

HOUSE AMENDMENTS TO HOUSE BILL 3135

By COMMITTEE ON LAND USE

May 6

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions; and”
2 and delete “469.405.”.

3 On page 2, line 18, after “Energy” delete the rest of the line and delete line 19 and insert “to
4 review, in a process that includes provisions for public hearing and comment and for consideration
5 of the public comment.”.

6 In line 23, delete “and”.

7 In line 25, after “environment” delete the period and insert “; and

8 “(E) Any other matter that the council determines essential to the adequate appraisal of the
9 effects of the proposed facility on the environment.”.

10 In line 26, delete “may” and insert “shall”.

11 In line 27, before the second “application” insert “site certificate”.

12 On page 10, delete lines 11 through 45 and delete page 11.

13 On page 12, delete lines 1 through 11 and insert:

14 “(5) The facility meets recommended guidelines for energy generation, conservation and con-
15 sumption in the region. In adopting the recommended guidelines, the council shall consider the
16 benefits of renewable energy resources over fossil fuel resources and prioritize siting approval for
17 projects that generate energy by sources other than fossil fuels.

18 “**SECTION 6.** ORS 469.504 is amended to read:

19 “469.504. (1) [*A proposed facility shall be found in*] **An applicant may demonstrate** compliance
20 with the statewide planning goals [*under*] **for purposes of** ORS 469.503 (4) if:

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

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

25 “[*(A) The facility complies with applicable substantive criteria from the affected local government’s*
26 *acknowledged comprehensive plan and land use regulations that are required by the statewide planning*
27 *goals and in effect on the date the application is submitted, and with any Land Conservation and De-*
28 *velopment Commission administrative rules and goals and any land use statutes directly applicable to*
29 *the facility under ORS 197.646 (3);]*

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

35 “[*(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant*

1 to subsection (5) of this section, that the proposed facility complies with the applicable statewide plan-
2 ning goals or that an exception to any applicable statewide planning goal is justified under subsection
3 (2) of this section.]

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

8 **“(c) For a facility that is a pipeline or transmission line that is located in two or more**
9 **local government jurisdictions, or for a wind power generation project, after public hearings**
10 **to gather information on the applicable substantive criteria from the acknowledged compre-**
11 **hensive plans and land use regulations of the affected local governments, a special advisory**
12 **group established under ORS 469.480 reports to the council regarding the information gather-**
13 **ed during the hearing process and the council determines that:**

14 **“(A) The facility complies with the applicable substantive criteria from the acknowledged**
15 **comprehensive plans and land use regulations; or**

16 **“(B) Compliance with the statewide planning goals may be achieved by taking an excep-**
17 **tion to an applicable goal, but only after the significant environmental, economic, social and**
18 **energy consequences anticipated as a result of the facility are identified and the adverse**
19 **impacts of the facility are mitigated in accordance with the rules of the council applicable**
20 **to the siting of the facility.**

21 **“(2) The council may find goal compliance for a facility that does not otherwise comply with one**
22 **or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding**
23 **the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process**
24 **or any rules of the Land Conservation and Development Commission pertaining to an exception**
25 **process goal, the council may take an exception to a goal if, after a joint public hearing held by**
26 **the council and a special advisory group and after a determination by the affected local**
27 **governments concurring in the decision, the council finds:**

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

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

34 **“(c) The following standards are met:**

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

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

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

41 **“(3) If an affected local government fails to concur with the decision of the council to**
42 **take an exception to a goal under subsection (2) of this section and the council determines**
43 **that an exception is necessary, the affected local government and the council shall meet to**
44 **determine whether the parties can resolve the issues that block the affected local govern-**
45 **ment from concurring in the decision. If the council and the affected local government are**

1 **unable to resolve the issues, the parties shall have the issues determined by binding arbi-**
2 **tration.**

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

7 “[4] *An applicant for a site certificate shall elect whether to demonstrate compliance with the*
8 *statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the*
9 *election on or before the date specified by the council by rule.]*

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

27 “[a] *The number of jurisdictions and zones in question;*]

28 “[b] *The degree to which the applicable substantive criteria reflect local government consideration*
29 *of energy facilities in the planning process; and]*

30 “[c] *The level of consistency of the applicable substantive criteria from the various zones and ju-*
31 *risdictions.]*

32 “[6] (5) The council is not subject to ORS 197.180 and a state agency may not require an ap-
33 plicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

34 “[7] (6) On or before its next periodic review, each affected local government shall amend its
35 comprehensive plan and land use regulations as necessary to reflect the decision of the council
36 pertaining to a site certificate or amended site certificate.

37 “[8] (7) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local
38 government’s land use approval of a proposed facility [*under subsection (1)(a) of this section*] and the
39 special advisory group’s [*recommendation of applicable substantive criteria*] **report** under subsection
40 [(5)] (1) of this section shall be subject to judicial review only as provided in ORS 469.403. If the
41 applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection
42 shall apply only to proposed projects for which the land use approval of the local government occurs
43 after the date a notice of intent or an application for expedited processing is submitted to the State
44 Department of Energy.

45 “[9] (8) The State Department of Energy, in cooperation with other state agencies, shall pro-

1 vide, to the extent possible, technical assistance and information about the siting process to local
2 governments that request such assistance or that anticipate having a facility proposed in their ju-
3 risdiction.”.

4 In line 39, after “thermal” insert “or contaminant”.

5 On page 13, line 27, after “(4)” insert “For the purpose of obtaining review and comment,”.

6 On page 14, line 22, after “facility” insert “and shall provide an opportunity for the public and
7 affected local governments to present written evidence, arguments or testimony regarding the ap-
8 plication”.

9 On page 15, delete lines 14 through 42.

10 In line 43, delete “9” and insert “8”.

11 On page 16, after line 22, insert:

12 **“SECTION 9. (1) There is created the Task Force on Regional Energy Policy consisting**
13 **of nine voting members and one nonvoting member appointed by the Director of the State**
14 **Department of Energy. The director shall appoint members in the following manner:**

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

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

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

18 **“(d) One member from the Oregon delegation to the Northwest Power and Conservation**
19 **Council;**

20 **“(e) Four members from nongovernmental entities that have a program focus on**
21 **renewable energy or the environment;**

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

23 **“(g) One nonvoting member to represent the State Department of Energy.**

24 **“(2) The task force shall:**

25 **“(a) Discuss and formulate recommendations for long-term regional energy policies as**
26 **those policies are relevant to energy facility siting in Oregon;**

27 **“(b) Recommend administrative rules to the department relating to the implementation**
28 **of ORS 469.503 (5) and the prioritizing of the use of renewable energy resources over the use**
29 **of fossil fuel resources; and**

30 **“(c) Recommend administrative rules to the department that would create a standard for**
31 **renewable energy development.**

32 **“(3) A majority of the members of the task force constitutes a quorum for the trans-**
33 **action of business.**

34 **“(4) Official action by the task force requires the approval of a majority of the members**
35 **of the task force.**

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

37 **“(6) If there is a vacancy for any cause, the director shall make an appointment to be-**
38 **come immediately effective.**

39 **“(7) The task force shall meet at times and places specified by the call of the chairperson**
40 **or of a majority of the members of the task force.**

41 **“(8) The task force may adopt rules necessary for the operation of the task force.**

42 **“(9) The task force shall submit a report, including recommendations for legislation re-**
43 **lating to the duties of the task force under subsection (2)(a) of this section, to an interim**
44 **committee related to the environment or land use as appropriate no later than October 1,**
45 **2006.**

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

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

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

8 “SECTION 10. Section 9 of this 2005 Act is repealed on the date of the convening of the
9 next regular biennial legislative session.

10 “SECTION 11. The amendments to ORS 469.503 by section 5 of this 2005 Act become op-
11 erative January 1, 2008, and apply to applications for a site certificate submitted to the En-
12 ergy Facility Siting Council on or after January 1, 2008.”.

13
