

A-Engrossed
House Bill 4090

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

Sponsored by Representatives FAHEY, GAMBA, SMITH G, ANDERSEN; Representatives BOICE, LEVY E, OWENS, Senators FINDLEY, PATTERSON (Pre-session filed.)

SUMMARY

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

Digest: Removes EFSC power over a project that makes clean power or is a power line, is only on U.S. lands and is reviewed under NEPA. (Flesch Readability Score: 63.0).

Prohibits the Energy Facility Siting Council from exercising jurisdiction over or requiring a site certificate for an energy facility that is a renewable energy facility or transmission line, is sited wholly within federal lands and is subject to review under the National Environmental Policy Act. **Requires the person seeking federal approval for the energy facility to consult with local governments within whose jurisdiction the facility is proposed to be located or whose jurisdiction adjoins the proposed facility on potential impacts.**

A BILL FOR AN ACT

1
2 Relating to the permitting of energy facilities; amending ORS 469.370.

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

4 **SECTION 1.** ORS 469.370 is amended to read:

5 469.370. (1) Based on its review of the application and the comments and recommendations on
6 the application from state agencies and local governments, the State Department of Energy shall
7 prepare and issue a draft proposed order on the application.

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

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

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

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

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

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

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

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 shall be made at the commencement of any public hearing on the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 [(13)] **(13)(a) Except as provided in paragraph (b) of this subsection**, for a facility that is
18 subject to and has been or will be reviewed by a federal agency under the National Environmental
19 Policy Act, 42 U.S.C. [Section] 4321[,] et seq., the council shall conduct its site certificate review, to
20 the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal
21 agency review. Such coordination shall include, but need not be limited to:

22 [(a)] **(A)** Elimination of duplicative application, study and reporting requirements;

23 [(b)] **(B)** Council use of information generated and documents prepared for the federal agency
24 review;

25 [(c)] **(C)** Development with the federal agency and reliance on a joint record to address appli-
26 cable council standards;

27 [(d)] **(D)** Whenever feasible, joint hearings and issuance of a site certificate decision in a time
28 frame consistent with the federal agency review; and

29 [(e)] **(E)** To the extent consistent with applicable state standards, establishment of conditions in
30 any site certificate that are consistent with the conditions established by the federal agency.

31 **(b) The council may not exercise jurisdiction over or require a site certificate for a fa-**
32 **ility that is:**

33 **(A) Sited wholly on federal land;**

34 **(B) Subject to and has been or will be reviewed by a federal agency under the National**
35 **Environmental Policy Act, 42 U.S.C. 4321 et seq.; and**

36 **(C) An “energy facility” as defined as any of the following:**

37 **(i) An electric power generating plant under ORS 469.300 (11)(a)(A) that:**

38 **(I) Does not produce electric power from fossil fuels; and**

39 **(II) Is not a nuclear power plant;**

40 **(ii) A high voltage transmission line under ORS 469.300 (11)(a)(C);**

41 **(iii) A solar photovoltaic power generation facility under ORS 469.300 (11)(a)(D); or**

42 **(iv) An electric power generating plant under ORS 469.300 (11)(a)(J).**

43 **(c) If, under paragraph (b) of this subsection, a facility is not subject to the jurisdiction**
44 **of the council or required to obtain a site certificate, the person seeking federal approval to**
45 **construct or operate the facility shall, nonetheless, during the federal agency review process,**

1 **consult with any local government within whose jurisdiction the facility is proposed to be**
2 **located or any local government whose jurisdiction adjoins the proposed facility on potential**
3 **impacts, including, but not limited to, potential impacts to existing federal agricultural and**
4 **grazing permits and leases, road usage, noxious weed management and fire management and**
5 **response plans, that may result from the construction or operation of the facility.**

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