

Senate Bill 1034

Sponsored by Senator NASH

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Removes a way in which EFSC may find that a proposed facility complies with statewide planning goals. (Flesch Readability Score: 60.1).

Removes provisions that allow the Energy Facility Siting Council to find that an energy facility is in compliance with statewide planning goals even when the council determines that the facility does not comply with applicable substantive criteria from the affected local government's land use plan and regulations that the facility must be evaluated against if the council determines that the facility otherwise complies with applicable statewide planning goals.

A BILL FOR AN ACT

1
2 Relating to the process to determine energy facility compliance with statewide planning goals;
3 amending ORS 469.504.

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

5 **SECTION 1.** ORS 469.504, as amended by section 4, chapter 25, Oregon Laws 2024, is amended
6 to read:

7 469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals
8 under ORS 469.503 (4) if:

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

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

12 (A) The facility complies with applicable substantive criteria from the affected local
13 government's acknowledged comprehensive plan and land use regulations that are [*required by the*
14 *statewide planning goals*] **recommended by the special advisory group established under ORS**
15 **469.480** and in effect on the date the application is submitted, and with any Land Conservation and
16 Development Commission administrative rules and goals and any land use statutes that apply di-
17 rectly to the facility under ORS 197.646; **or**

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

23 [(C)] **(B)** For a facility that the council elects to evaluate against the statewide planning goals
24 pursuant to subsection (5) of this section, that the proposed facility complies with the applicable
25 statewide planning goals or that an exception to any applicable statewide planning goal is justified
26 under subsection (2) of this section.

27 (2) The council may find goal compliance for a facility that does not otherwise comply with one
28 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding

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 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process
 2 or any rules of the Land Conservation and Development Commission pertaining to an exception
 3 process goal, the council may take an exception to a goal if the council finds:

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

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

10 (c) The following standards are met:

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

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

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

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

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

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

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

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

45 [(c) *The level of consistency of the applicable substantive criteria from the various zones and ju-*

1 *risdictions.]*

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

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

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

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

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