

Enrolled
House Bill 3310

Sponsored by Representative GARRARD

CHAPTER

AN ACT

Relating to land use; creating new provisions; amending ORS 197.015, 197.060, 197.628, 197.629, 197.631, 197.633, 197.636, 197.639, 197.646, 197.820, 197.825 and 469.504; and declaring an emergency.

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

SECTION 1. ORS 197.628 is amended to read:

197.628. (1) It is the policy of the State of Oregon to require the periodic review of comprehensive plans and land use regulations in order to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for **economic development**, needed housing, *[employment,]* transportation, *[and]* public facilities and services **and urbanization**.

(2) The Land Conservation and Development Commission shall concentrate periodic review assistance to local governments on achieving compliance with those statewide land use planning laws and goals that address **economic development**, needed housing, *[employment,]* transportation, *[and]* public facilities and services **and urbanization**.

(3) The following conditions indicate the need for periodic review of comprehensive plans and land use regulations:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals **relating to economic development, needed housing, transportation, public facilities and services and urbanization**;

(b) Decisions implementing acknowledged comprehensive plan and land use regulations are inconsistent with the goals **relating to economic development, needed housing, transportation, public facilities and services and urbanization**;

(c) There are issues of regional or statewide significance, intergovernmental coordination or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals **relating to economic development, needed housing, transportation, public facilities and services and urbanization**;

or

(d) The local government, commission or Department of Land Conservation and Development determines that the existing comprehensive plan and land use regulations are not achieving the statewide planning goals **relating to economic development, needed housing, transportation, public facilities and services and urbanization**.

SECTION 2. ORS 197.629 is amended to read:

197.629. (1) The Land Conservation and Development Commission shall establish and maintain a schedule for periodic review of comprehensive plans and land use regulations. Except as necessary to coordinate approved periodic review work programs and to account for special circumstances that from time to time arise, the schedule shall reflect the following timelines:

[(a) A city with a population of less than 2,500 within its urban growth boundary shall not be required to conduct periodic review unless the city lies close enough to another city that has a population of 25,000 or more within its urban growth boundary that the smaller city is significantly affected by needed housing, employment, transportation or public facility and services decisions made by the larger city;]

[(b) Except as provided in subsection (2) of this section, a county with a population of less than 15,000 shall not be required to conduct periodic review;]

[(c) A county with a population of 15,000 or more but less than 50,000, or a city with a population of 2,500 or more but less than 25,000 inside its urban growth boundary, shall conduct periodic review every 5 to 15 years after completion of the previous periodic review; and]

[(d) A county with a population of 50,000 or more, or a metropolitan service district or a city with a population of 25,000 or more inside its urban growth boundary, shall conduct periodic review every 5 to 10 years after completion of the previous periodic review.]

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review; and

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(2) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(4) If the Land Conservation and Development Commission pays the costs of a local government that is not subject to subsection (1) of this section to perform new work programs and work tasks, the commission may require the local government to complete periodic review when the local government has not completed periodic review within the previous five years if:

(a) A city has been growing faster than the annual population growth rate of the state for five consecutive years;

(b) A major transportation project on the Statewide Transportation Improvement Program that is approved for funding by the Oregon Transportation Commission is likely to:

(A) Have a significant impact on a city or an urban unincorporated community; or

(B) Be significantly affected by growth and development in a city or an urban unincorporated community;

(c) A major facility, including a prison, is sited or funded by a state agency; or

(d) Approval by the city or county of a facility for a major employer will increase employment opportunities and significantly affect the capacity of housing and public facilities in the city or urban unincorporated community.

[(4)] **(5) The Land Conservation and Development Commission may schedule periodic review for a local government earlier than provided in subsection (1) of this section if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.**

[5] (6) A city or county that is *[exempt from]* **not required to complete** periodic review under subsection (1)[(a) or (b)] of this section may request periodic review by the commission.

(7) **As used in this section, “metropolitan planning organization” means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c).**

SECTION 3. ORS 197.631 is amended to read:

197.631. [(1)] In order to use state and local periodic review resources most efficiently and effectively and to concentrate periodic review on adequate provision of **economic development**, needed housing, *[employment,]* transportation, *[and]* public facilities and services **and urbanization**, the Land Conservation and Development Commission shall adopt, amend or repeal the statewide land use planning goals, guidelines and corresponding rules as necessary to facilitate periodic review and to provide for compliance by local governments with those goals not described in ORS 197.628 (2) through the post-acknowledgment procedures of ORS 197.610 to 197.625.

[(2) *In the biennial report required under ORS 197.060, the commission shall report to the Legislative Assembly and the Joint Legislative Committee on Land Use on its activities implementing subsection (1) of this section.*]

SECTION 4. ORS 197.633 is amended to read:

197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review. The rules shall provide a process for:

- (a) Initiating periodic review;
- (b) Citizen participation;
- (c) The participation of state agencies;

(d) The preparation, review and approval of an evaluation of a comprehensive plan and land use regulations;

- (e) Review of a work program; and
- (f) Review of completed work tasks.

(3)[(a) *A decision by the Director of the Department of Land Conservation and Development to approve a work program or a work task, that no work program is necessary or that no further work is necessary, may be appealed to the commission or referred to the commission by the director.*] **A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal.**

(4) **The director:**

(a) **Shall take action on a work task not later than 120 days after the local government submits the work task for review unless the local government waives the 120-day deadline or the commission grants the director an extension. If the director does not take action within the time period required by this subsection, the work task is deemed approved. The department shall provide a letter to the local government certifying that the work task is approved unless an interested party has filed a timely objection to the work task consistent with administrative rules for conducting periodic review. If a timely objection is filed, the director shall refer the work task to the commission.**

(b) **May approve or remand a work task or refer the work task to the commission for a decision. A decision by the director to approve or remand a work task may be appealed to the commission.**

(5) Except as provided in *[paragraph (b) of]* this subsection, the commission shall take action on the appeal or referral within 90 days of the appeal or referral. Action by the commission in response to an appeal from a decision of the director is a final order subject to judicial review in the manner provided in ORS 197.650.

[(b)] The commission may extend the time [in paragraph (a) of this subsection] for taking action on the appeal or referral if the commission finds that:

[(A)] (a) The appeal or referral is appropriate for mediation; [or]

[(B)] (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit; or

(c) The parties to the appeal and the commission agree to an extension, not to exceed an additional 90 days.

[(4)] (6) The commission and a local government shall attempt to complete periodic review within three years after approval of a work program. In order to promote the timely completion of periodic review, the commission shall establish a system of incentives to encourage local government compliance with timelines in periodic review work programs.

SECTION 5. ORS 197.636 is amended to read:

197.636. (1) Upon good cause shown by a local government, the Director of the Department of Land Conservation and Development may allow the local government an extension of time for submitting a work program or completing a work task. A decision by the director to grant or deny an extension may be [appealed to the Land Conservation and Development Commission or may be] referred to the **Land Conservation and Development** Commission by the director. The Department of Land Conservation and Development or the commission shall not extend the deadline for submitting a work program more than once nor for more than 90 days, and shall not extend the deadline for a work task more than once nor for more than one year.

(2) If a local government fails to submit a work program or to complete a work task by the deadline set by the director or the commission, including any extension that has been granted, the director shall schedule a hearing before the commission. The commission shall issue an order imposing one or more of the following sanctions until the work program or the work task receives final approval by the director or the commission:

(a) Require the local government to apply those portions of the goals and rules to land use decisions as specified in the order. Sanctions may be imposed under this paragraph only when necessary to resolve a specific deficiency identified in the order.

(b) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task.

(c) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335 (4).

(d) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

(3) If the department receives a work program or work task completed in response to a commission order issued under subsection (2) of this section, the director shall evaluate and issue a decision on the work program or work task within 90 days.

(4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650.

SECTION 6. ORS 197.639 is amended to read:

197.639. (1) In addition to coordination between state agencies and local government established in certified state agency coordination programs, the Department of Land Conservation and Development may establish one or more state assistance teams made up of representatives of various agencies and local governments, **utilize the Economic Revitalization Team established under ORS 284.555** or **institute** an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(2) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review.

[2] (3) The department may develop model ordinance provisions to assist local governments in the periodic review plan update process **and in complying with new statutory requirements or new land use planning goal or rule requirements adopted by the Land Conservation and Development Commission outside the periodic review process.**

[3] (4) A local government may arrange with the department for the provision of periodic review planning services and those services may be paid with grant program funds.

[4] (5) The [*Land Conservation and Development*] commission shall establish an advisory committee composed, at a minimum, of representatives from the League of Oregon Cities, the Association of Oregon Counties, metropolitan service districts, the Special Districts Association of Oregon, land use planning public interest groups and developer interest groups. The advisory committee shall advise the commission and the department on the allocation of grants and technical assistance funding from General Fund sources and other issues assigned by the commission.

SECTION 7. ORS 197.646 is amended to read:

197.646. [(1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, Land Conservation and Development Commission administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction. Any amendment to incorporate a goal, rule or statute change shall be submitted to the Department of Land Conservation and Development as set forth in ORS 197.610 to 197.625.]

[(2) The department shall notify cities and counties of newly adopted commission goals and commission rules, including the effective date, as they are adopted. The department shall notify cities and counties of newly adopted land use statutes following the legislative session when such statutes are adopted.]

(1) A local government shall amend its acknowledged comprehensive plan, regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with:

(a) A new statutory requirement; or

(b) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission.

(2) Periodic review is not the implementation process for new statutory, land use planning goal or rule requirements.

(3)(a) The Department of Land Conservation and Development shall notify local governments when a new statutory requirement or a new land use planning goal or rule requirement adopted by the commission requires changes to an acknowledged comprehensive plan, regional framework plan and land use regulations implementing either plan.

(b) The commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, regional framework plan and land use regulations implementing either plan must be in compliance with:

(A) A new statutory requirement, if the legislation does not specify a time period for compliance; and

(B) A new land use planning goal or rule requirement adopted by the commission.

[3] (4) When a local government does not adopt **amendments to a comprehensive plan, regional framework plan and [or] land use [regulation amendments] regulations implementing either plan** as required by subsection (1) of this section, the new [*or amended goal, rule or statute shall be directly applicable*] **statutory, land use planning goal or rule requirements apply directly** to the local government's land use decisions. The failure to adopt **amendments to a comprehensive plan, regional framework plan and land use [regulation amendments] regulations implementing either plan** required by subsection (1) of this section [*may be the*] **is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.**

SECTION 8. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals

or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Commission" means the Land Conservation and Development Commission.

(4) "Committee" means the Joint Legislative Committee on Land Use.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

(9) "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

(10) "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) Which is made under land use standards which do not require interpretation or the exercise of policy or legal judgment;

(B) Which approves or denies a building permit issued under clear and objective land use standards;

(C) Which is a limited land use decision;

(D) Which determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility which is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

(E) Which is an expedited land division as described in ORS 197.360;

(c) Does not include a decision by a school district to close a school;

(d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179; or

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:

(a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.

(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025 authorized and regulated by statute and includes but is not limited to: Water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Urban unincorporated community" means an area designated in a county's acknowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

[20] (21) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

[21] (22) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 9. ORS 197.060 is amended to read:

197.060. (1) Prior to the end of each even-numbered year, the Department of Land Conservation and Development shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, Land Conservation and Development Commission, state agencies, local governments and special districts in carrying out ORS chapters 195, 196 and 197.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the Joint Legislative Committee on Land Use for its review and comment at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

(3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly submitted under subsection (1) of this section.

(4) The department shall include in its biennial report:

(a) A description of its activities implementing ORS 197.631; and

(b) An accounting of new statutory, land use planning goal and rule requirements and local government compliance with the new requirements pursuant to ORS 197.646.

SECTION 10. ORS 197.825 is amended to read:

197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

(2) The jurisdiction of the board:

(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review;

(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals;

(c) Does not include *[those matters over which the Department of Land Conservation and Development or the Land Conservation and Development Commission has review authority under ORS 197.251, 197.430, 197.445, 197.450, 197.455 and 197.628 to 197.650]* **a local government decision that is:**

(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board; or

(B) Subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455 or a matter related to a local government decision subject to the review authority of the department under ORS 197.430, 197.445, 197.450 or 197.455;

(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663; and

(g) Does not include review of expedited land divisions under ORS 197.360.

(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 (10)(b) or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; and

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order.

SECTION 11. ORS 197.820 is amended to read:

197.820. (1) The Land Use Board of Appeals shall conduct review proceedings upon petitions filed in the manner prescribed in ORS 197.830.

(2) In conducting review proceedings the members of the board may sit together or separately as the board chairperson shall decide.

(3) The board chairperson shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions.

(4) The board shall adopt rules governing:

(a) The conduct of review proceedings brought before it under ORS 197.830 to 197.845.

(b) The transfer of a matter to the board by the Director of the Department of Land Conservation and Development under ORS 197.825 (2)(c).

SECTION 12. ORS 469.504 is amended to read:

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

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

(b) The Energy Facility Siting Council determines that:

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

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

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

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

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

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

(c) The following standards are met:

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

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

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

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

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

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

- (a) The number of jurisdictions and zones in question;
- (b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and
- (c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

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

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

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

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

SECTION 13. (1) The amendments to ORS 197.060, 197.628, 197.631, 197.633, 197.636, 197.646 and 469.504 by sections 1, 3, 4, 5, 7, 9 and 12 of this 2005 Act become operative January 1, 2006.

(2) The amendments to ORS 197.015, 197.629 and 197.639 by sections 2, 6 and 8 of this 2005 Act become operative July 1, 2007.

SECTION 14. The amendments to ORS 197.820 and 197.825 by sections 10 and 11 of this 2005 Act apply to a local government decision that is submitted to the Department of Land Conservation and Development or the Land Conservation and Development Commission on or after the effective date of this 2005 Act.

SECTION 15. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House May 12, 2005

Repassed by House August 1, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 22, 2005

Repassed by Senate August 1, 2005

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President of Senate

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