

House Bill 2208

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Sustainability and Economic Development)

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**.

Modifies provisions related to single energy facilities. Requires review of certain applications by Energy Facility Siting Council.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to energy; creating new provisions; amending ORS 469.300 and 469.320; and declaring an
3 emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 469.300 to**
6 **469.563.**

7 **SECTION 2. ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 apply to electric**
8 **power generating plants with an average electric generating capacity of 35 megawatts or**
9 **more if the power is produced from geothermal, solar or wind energy:**

10 (1) **Within a single energy generation area; or**

11 (2) **At a single energy facility that is a generating plant, or a combination of multiple**
12 **existing or proposed generating plants, to which three or more of the following apply:**

13 (a) **The generating plants are located on one or more adjacent parcels of land;**

14 (b) **The generating plants share related or supporting facilities such as operation centers,**
15 **operation and maintenance facilities, service and storage facilities, other related or sup-**
16 **porting facilities, access roads, water or discharge lines, perimeter fencing, storage or**
17 **parking areas, substations except those owned by third party utility companies and not**
18 **constructed specifically to serve the generating plant, or transmission lines except those**
19 **owned by third party utility companies and not constructed specifically to serve the gener-**
20 **ating plant;**

21 (c) **The generating plants have been recognized as a single facility by a federal, state,**
22 **county, city or local authority;**

23 (d) **The generating plants have obtained or made application for siting or land use ap-**
24 **proval and other applicable permits, licenses or site certificates as a single facility, on a**
25 **single application, or on applications that are substantially identical except for the site de-**
26 **scriptions;**

27 (e) **The generating plant owners obtain or share one or more sources of financing, re-**
28 **venue, grants or other financial resources for the development, construction, operation and**
29 **maintenance of the generating plants and associated equipment;**

30 (f) **The generating plant owners share project expenses, personnel, capital investments**

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 including generating equipment or other resources related to the generating plants, demon-
 2 strated by an agreement, anticipated agreement or ownership or personnel common to the
 3 owners, regardless of the owners' form of business entity;

4 (g) The generating equipment and the related generating plant were purchased by the
 5 same person or persons that own or operate the generating plant;

6 (h) The generating plants are connected to the transmission grid through a single con-
 7 nection or multiple connections with shared net metering or power purchase, or other ap-
 8 plicable transmission agreement;

9 (i) When the generating plants are designed, the construction of the generating plants
 10 is performed under the same contract with a general contractor licensed under ORS chapter
 11 701 or under multiple contracts entered into within two years of each other with one or more
 12 general contractors licensed under ORS chapter 701;

13 (j) The facility is composed of generating plants that will be completed in phases over
 14 time, and each phase of the facility does not independently qualify as a single energy facility
 15 or each phase of the facility is not independent in purpose or in the manner in which the
 16 phases will be owned, financed, constructed, operated or maintained; or

17 (k) Any other factors specified in rules adopted by the Energy Facility Siting Council.

18 **SECTION 3.** ORS 469.300 is amended to read:

19 469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the
 20 context requires otherwise:

21 (1) "Applicant" means any person [who] **that** makes application for a site certificate in the
 22 manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

23 (2) "Application" means a request for approval of a particular site or sites for the construction
 24 and operation of an energy facility or the construction and operation of an additional energy facility
 25 upon a site for which a certificate has already been issued, filed in accordance with the procedures
 26 established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

27 (3) "Associated transmission lines" means new transmission lines constructed to connect an en-
 28 ergy facility to the first point of junction of such transmission line or lines with either a power
 29 distribution system or an interconnected primary transmission system or both or to the Northwest
 30 Power Grid.

31 (4) "Average electric generating capacity" means the peak generating capacity of the facility
 32 divided by one of the following factors:

33 (a) For wind or solar energy facilities, 3.00;

34 (b) For geothermal energy facilities, 1.11; or

35 (c) For all other energy facilities, 1.00.

36 (5) "Combustion turbine power plant" means a thermal power plant consisting of one or more
 37 fuel-fired combustion turbines and any associated waste heat combined cycle generators.

38 (6) "Construction" means work performed on a site, excluding surveying, exploration or other
 39 activities to define or characterize the site, the cost of which exceeds \$250,000.

40 (7) "Council" means the Energy Facility Siting Council established under ORS 469.450.

41 (8) "Department" means the State Department of Energy created under ORS 469.030.

42 (9) "Director" means the Director of the State Department of Energy appointed under ORS
 43 469.040.

44 (10) "Electric utility" means persons, regulated electrical companies, people's utility districts,
 45 joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged

1 in or authorized to engage in the business of generating, supplying, transmitting or distributing
2 electric energy.

3 (11)(a) "Energy facility" means any of the following:

4 (A) An electric power generating plant with a nominal electric generating capacity of 25 mega-
5 watts or more, including but not limited to:

6 (i) Thermal power; or

7 (ii) Combustion turbine power plant.

8 (B) A nuclear installation as defined in this section.

9 (C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000
10 volts or more to be constructed in more than one city or county in this state, but excluding:

11 (i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by
12 high voltage transmission lines with a capacity of 230,000 volts or more; and

13 (ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same
14 right of way.

15 (D) A solar collecting facility using more than 100 acres of land.

16 (E) A pipeline that is:

17 (i) At least six inches in diameter, and five or more miles in length, used for the transportation
18 of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a
19 liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

20 (ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation
21 of natural or synthetic gas, but excluding:

22 (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than
23 50 feet from a public road, as defined in ORS 368.001; or

24 (II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the
25 same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies
26 and necessary mitigation conducted for the existing site certificate meet or are updated to meet
27 current site certificate standards; or

28 (iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal
29 energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal
30 heating district established under ORS chapter 523.

31 (F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal
32 or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to
33 produce the equivalent of two billion Btu of heat a day.

34 (G) A plant which converts biomass to a gas, liquid or solid product, or combination of such
35 products, intended to be used as a fuel and if any one of such products is capable of being burned
36 to produce the equivalent of six billion Btu of heat a day.

37 (H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is de-
38 signed to hold at least 70,000 gallons.

39 (I) A surface facility related to an underground gas storage reservoir that, at design injection
40 or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic
41 gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but ex-
42 cluding:

43 (i) The underground storage reservoir;

44 (ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

45 (iii) An underground gas storage reservoir into which gas is injected solely for testing or res-

1 ervoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

2 (J) An electric power generating plant [*with an average electric generating capacity of 35 mega-*
3 *watts or more if the power is produced from geothermal, solar or wind energy at a single energy fa-*
4 *ility or within a single energy generation area*] **described in section 2 of this 2011 Act.**

5 (b) “Energy facility” does not include a hydroelectric facility.

6 (12) “Energy generation area” means an area within which the effects of two or more small
7 generating plants may accumulate so the small generating plants have effects of a magnitude similar
8 to a single generating plant of 35 megawatts average electric generating capacity or more. An “en-
9 ergy generation area” for facilities using a geothermal resource and covered by a unit agreement,
10 as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If
11 no such unit agreement exists, an energy generation area for facilities using a geothermal resource
12 shall be the area that is within two miles, measured from the electrical generating equipment of the
13 facility, of an existing or proposed geothermal electric power generating plant, not including the site
14 of any other such plant not owned or controlled by the same person.

15 (13) “Extraordinary nuclear occurrence” means any event causing a discharge or dispersal of
16 source material, special nuclear material or by-product material as those terms are defined in ORS
17 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the
18 United States Nuclear Regulatory Commission or its successor determines to be substantial and to
19 have resulted in or to be likely to result in substantial damages to persons or property off-site.

20 (14) “Facility” means an energy facility together with any related or supporting facilities.

21 (15) “Geothermal reservoir” means an aquifer or aquifers containing a common geothermal fluid.

22 (16) “Local government” means a city or county.

23 (17) “Nominal electric generating capacity” means the maximum net electric power output of
24 an energy facility based on the average temperature, barometric pressure and relative humidity at
25 the site during the times of the year when the facility is intended to operate.

26 (18) “Nuclear incident” means any occurrence, including an extraordinary nuclear occurrence,
27 that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use
28 of property due to the radioactive, toxic, explosive or other hazardous properties of source material,
29 special nuclear material or by-product material as those terms are defined in ORS 453.605.

30 (19) “Nuclear installation” means any power reactor, nuclear fuel fabrication plant, nuclear fuel
31 reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that
32 quantity of fissionable materials sufficient to form a critical mass. “Nuclear installation” does not
33 include any such facilities that are part of a thermal power plant.

34 (20) “Nuclear power plant” means an electrical or any other facility using nuclear energy with
35 a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of
36 electricity, and associated transmission lines.

37 (21) “Person” means an individual, partnership, joint venture, private or public corporation, as-
38 sociation, firm, public service company, political subdivision, municipal corporation, government
39 agency, people’s utility district, or any other entity, public or private, however organized.

40 (22) “Project order” means the order, including any amendments, issued by the State Department
41 of Energy under ORS 469.330.

42 (23)(a) “Radioactive waste” means all material which is discarded, unwanted or has no present
43 lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator
44 produced isotopes and by-product material, source material or special nuclear material as those
45 terms are defined in ORS 453.605. The term does not include those radioactive materials identified

1 in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and re-
 2 vised periodically for the purpose of adding additional isotopes which are not referred to in OAR
 3 345-50 as presenting no significant danger to the public health and safety.

4 (b) Notwithstanding paragraph (a) of this subsection, “radioactive waste” does not include ura-
 5 nium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those
 6 terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

7 (24) “Related or supporting facilities” means any structure, proposed by the applicant, to be
 8 constructed or substantially modified in connection with the construction of an energy facility, in-
 9 cluding associated transmission lines, reservoirs, storage facilities, intake structures, road and rail
 10 access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.
 11 “Related or supporting facilities” does not include geothermal or underground gas storage reser-
 12 voirs, production, injection or monitoring wells or wellhead equipment or pumps.

13 (25) “Site” means any proposed location of an energy facility and related or supporting facilities.

14 (26) “Site certificate” means the binding agreement between the State of Oregon and the appli-
 15 cant, authorizing the applicant to construct and operate a facility on an approved site, incorporating
 16 all conditions imposed by the council on the applicant.

17 (27) “Thermal power plant” means an electrical facility using any source of thermal energy with
 18 a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of
 19 electricity, and associated transmission lines, including but not limited to a nuclear-fueled,
 20 geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal
 21 use of which is to supply power in emergencies. “Thermal power plant” includes a nuclear-fueled
 22 thermal power plant that has ceased to operate.

23 (28) “Transportation” means the transport within the borders of the State of Oregon of radio-
 24 active material destined for or derived from any location.

25 (29) “Underground gas storage reservoir” means any subsurface sand, strata, formation, aquifer,
 26 cavern or void, whether natural or artificially created, suitable for the injection, storage and with-
 27 drawal of natural gas or other gaseous substances. “Underground gas storage reservoir” includes a
 28 pool as defined in ORS 520.005.

29 (30) “Utility” includes:

30 (a) A person, a regulated electrical company, a people’s utility district, a joint operating agency,
 31 an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage
 32 in the business of generating, transmitting or distributing electric energy;

33 (b) A person or public agency generating electric energy from an energy facility for its own
 34 consumption; and

35 (c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

36 (31) “Waste disposal facility” means a geographical site in or upon which radioactive waste is
 37 held or placed but does not include a site at which radioactive waste used or generated pursuant
 38 to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used
 39 for the temporary storage of radioactive waste from that plant for which a site certificate has been
 40 issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a
 41 reactor operated by a college, university or graduate center for research purposes and not con-
 42 nected to the Northwest Power Grid. As used in this subsection, “temporary storage” includes
 43 storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site
 44 certificate has been issued until a permanent storage site is available by the federal government.

45 **SECTION 4.** ORS 469.320 is amended to read:

1 469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be
 2 constructed or expanded unless a site certificate has been issued for the site thereof in the manner
 3 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be
 4 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,
 5 469.590 to 469.619, 469.930 and 469.992.

6 (2) A site certificate is not required for:

7 (a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had
 8 operable electric generating equipment for a modification that uses the same fuel type and increases
 9 electric generating capacity, if:

10 (A) The site is not enlarged; and

11 (B) The ability of the energy facility to use fuel for electricity production under peak steady
 12 state operating conditions is not more than 200 million Btu per hour greater than it was on August
 13 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy
 14 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

15 (b) Construction or expansion of any interstate natural gas pipeline or associated underground
 16 natural gas storage facility authorized by and subject to the continuing regulation of the Federal
 17 Energy Regulatory Commission or successor agency.

18 (c) An energy facility, except coal and nuclear power plants, if the energy facility:

19 (A) Sequentially produces electrical energy and useful thermal energy from the same fuel source;
 20 and

21 (B) Under average annual operating conditions, has a nominal electric generating capacity:

22 (i) Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater
 23 than 6,000 Btu per kilowatt hour;

24 (ii) Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater
 25 than 5,500 Btu per kilowatt hour; or

26 (iii) Specified by the Energy Facility Siting Council by rule based on the council's determination
 27 relating to emissions of the energy facility.

28 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site cer-
 29 tificate has been issued by the State of Oregon, of radioactive waste from the plant.

30 (e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary
 31 fuel used on site for the production of heat or electricity, if the output of the primary fuel is less
 32 than six billion Btu of heat a day.

33 (f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

34 (A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oil seeds, waste
 35 vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

36 (B) Has received local land use approval under the applicable acknowledged comprehensive plan
 37 and land use regulations of the affected local government and the facility complies with any state-
 38 wide planning goals or rules of the Land Conservation and Development Commission that are di-
 39 rectly applicable to the facility;

40 (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would
 41 require a site certificate under subsection (1) of this section;

42 (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling
 43 facility located within one mile of the facility or is transported from the facility by rail or barge;
 44 and

45 (E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for con-

1 version energy.

2 (g) A standby generation facility, if the facility complies with all of the following:

3 (A) The facility has received local land use approval under the applicable acknowledged com-
4 prehensive plan and land use regulations of the affected local government and the facility complies
5 with all statewide planning goals and applicable rules of the Land Conservation and Development
6 Commission;

7 (B) The standby generators have been approved by the Department of Environmental Quality
8 as having complied with all applicable air and water quality requirements. For an applicant that
9 proposes to provide the physical facilities for the installation of standby generators, the requirement
10 of this subparagraph may be met by agreeing to require such a term in the lease contract for the
11 facility; and

12 (C) The standby generators are electrically incapable of being interconnected to the trans-
13 mission grid. For an applicant that proposes to provide the physical facilities for the installation of
14 standby generators, the requirement of this subparagraph may be met by agreeing to require such
15 a term in the lease contract for the facility.

16 (3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable
17 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,
18 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in
19 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power
20 heat rate value for the best available, commercially viable thermal power plant technology at the
21 time of the revision.

22 (4) Any person [*who*] **that** proposes to construct or enlarge an energy facility and who claims
23 an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a
24 site certificate shall request the Energy Facility Siting Council to determine whether the proposed
25 facility qualifies for the claimed exemption. The council shall make its determination within 60 days
26 after the request for exemption is filed. An appeal from the council's determination on a request for
27 exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court
28 shall be the same as a review by a circuit court under ORS 183.484. The record on review by the
29 Supreme Court shall be the record established in the council proceeding on the exemption.

30 (5)(a) **Any person that submits an application to a city pursuant to ORS 227.160 to 227.186,**
31 **or to a county pursuant to ORS 215.402 to 215.438, for a conditional use permit to construct**
32 **or enlarge an electric power generating plant with an average electric generating capacity**
33 **of less than 35 megawatts from geothermal, solar or wind energy must request review of the**
34 **application by the Energy Facility Siting Council by submitting information demonstrating**
35 **that the proposed plant is separate and distinct from existing or proposed facilities and that**
36 **it is not a single energy facility or part of a single energy facility described in section 2 of**
37 **this 2011 Act.**

38 (b) **Within 60 days after the request for review is filed, the Energy Facility Siting Council**
39 **shall make a determination whether the proposed plant is a single energy facility or is part**
40 **of a single energy facility and whether the proposed plant requires site certification under**
41 **the provisions of ORS 469.300 to 469.563.**

42 (c) **An appeal from the Energy Facility Siting Council's determination on a request for**
43 **review shall be made pursuant to the provisions of ORS 469.403. The record on review by the**
44 **Supreme Court shall be the record established in the council proceeding on the request.**

45 [(5)] (6) Notwithstanding subsection (1) of this section, a separate site certificate shall not be

1 required for:

2 (a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if
3 such related or supporting facilities are addressed in and are subject to a site certificate for another
4 energy facility;

5 (b) Expansion within the site or within the energy generation area of a facility for which a site
6 certificate has been issued, if the existing site certificate has been amended to authorize expansion;
7 or

8 (c) Expansion, either within the site or outside the site, of an existing council certified surface
9 facility related to an underground gas storage reservoir, if the existing site certificate is amended
10 to authorize expansion.

11 [(6)] (7) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c)
12 of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of
13 this section, the electric generating facility shall cease to operate one year after the substantial loss
14 of the steam host unless an application for a site certificate has been filed in accordance with the
15 provisions of ORS 469.300 to 469.563.

16 [(7)] (8) As used in this section:

17 (a) "Standby generation facility" means an electric power generating facility, including standby
18 generators and the physical structures necessary to install and connect standby generators, that
19 provides temporary electric power in the event of a power outage and that is electrically incapable
20 of being interconnected with the transmission grid.

21 (b) "Total energy output" means the sum of useful thermal energy output and useful electrical
22 energy output.

23 (c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial
24 or commercial process, heating or cooling application.

25 [(8)] (9) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric
26 power generating plant with an average electric generating capacity of less than 35 megawatts
27 produced from wind energy at a single energy facility or within a single energy generation area may
28 elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to
29 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be
30 final upon submission of an application for a site certificate.

31 **SECTION 5. (1) Section 2 of this 2011 Act and the amendments to ORS 469.300 by section**
32 **3 of this 2011 Act do not apply to any single energy facility already in operation on the ef-**
33 **fective date of this 2011 Act.**

34 **(2) The amendments to ORS 469.320 by section 4 of this 2011 Act apply to applications**
35 **submitted to a city pursuant to ORS 227.160 to 227.186, or to a county pursuant to ORS**
36 **215.402 to 215.438, for a conditional use permit or after the effective date of this 2011 Act.**

37 **SECTION 6. This 2011 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
39 **on its passage.**

40