopt site certificate
21 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

22 (B) The applicant or a third party will implement particular offsets, in which case the council
23 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall
24 not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas
25 emissions be achieved. The council shall determine the quantity of greenhouse gas emissions re-
26 duction that is reasonably likely to result from each of the proposed offsets based on the criteria in
27 sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall
28 not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas
29 emissions reduction in another regulatory setting. In addition, the fact that an applicant or other
30 parties involved with an offset may derive benefits from the offset other than the reduction of
31 greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset.

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

34 (ii) The ability of the council to determine the actual quantity of greenhouse gas emissions re-
35 duction resulting from the offset, taking into consideration any proposed measurement, monitoring
36 and evaluation of mitigation measure performance; and

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

39 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to
40 produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide
41 emissions standard, in which case the funds shall be used as specified in paragraph (d) of this sub-
42 section. Unless modified by the council as provided below, the payment of 57 cents shall be deemed
43 to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the
44 offset funds using the monetary offset rate and the level of emissions reduction required to meet the
45 applicable standard. If a site certificate is approved based on this subparagraph, the council may

1 not adjust the amount of such offset funds based on the actual performance of offsets. After three
2 years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of
3 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based
4 on empirical evidence of the cost of offsets and the council's finding that the standard will be eco-
5 nomically achievable with the modified rate for natural gas-fired power plants. Following the initial
6 three-year period, the council may increase or decrease the monetary offset rate no more than 50
7 percent in any two-year period.

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

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

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

25 (i) When the site certificate holder receives written notice from the qualified organization cer-
26 tifying that the qualified organization is contractually obligated to pay any funds to implement off-
27 sets using the offset funds, the site certificate holder shall make the requested amount available to
28 the qualified organization unless the total of the amount requested and any amounts previously re-
29 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall
30 be made available. The qualified organization shall use at least 80 percent of the offset funds for
31 contracts to implement offsets. The qualified organization shall assess offsets for their potential to
32 qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified or-
33 ganization may use up to 20 percent of the offset funds for monitoring, evaluation, administration
34 and enforcement of contracts to implement offsets.

35 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-
36 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first
37 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount
38 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount
39 compensates the qualified organization for its costs of selecting offsets and contracting for the im-
40 plementation of offsets.

41 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-
42 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by
43 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization
44 the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this
45 subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified

1 organization be a basis for revocation of the site certificate or any other enforcement action by the
2 council with respect to the site certificate holder.

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

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

32 (e) As used in this subsection:

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

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

43 (C) "Carbon dioxide equivalent" means the global warming potential of a greenhouse gas re-
44 flected in units of carbon dioxide.

45 (D) "Fossil-fueled power plant" means a generating facility that produces electric power from

1 natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

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

4 (F) "Global warming potential" means the determination of the atmospheric warming resulting
5 from the release of a unit mass of a particular greenhouse gas in relation to the warming resulting
6 from the release of the equivalent mass of carbon dioxide.

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

8 (H) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the pro-
9 posed energy facility measured on a new and clean basis.

10 (I) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy
11 facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by
12 any combination of cogeneration or offsets.

13 (J) "New and clean basis" means the average carbon dioxide emissions rate per hour and net
14 electric power output of the energy facility, without degradation, as determined by a 100-hour test
15 at full power completed during the first 12 months of commercial operation of the energy facility,
16 with the results adjusted for the average annual site condition for temperature, barometric pressure
17 and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide
18 per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of
19 distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate
20 of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by
21 rule set carbon dioxide emissions rates for other fuels.

22 (K) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300
23 (11)(a)(C) and (E) to (I).

24 (L) "Offset" means an action that will be implemented by the applicant, a third party or through
25 the qualified organization to avoid, sequester or displace emissions.

26 (M) "Offset funds" means the amount of funds determined by the council to satisfy the applicable
27 carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

28 (N) "Qualified organization" means an entity that:

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

31 (ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do
32 business in the State of Oregon;

33 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to
34 this section are used for offsets that require that decisions on the use of the offset funds are made
35 by a decision-making body composed of seven voting members of which three are appointed by the
36 council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environ-
37 mental nonprofit organization named by the body, and one is appointed by the applicants for site
38 certificates that are subject to paragraph (d) of this subsection and the holders of such site certif-
39 icates, and that require nonvoting membership on the body for holders of site certificates that have
40 provided funds not yet disbursed under paragraph (d)(A) of this subsection;

41 (iv) Has made available on an annual basis, beginning after the first year of operation, a signed
42 opinion of an independent certified public accountant stating that the qualified organization's use
43 of funds pursuant to this statute conforms with generally accepted accounting procedures except
44 that the qualified organization shall have one year to conform with generally accepted accounting
45 principles in the event of a nonconforming audit;

1 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least
 2 60 percent of the offset funds to implement offsets within two years after the commencement of
 3 construction of the facility; and

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

6 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and
 7 rules for which the decision on compliance has been delegated by the federal government to a state
 8 agency other than the council, the facility complies with all other Oregon statutes and administra-
 9 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-
 10 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative
 11 rules, other than those involving federally delegated programs, would result in conflicting conditions
 12 in the site certificate, the council may resolve the conflict consistent with the public interest. A
 13 resolution may not result in the waiver of any applicable state statute.

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

16 **(5) The facility meets recommended guidelines for energy generation, conservation and**
 17 **consumption in the region. In adopting the recommended guidelines, the council shall con-**
 18 **sider the benefits of using renewable energy resources instead of fossil fuel resources and**
 19 **prioritize siting approval for projects that generate energy by sources other than fossil fuels.**

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

21 469.504. (1) *[A proposed facility shall be found in]* **An applicant may demonstrate** compliance
 22 with the statewide planning goals *[under]* **for purposes of** ORS 469.503 (4) if:

23 (a) *[The facility has received]* **The applicant receives** local land use approval **for the facility**
 24 under the acknowledged comprehensive plan and land use regulations of the affected local govern-
 25 ment; *[or]*

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

27 *[(A) The facility complies with applicable substantive criteria from the affected local government's*
 28 *acknowledged comprehensive plan and land use regulations that are required by the statewide planning*
 29 *goals and in effect on the date the application is submitted, and with any Land Conservation and De-*
 30 *velopment Commission administrative rules and goals and any land use statutes that apply directly to*
 31 *the facility under ORS 197.646;]*

32 *[(B) For an energy facility or a related or supporting facility that must be evaluated against the*
 33 *applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does*
 34 *not comply with one or more of the applicable substantive criteria but does otherwise comply with the*
 35 *applicable statewide planning goals, or that an exception to any applicable statewide planning goal is*
 36 *justified under subsection (2) of this section; or]*

37 *[(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant*
 38 *to subsection (5) of this section, that the proposed facility complies with the applicable statewide plan-*
 39 *ning goals or that an exception to any applicable statewide planning goal is justified under subsection*
 40 *(2) of this section.]*

41 **(b) After public hearings to gather information on the applicable substantive criteria**
 42 **from the acknowledged comprehensive plan and land use regulations of the affected local**
 43 **government, a special advisory group established under ORS 469.480 reports to the Energy**
 44 **Facility Siting Council that the facility complies with the applicable substantive criteria; or**

45 **(c) For a facility that is a pipeline or transmission line that is located in two or more**

1 local government jurisdictions, or a wind power generation project, after public hearings to
 2 gather information on the applicable substantive criteria from the acknowledged compre-
 3 hensive plans and land use regulations of the affected local governments, a special advisory
 4 group established under ORS 469.480 reports to the council regarding the information gath-
 5 ered during the hearing process and the council determines that:

6 (A) The facility complies with the applicable substantive criteria from the acknowledged
 7 comprehensive plans and land use regulations; or

8 (B) Compliance with the statewide planning goals may be achieved by taking an exception
 9 to the applicable goal, but only after the significant environmental, economic, social and en-
 10 ergy consequences anticipated as a result of the facility are identified and the adverse effects
 11 of the facility are mitigated in accordance with rules of the council applicable to the siting
 12 of the facility.

13 (2) The council may find goal compliance for a facility that does not otherwise comply with one
 14 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding
 15 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process
 16 or any rules of the Land Conservation and Development Commission pertaining to an exception
 17 process goal, the council may take an exception to a goal if, **after a joint public hearing held by**
 18 **the council and a special advisory group and after a determination by the affected local**
 19 **government concurring in the decision**, the council finds:

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

22 (b) The land subject to the exception is irrevocably committed as described by the rules of the
 23 Land Conservation and Development Commission to uses not allowed by the applicable goal because
 24 existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-
 25 ticable; or

26 (c) The following standards are met:

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

28 (B) The significant environmental, economic, social and energy consequences anticipated as a
 29 result of the proposed facility have been identified and adverse impacts will be mitigated in ac-
 30 cordance with rules of the council applicable to the siting of the proposed facility; and

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

33 **(3) If the affected local government fails to concur with the decision of the council to**
 34 **take an exception to a goal under subsection (2) of this section and the council determines**
 35 **that an exception is necessary, the affected local government and the council shall meet to**
 36 **determine whether the parties can resolve the issues that block the affected local govern-**
 37 **ment from concurring in the decision. If the council and the affected local government are**
 38 **unable to resolve the issues, the parties shall have the issues resolved by binding arbitration.**

39 [(3)] (4) If compliance with applicable substantive local criteria and applicable statutes and state
 40 administrative rules would result in conflicting conditions in the site certificate or amended site
 41 certificate, the council shall resolve the conflict consistent with the public interest. A resolution
 42 may not result in a waiver of any applicable state statute.

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

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

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

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

21 [(c) The level of consistency of the applicable substantive criteria from the various zones and ju-
 22 risdictions.]

23 [(6)] (5) The council is not subject to ORS 197.180 and a state agency may not require an ap-
 24 plicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

25 [(7)] (6) On or before its next periodic review, each affected local government shall amend its
 26 comprehensive plan and land use regulations as necessary to reflect the decision of the council
 27 pertaining to a site certificate or amended site certificate.

28 [(8)] (7) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local
 29 government's land use approval of a proposed facility [*under subsection (1)(a) of this section*] and the
 30 special advisory group's [*recommendation of applicable substantive criteria*] **report** under subsection
 31 [(5)] (1) of this section shall be subject to judicial review only as provided in ORS 469.403. If the
 32 applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection
 33 shall apply only to proposed projects for which the land use approval of the local government occurs
 34 after the date a notice of intent or an application for expedited processing is submitted to the State
 35 Department of Energy.

36 [(9)] (8) The State Department of Energy, in cooperation with other state agencies, shall provide,
 37 to the extent possible, technical assistance and information about the siting process to local gov-
 38 ernments that request such assistance or that anticipate having a facility proposed in their juris-
 39 diction.

40 **SECTION 11. (1) There is created the Task Force on Regional Energy Policy consisting**
 41 **of nine voting members appointed by the Director of the State Department of Energy. The**
 42 **director shall appoint members in the following manner:**

43 (a) **One member to represent the Public Utility Commission;**

44 (b) **One member to represent consumer-owned utilities;**

45 (c) **One member to represent investor-owned utilities;**

1 (d) One member from the Oregon delegation to the Northwest Power and Conservation
2 Council;

3 (e) Four members from nongovernmental entities that have a program focus on
4 renewable energy or the environment;

5 (f) One member with experience in energy policy to represent the general public; and

6 (g) One nonvoting member to represent the State Department of Energy.

7 (2) The task force shall:

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

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

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

15 (3) A majority of the members of the task force constitutes a quorum for the transaction
16 of business.

17 (4) Official action by the task force requires the approval of a majority of the members
18 of the task force.

19 (5) The task force shall elect one of its members to serve as chairperson.

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

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

24 (8) The task force may adopt rules necessary for the operation of the task force.

25 (9) The task force shall submit a report, including recommendations for legislation re-
26 lating to the duties of the task force under subsection (2)(a) of this section, to an interim
27 committee of the Legislative Assembly related to the environment or land use, as appropri-
28 ate, no later than October 1, 2020.

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

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

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

36 **SECTION 12.** Section 11 of this 2019 Act is repealed on the date of the convening of the
37 2021 regular session of the Legislative Assembly as specified in ORS 171.010.

38 **SECTION 13.** The amendments to ORS 469.503 by section 9 of this 2019 Act become op-
39 erative January 1, 2022, and apply to applications for a site certificate submitted to the En-
40 ergy Facility Siting Council on or after January 1, 2022.

41 **SECTION 14.** The amendments to ORS 469.350 and 469.401 by sections 3 and 7 of this 2019
42 Act apply to applications for site certificates submitted to the Energy Facility Siting Council
43 on or after the effective date of this 2019 Act.