

HOUSE AMENDMENTS TO HOUSE BILL 3538

By COMMITTEE ON ENERGY, ENVIRONMENT AND WATER

April 28

- 1 On page 1 of the printed bill, line 2, delete the comma.
2 In line 3, delete “469.407, 469.409, 469.501”.
3 Delete lines 5 through 31 and delete pages 2 through 11 and insert:
4 “**SECTION 1.** ORS 469.373 is amended to read:
5 “469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
6 an applicant may apply under the provisions of this section for expedited review of an application
7 for a site certificate for an energy facility if the energy facility:
8 “(a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
9 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
10 power generation;
11 “(b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
12 hensive plan, land use regulation or federal land use plan, and is located:
13 “(A) At or adjacent to an existing energy facility; or
14 “(B)(i) At, adjacent to or in close proximity to an existing industrial use; and
15 “(ii) In an area currently zoned or designated for industrial use;
16 “(c)(A) Requires no more than three miles of associated transmission lines or three miles of new
17 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;
18 or
19 “(B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact
20 in the locating of associated transmission lines or new natural gas pipelines outside of existing
21 rights of way;
22 “(d) Requires no new water right or water right transfer;
23 “(e) Provides funds to a qualified organization in an amount determined by the council to be
24 sufficient to produce any required reduction in [*carbon dioxide*] emissions as specified in ORS
25 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions
26 produced by the energy facility for the life of the energy facility; and
27 “(f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing
28 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment
29 permit, if needed, within the expedited review process time frame and has written confirmation from
30 the wastewater facility permit holder that the additional wastewater load will be accommodated by
31 the facility without resulting in a significant thermal increase in the facility effluent or without re-
32 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System
33 permit;
34 “(B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
35 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-

1 idence from the municipal corporation that:

2 “(i) The municipal corporation has included, or intends to include, the process wastewater load
3 from the energy facility in an application for a National Pollutant Discharge Elimination System
4 permit; and

5 “(ii) All conditions required of the energy facility to allow the discharge of process wastewater
6 from the energy facility will be satisfied; or

7 “(C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-
8 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-
9 charge can likely be permitted within the expedited review process time frame and that the
10 discharge will not require:

11 “(i) A new National Pollutant Discharge Elimination System permit, except for a storm water
12 general permit for construction activities; or

13 “(ii) A change in any effluent limit or discharge location under an existing National Pollutant
14 Discharge Elimination System or water pollution control facility permit.

15 “(2) An applicant seeking expedited review under this section shall submit documentation to the
16 State Department of Energy, prior to the submission of an application for a site certificate, that
17 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
18 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
19 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

20 “(3) If the department determines that the energy facility preliminarily qualifies for expedited
21 review, the applicant may submit an application for expedited review. Within 30 days after the date
22 that the application for expedited review is submitted, the department shall determine whether the
23 application is complete. If the department determines that the application is complete, the applica-
24 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-
25 mination. If the department determines that the application is not complete, the department shall
26 notify the applicant of the deficiencies in the application and shall deem the application filed on the
27 date that the department determines that the application is complete. The department or the
28 council may request additional information from the applicant at any time.

29 “(4) The State Department of Energy shall send a copy of a filed application to the Department
30 of Environmental Quality, the Water Resources Department, the State Department of Fish and
31 Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agri-
32 culture, the Department of Land Conservation and Development, the Public Utility Commission and
33 any other state agency, city, county or political subdivision of the state that has regulatory or ad-
34 visory responsibility with respect to the proposed energy facility. The State Department of Energy
35 shall send with the copy of the filed application a notice specifying that:

36 “(a) In the event the council issues a site certificate for the energy facility, the site certificate
37 will bind the state and all counties, cities and political subdivisions in the state as to the approval
38 of the site, the construction of the energy facility and the operation of the energy facility, and that
39 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site
40 certificate must be issued as required by ORS 469.401 (3); and

41 “(b) The comments and recommendations of state agencies, counties, cities and political subdi-
42 visions concerning whether the proposed energy facility complies with any statute, rule or local
43 ordinance that the state agency, county, city or political subdivision would normally administer in
44 determining whether a permit, license or certificate required for the construction or operation of the
45 energy facility should be approved will be considered only if the comments and recommendations

1 are received by the department within a reasonable time after the date the application and notice
2 of the application are sent by the department.

3 “(5) Within 90 days after the date that the application was filed, the department shall issue a
4 draft proposed order setting forth:

5 “(a) A description of the proposed energy facility;

6 “(b) A list of the permits, licenses and certificates that are addressed in the application and that
7 are required for the construction or operation of the proposed energy facility;

8 “(c) A list of the statutes, rules and local ordinances that are the standards and criteria for
9 approval of any permit, license or certificate addressed in the application and that are required for
10 the construction or operation of the proposed energy facility; and

11 “(d) Proposed findings specifying how the proposed energy facility complies with the applicable
12 standards and criteria for approval of a site certificate.

13 “(6) The council shall review the application for site certification in the manner set forth in
14 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council
15 determines that the facility, with any required conditions to the site certificate, will comply with:

16 “(a) The requirements for expedited review as specified in this section;

17 “(b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and
18 (L) to (o);

19 “(c) The requirements of ORS 469.503 (3); and

20 “(d) The requirements of ORS 469.504 (1)(b).

21 “(7) Following submission of an application for a site certificate, the council shall hold a public
22 informational meeting on the application. Following the issuance of the proposed order, the council
23 shall hold at least one public hearing on the application. The public hearing shall be held in the area
24 affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior
25 to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall
26 include, but need not be limited to, the following:

27 “(a) A description of the energy facility and the general location of the energy facility;

28 “(b) The name of a department representative to contact and the telephone number at which
29 people may obtain additional information;

30 “(c) A statement that copies of the application and proposed order are available for inspection
31 at no cost and will be provided at reasonable cost; and

32 “(d) A statement that the record for public comment on the application will close at the con-
33 clusion of the hearing and that failure to raise an issue in person or in writing prior to the close
34 of the record, with sufficient specificity to afford the decision maker an opportunity to respond to
35 the issue, will preclude consideration of the issue, by the council or by a court on judicial review
36 of the council’s decision.

37 “(8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present
38 additional written evidence, arguments or testimony regarding the application. In the alternative,
39 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the
40 application. If the applicant requests an opportunity to present written evidence, arguments or tes-
41 timony, the council shall leave the record open for that purpose only for a period not to exceed 14
42 days after the date of the hearing. Following the close of the record, the department shall prepare
43 a draft final order for the council. If the applicant requests a contested case hearing, the council
44 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
45 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,

1 and the application shall be considered under the same contested case procedures used for a non-
2 expedited application for a site certificate.

3 “(9) The council shall make its decision based on the record and the draft final order prepared
4 by the department. The council shall, within six months of the date that the application is deemed
5 filed:

6 “(a) Grant the application;

7 “(b) Grant the application with conditions;

8 “(c) Deny the application; or

9 “(d) Return the application to the site certification process required by ORS 469.320.

10 “(10) If the application is granted, the council shall issue a site certificate pursuant to ORS
11 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
12 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
13 application based on those standards.

14 “(11) Judicial review of the approval or rejection of a site certificate by the council under this
15 section shall be as provided in ORS 469.403.

16 “**SECTION 2.** ORS 469.503 is amended to read:

17 “469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
18 that the preponderance of the evidence on the record supports the following conclusions:

19 “(1) The facility complies with the standards adopted by the council pursuant to ORS 469.501
20 or the overall public benefits of the facility outweigh the damage to the resources protected by the
21 standards the facility does not meet.

22 “(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any
23 applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base
24 load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other
25 fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule
26 pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the
27 means by which an applicant may comply with the applicable standard.

28 “(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed
29 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon
30 dioxide emissions and net electric power output measured on a new and clean basis.
31 Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions stand-
32 ard for base load gas plants if the council finds that the most efficient stand-alone combined cycle,
33 combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operat-
34 ing in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating
35 value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council
36 shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such
37 energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17
38 percent below this rate.

39 “(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled
40 power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting
41 or amending such carbon dioxide emissions standards, the council shall consider and balance at
42 least the following principles, the findings on which shall be contained in the rulemaking record:

43 “(A) Promote facility fuel efficiency;

44 “(B) Promote efficiency in the resource mix;

45 “(C) Reduce net carbon dioxide emissions;

1 “(D) Promote cogeneration that reduces net carbon dioxide emissions;

2 “(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoid-

3 ing carbon dioxide emissions;

4 “(F) Minimize transaction costs;

5 “(G) Include an alternative process that separates decisions on the form and implementation of

6 offsets from the final decision on granting a site certificate;

7 “(H) Allow either the applicant or third parties to implement offsets;

8 “(I) Be attainable and economically achievable for various types of power plants;

9 “(J) Promote public participation in the selection and review of offsets;

10 “(K) Promote prompt implementation of offset projects;

11 “(L) Provide for monitoring and evaluation of the performance of offsets; and

12 “(M) Promote reliability of the regional electric system.

13 “(c) The council shall determine whether the applicable carbon dioxide emissions standard is

14 met by first determining the gross carbon dioxide emissions that are reasonably likely to result from

15 the operation of the proposed energy facility. Such determination shall be based on the proposed

16 design of the energy facility. The council shall adopt site certificate conditions to ensure that the

17 predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining

18 emissions reduction necessary to meet the applicable standard, the applicant may elect to use any

19 of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall deter-

20 mine the amount of carbon dioxide **or other greenhouse gas** emissions reduction that is reasonably

21 likely to result from the applicant’s offsets and whether the resulting net carbon dioxide emissions

22 meet the applicable carbon dioxide emissions standard. **For purposes of determining the net**

23 **carbon dioxide emissions, the council shall by rule establish the global warming potential of**

24 **each greenhouse gas based on a generally accepted scientific method, and convert any**

25 **greenhouse gas emissions to a carbon dioxide equivalent. Unless otherwise provided by the**

26 **council by rule, the global warming potential of methane is 23 times that of carbon dioxide,**

27 **and the global warming potential of nitrous oxide is 296 times that of carbon dioxide.** If the

28 council or a court on judicial review concludes that the applicant has not demonstrated compliance

29 with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this

30 paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of

31 subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance

32 based on such agreement.

33 “(A) The facility will sequentially produce electrical and thermal energy from the same fuel

34 source, and the thermal energy will be used to displace another source of carbon dioxide emissions

35 that would have otherwise continued to occur, in which case the council shall adopt site certificate

36 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

37 “(B) The applicant or a third party will implement particular offsets, in which case the council

38 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall

39 not require that predicted levels of avoidance, displacement or sequestration of [*carbon dioxide*]

40 **greenhouse gas** emissions be achieved. The council shall determine the quantity of [*carbon*

41 *dioxide*] **greenhouse gas** emissions reduction that is reasonably likely to result from each of the

42 proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In mak-

43 ing this determination, the council shall not allow credit for offsets that have already been allocated

44 or awarded credit for [*carbon dioxide*] **greenhouse gas** emissions reduction in another regulatory

45 setting. In addition, the fact that an applicant or other parties involved with an offset may derive

1 benefits from the offset other than the reduction of [*carbon dioxide*] **greenhouse gas** emissions is
2 not, by itself, a basis for withholding credit for an offset.

3 “(i) The degree of certainty that the predicted quantity of [*carbon dioxide*] **greenhouse gas**
4 emissions reduction will be achieved by the offset;

5 “(ii) The ability of the council to determine the actual quantity of [*carbon dioxide*] **greenhouse**
6 **gas** emissions reduction resulting from the offset, taking into consideration any proposed measure-
7 ment, monitoring and evaluation of mitigation measure performance; and

8 “(iii) The extent to which the reduction of [*carbon dioxide*] **greenhouse gas** emissions would
9 occur in the absence of the offsets.

10 “(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to
11 produce the reduction in [*carbon dioxide*] **greenhouse gas** emissions necessary to meet the appli-
12 cable carbon dioxide emissions standard, in which case the funds shall be used as specified in par-
13 agraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57
14 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council
15 shall determine the offset funds using the monetary offset rate and the level of emissions reduction
16 required to meet the applicable standard. If a site certificate is approved based on this subpara-
17 graph, the council may not adjust the amount of such offset funds based on the actual performance
18 of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the
19 monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary
20 offset rate shall be based on empirical evidence of the cost of [*carbon dioxide*] offsets and the
21 council’s finding that the standard will be economically achievable with the modified rate for natural
22 gas-fired power plants. Following the initial three-year period, the council may increase or decrease
23 the monetary offset rate no more than 50 percent in any two-year period.

24 “(D) Any other means that the council adopts by rule for demonstrating compliance with any
25 applicable carbon dioxide emissions standard.

26 “(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole
27 or in part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified or-
28 ganization. The applicant may identify an organization that has applied for, but has not received,
29 an exemption from federal income taxation, but the council may not find that the organization is a
30 qualified organization unless the organization is exempt from federal taxation under section 501(c)(3)
31 of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate
32 holder shall provide a bond or comparable security in a form reasonably acceptable to the council
33 to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this
34 paragraph. Such security shall be provided by the date specified in the site certificate, which shall
35 be no later than the commencement of construction of the facility. The site certificate shall require
36 that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the
37 council finds that no qualified organization exists, in which case the site certificate shall require
38 that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

39 “(A) The site certificate holder shall disburse the offset funds and any other funds required by
40 sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

41 “(i) When the site certificate holder receives written notice from the qualified organization
42 certifying that the qualified organization is contractually obligated to pay any funds to implement
43 offsets using the offset funds, the site certificate holder shall make the requested amount available
44 to the qualified organization unless the total of the amount requested and any amounts previously
45 requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall

1 be made available. The qualified organization shall use at least 80 percent of the offset funds for
2 contracts to implement offsets. **The qualified organization shall assess offsets for their poten-**
3 **tial to qualify in, generate credits in or reduce obligations in other regulatory settings.** The
4 qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, ad-
5 ministration and enforcement of contracts to implement offsets.

6 “(ii) At the request of the qualified organization and in addition to the offset funds, the site
7 certificate holder shall pay the qualified organization an amount equal to 10 percent of the first
8 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount
9 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount
10 compensates the qualified organization for its costs of selecting offsets and contracting for the im-
11 plementation of offsets.

12 “(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this
13 subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required
14 by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organ-
15 ization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii)
16 of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the
17 qualified organization be a basis for revocation of the site certificate or any other enforcement
18 action by the council with respect to the site certificate holder.

19 “(B) If the council finds there is no qualified organization, the site certificate holder shall select
20 one or more offsets to be implemented pursuant to criteria established by the council. The site cer-
21 tificate holder shall give written notice of its selections to the council and to any person requesting
22 notice. On petition by the State Department of Energy, or by any person adversely affected or
23 aggrieved by the site certificate holder’s selection of offsets, or on the council’s own motion, the
24 council may review such selection. The petition must be received by the council within 30 days of
25 the date the notice of selection is placed in the United States mail, with first-class postage prepaid.
26 The council shall approve the site certificate holder’s selection unless it finds that the selection is
27 not consistent with criteria established by the council. The site certificate holder shall contract to
28 implement the selected offsets within 18 months after commencing construction of the facility unless
29 good cause is shown requiring additional time. The contracts shall obligate the expenditure of at
30 least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the
31 offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement
32 the selected offsets. The council’s criteria for selection of offsets shall be based on the criteria set
33 forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular
34 types of offsets in relation to the expected benefits of such offsets. The council’s criteria shall not
35 require the site certificate holder to select particular offsets, and shall allow the site certificate
36 holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other
37 provision of this section, the site certificate holder’s financial liability for implementation, monitor-
38 ing, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount
39 of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct
40 by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a
41 basis for revocation of the site certificate or any other enforcement action by the council with re-
42 spect to the site certificate holder.

43 “(C) Every qualified organization that has received funds under this paragraph shall, at five-year
44 intervals beginning on the date of receipt of such funds, provide the council with the information
45 the council requests about the qualified organization’s performance. The council shall evaluate the

1 information requested and, based on such information, shall make any recommendations to the
2 Legislative Assembly that the council deems appropriate.

3 “(e) As used in this subsection:

4 “(A) ‘Adjusted to ISO conditions’ means carbon dioxide emissions and net electric power output
5 as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60
6 percent humidity.

7 “(B) ‘Base load gas plant’ means a generating facility that is fueled by natural gas, except for
8 periods during which an alternative fuel may be used and when such alternative fuel use shall not
9 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and
10 where the applicant requests and the council adopts no condition in the site certificate for the
11 generating facility that would limit hours of operation other than restrictions on the use of alter-
12 native fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year
13 life for the plants for purposes of determining gross carbon dioxide emissions.

14 “(C) **‘Carbon dioxide equivalent’ means the global warming potential of a greenhouse gas**
15 **reflected in units of carbon dioxide.**

16 “[C] (D) ‘Fossil-fueled power plant’ means a generating facility that produces electric power
17 from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such
18 material.

19 “[D] (E) ‘Generating facility’ means those energy facilities that are defined in ORS 469.300
20 (11)(a)(A), (B) and (D).

21 “(F) **‘Global warming potential’ means the determination of the atmospheric warming**
22 **resulting from the release of a unit mass of a particular greenhouse gas in relation to the**
23 **warming resulting from the release of the equivalent mass of carbon dioxide.**

24 “(G) **‘Greenhouse gas’ means carbon dioxide, methane and nitrous oxide.**

25 “[E] (H) ‘Gross carbon dioxide emissions’ means the predicted carbon dioxide emissions of the
26 proposed energy facility measured on a new and clean basis.

27 “[F] (I) ‘Net carbon dioxide emissions’ means gross carbon dioxide emissions of the proposed
28 energy facility, less carbon dioxide **or other greenhouse gas** emissions avoided, displaced or
29 sequestered by any combination of cogeneration or offsets.

30 “[G] (J) ‘New and clean basis’ means the average carbon dioxide emissions rate per hour and
31 net electric power output of the energy facility, without degradation, as determined by a 100-hour
32 test at full power completed during the first 12 months of commercial operation of the energy fa-
33 cility, with the results adjusted for the average annual site condition for temperature, barometric
34 pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon
35 dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million
36 Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust
37 the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council
38 may by rule set carbon dioxide emissions rates for other fuels.

39 “[H] (K) ‘Nongenerating facility’ means those energy facilities that are defined in ORS 469.300
40 (11)(a)(C) and (E) to (I).

41 “[I] (L) ‘Offset’ means an action that will be implemented by the applicant, a third party or
42 through the qualified organization to avoid, sequester or displace emissions [*of carbon dioxide*].

43 “[J] (M) ‘Offset funds’ means the amount of funds determined by the council to satisfy the ap-
44 plicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

45 “[K] (N) ‘Qualified organization’ means an entity that:

1 “(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as
2 amended and in effect on December 31, 1996;

3 “(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do
4 business in the State of Oregon;

5 “(iii) Has in effect articles of incorporation that require that offset funds received pursuant to
6 this section are used for offsets [*that will result in the direct reduction, elimination, sequestration or*
7 *avoidance of carbon dioxide emissions,*] that require that decisions on the use of [*such*] **the offset**
8 funds are made by a **decision-making** body composed of seven voting members of which three are
9 appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an al-
10 ternative environmental nonprofit organization named by the body, and one is appointed by the ap-
11 plicants for site certificates that are subject to paragraph (d) of this subsection and the holders of
12 such site certificates, and that require nonvoting membership on the [*decision-making*] body for
13 holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this
14 subsection;

15 “(iv) Has made available on an annual basis, beginning after the first year of operation, a signed
16 opinion of an independent certified public accountant stating that the qualified organization’s use
17 of funds pursuant to this statute conforms with generally accepted accounting procedures except
18 that the qualified organization shall have one year to conform with generally accepted accounting
19 principles in the event of a nonconforming audit;

20 “(v) Has to the extent applicable, except for good cause, entered into contracts obligating at
21 least 60 percent of the offset funds to implement offsets within two years after the commencement
22 of construction of the facility; and

23 “(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of
24 this subsection.

25 “(3) Except as provided in ORS 469.504 for land use compliance and except for those statutes
26 and rules for which the decision on compliance has been delegated by the federal government to a
27 state agency other than the council, the facility complies with all other Oregon statutes and ad-
28 ministrative rules identified in the project order, as amended, as applicable to the issuance of a site
29 certificate for the proposed facility. If compliance with applicable Oregon statutes and administra-
30 tive rules, other than those involving federally delegated programs, would result in conflicting con-
31 ditions in the site certificate, the council may resolve the conflict consistent with the public interest.
32 A resolution may not result in the waiver of any applicable state statute.

33 “(4) The facility complies with the statewide planning goals adopted by the Land Conservation
34 and Development Commission.

35 “**SECTION 3. (1) Except as provided in subsection (2) of this section, the amendments to**
36 **ORS 469.373 and 469.503 by sections 1 and 2 of this 2011 Act become operative on October 1,**
37 **2011.**

38 “**(2) Before the operative date specified in subsection (1) of this section, the Energy Fa-**
39 **ility Siting Council may adopt rules or take any other action that is necessary to implement,**
40 **on or after the operative date specified in subsection (1) of this section, the amendments to**
41 **ORS 469.373 and 469.503 by sections 1 and 2 of this 2011 Act.**

42 “**SECTION 4. The amendments to ORS 469.373 and 469.503 by sections 1 and 2 of this 2011**
43 **Act apply to:**

44 “**(1) All site certificates or amended site certificates approved by the Energy Facility**
45 **Siting Council on or after the operative date specified in section 3 of this 2011 Act; and**

1 “(2) All offset funds held by or paid to a qualified organization on or after the operative
2 date specified in section 3 of this 2011 Act.

3 “SECTION 5. This 2011 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
5 on its passage.”

6
