

A-Engrossed
House Bill 3153

Ordered by the House May 5
Including House Amendments dated May 5

Sponsored by Representative CLEM; Representative BOONE

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.

[Prohibits establishment of utility facility in area zoned for farm use, forest use or mixed farm and forest use if majority of utility service provided by utility facility will be used within urban growth boundary.]

[Authorizes owner of land in area zoned for farm use, forest use or mixed farm and forest use to refuse to grant utility easement. Requires owner to agree to five-year license, including mitigation agreement, for utility facility with inflation-adjusted annual license fee and mitigation costs provided to owner.]

[Directs State Department of Agriculture or State Forestry Department to oversee mitigation agreement and activities.]

Requires utility provider to make reasonable effort to locate utility transmission and distribution lines in exclusive farm use zones so that lines have least practical impact on farming operations.

A BILL FOR AN ACT

1
2 Relating to utility facilities; creating new provisions; and amending ORS 215.246 and 215.275.

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

4 **SECTION 1.** ORS 215.275 is amended to read:

5 215.275. (1) A utility facility established under ORS 215.213 (1)(d) or 215.283 (1)(d) is necessary
6 for public service if the facility must be sited in an exclusive farm use zone in order to provide the
7 service.

8 (2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS
9 215.213 (1)(d) or 215.283 (1)(d) must show that reasonable alternatives have been considered and that
10 the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

11 (a) Technical and engineering feasibility;

12 (b) The proposed facility is locationally dependent. A utility facility is locationally dependent if
13 it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reason-
14 ably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

15 (c) Lack of available urban and nonresource lands;

16 (d) Availability of existing rights of way;

17 (e) Public health and safety; and

18 (f) Other requirements of state or federal agencies.

19 (3) Costs associated with any of the factors listed in subsection (2) of this section may be con-
20 sidered, but cost alone may not be the only consideration in determining that a utility facility is
21 necessary for public service. Land costs shall not be included when considering alternative locations
22 for substantially similar utility facilities. The Land Conservation and Development Commission shall

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 determine by rule how land costs may be considered when evaluating the siting of utility facilities
2 that are not substantially similar.

3 **(4) If the criteria in subsections (2) and (3) of this section are met, a utility provider shall**
4 **make a reasonable effort, in consultation with the owner of high-value farmland, as defined**
5 **in ORS 195.300, to locate utility transmission and distribution lines so that the lines have the**
6 **least practical impact on the farming operation.**

7 [(4)] (5) The owner of a utility facility approved under ORS 215.213 (1)(d) or 215.283 (1)(d) shall
8 be responsible for restoring, as nearly as possible, to its former condition any agricultural land and
9 associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair
10 or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility fa-
11 cility from requiring a bond or other security from a contractor or otherwise imposing on a con-
12 tractor the responsibility for restoration.

13 [(5)] (6) The governing body of the county or its designee shall impose clear and objective con-
14 ditions on an application for utility facility siting under ORS 215.213 (1)(d) or 215.283 (1)(d) to miti-
15 gate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm
16 use in order to prevent a significant change in accepted farm practices or a significant increase in
17 the cost of farm practices on the surrounding farmlands.

18 [(6)] (7) The provisions of subsections (2) to [(5)] (6) of this section do not apply to interstate
19 natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal
20 Energy Regulatory Commission.

21 **SECTION 2.** ORS 215.246 is amended to read:

22 215.246. (1) The uses allowed under ORS 215.213 (1)(bb) and 215.283 (1)(y):

23 (a) Require a determination by the Department of Environmental Quality, in conjunction with
24 the department's review of a license, permit or approval, that the application rates and site man-
25 agement practices for the land application of reclaimed water, agricultural or industrial process
26 water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not
27 reduce the productivity of the tract.

28 (b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS
29 215.275 or 215.296.

30 (2) The use of a tract of land on which the land application of reclaimed water, agricultural or
31 industrial process water or biosolids has occurred under this section may not be changed to allow
32 a different use unless:

33 (a) The tract is included within an acknowledged urban growth boundary;

34 (b) The tract is rezoned to a zone other than an exclusive farm use zone;

35 (c) The different use of the tract is a farm use as defined in ORS 215.203; or

36 (d) The different use of the tract is a use allowed under:

37 (A) ORS 215.213 (1)(c), (e) to (g), (k), (m) to (q), (s) to (u), (x), (z) or (aa);

38 (B) ORS 215.213 (2)(a) to (c), (i), (m) or (p) to (r);

39 (C) ORS 215.283 (1)(c), (e), (f), (k) to (o), (q) to (s), (u), (w) or (x); or

40 (D) ORS 215.283 (2)(a), (j), (L) or (p) to (s).

41 (3) When a state agency or a local government makes a land use decision relating to the land
42 application of reclaimed water, agricultural or industrial process water or biosolids under a license,
43 permit or approval by the Department of Environmental Quality, the applicant shall explain in
44 writing how alternatives identified in public comments on the land use decision were considered and,
45 if the alternatives are not used, explain in writing the reasons for not using the alternatives. The

1 applicant must consider only those alternatives that are identified with sufficient specificity to af-
2 ford the applicant an adequate opportunity to consider the alternatives. A land use decision relating
3 to the land application of reclaimed water, agricultural or industrial process water or biosolids may
4 not be reversed or remanded under this subsection unless the applicant failed to consider identified
5 alternatives or to explain in writing the reasons for not using the alternatives.

6 (4) The uses allowed under this section include:

7 (a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that
8 occurs as a result of the land application;

9 (b) The establishment and use of facilities, including buildings, equipment, aerated and
10 nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and
11 reasonably necessary for the land application to occur on the subject tract;

12 (c) The establishment and use of facilities, including buildings and equipment, that are not on
13 the tract on which the land application occurs for the transport of reclaimed water, agricultural or
14 industrial process water or biosolids to the tract on which the land application occurs if the facili-
15 ties are located within:

16 (A) A public right of way; or

17 (B) Other land if the landowner provides written consent and the owner of the facility complies
18 with ORS 215.275 [(4)] (5); and

19 (d) The transport by vehicle of reclaimed water or agricultural or industrial process water to
20 a tract on which the water will be applied to land.

21 (5) Uses not allowed under this section include:

22 (a) The establishment and use of facilities, including buildings or equipment, for the treatment
23 of reclaimed water, agricultural or industrial process water or biosolids other than those treatment
24 facilities related to the treatment that occurs as a result of the land application; or

25 (b) The establishment and use of utility facility service lines allowed under ORS 215.213 (1)(aa)
26 or 215.283 (1)(x).

27 **SECTION 3. Section 1 of this 2009 Act applies to a utility facility established on or after**
28 **the effective date of this 2009 Act.**

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