

House Bill 3538

Sponsored by Representative HARKER; Representatives CANNON, FREDERICK, TOMEI, Senator DINGFELDER

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**.

Requires certain energy facilities and any related or supporting facilities to meet greenhouse gas emissions standards.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to greenhouse gas emissions of facilities; creating new provisions; amending ORS 469.373,
3 469.407, 469.409, 469.501 and 469.503; and declaring an emergency.

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

5 **SECTION 1.** ORS 469.373 is amended to read:

6 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
7 an applicant may apply under the provisions of this section for expedited review of an application
8 for a site certificate for an energy facility if the energy facility:

9 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
10 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
11 power generation;

12 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
13 hensive plan, land use regulation or federal land use plan, and is located:

14 (A) At or adjacent to an existing energy facility; or

15 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and

16 (ii) In an area currently zoned or designated for industrial use;

17 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new
18 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;
19 or

20 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in
21 the locating of associated transmission lines or new natural gas pipelines outside of existing rights
22 of way;

23 (d) Requires no new water right or water right transfer;

24 (e) Provides funds to a qualified organization in an amount determined by the council to be
25 sufficient to produce any required reduction in [*carbon dioxide*] **greenhouse gas** emissions as spec-
26 ified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total [*carbon dioxide*]
27 **greenhouse gas** emissions produced by the energy facility for the life of the energy facility; and

28 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing
29 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment
30 permit, if needed, within the expedited review process time frame and has written confirmation from
31 the wastewater facility permit holder that the additional wastewater load will be accommodated by

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 the facility without resulting in a significant thermal increase in the facility effluent or without re-
2 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System
3 permit;

4 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
5 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-
6 idence from the municipal corporation that:

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

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

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

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

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

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

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

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

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

1 (b) The comments and recommendations of state agencies, counties, cities and political subdivi-
2 sions concerning whether the proposed energy facility complies with any statute, rule or local
3 ordinance that the state agency, county, city or political subdivision would normally administer in
4 determining whether a permit, license or certificate required for the construction or operation of the
5 energy facility should be approved will be considered only if the comments and recommendations
6 are received by the department within a reasonable time after the date the application and notice
7 of the application are sent by the department.

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

10 (a) A description of the proposed energy facility;

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

13 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-
14 proval of any permit, license or certificate addressed in the application and that are required for the
15 construction or operation of the proposed energy facility; and

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

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

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

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

24 (c) The requirements of ORS 469.503 (3); and

25 (d) The requirements of ORS 469.504 (1)(b).

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

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

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

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

37 (d) A statement that the record for public comment on the application will close at the conclu-
38 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
39 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
40 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the
41 council's decision.

42 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present
43 additional written evidence, arguments or testimony regarding the application. In the alternative,
44 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the
45 application. If the applicant requests an opportunity to present written evidence, arguments or tes-

1 timony, the council shall leave the record open for that purpose only for a period not to exceed 14
 2 days after the date of the hearing. Following the close of the record, the department shall prepare
 3 a draft final order for the council. If the applicant requests a contested case hearing, the council
 4 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
 5 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,
 6 and the application shall be considered under the same contested case procedures used for a non-
 7 expedited application for a site certificate.

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

- 11 (a) Grant the application;
- 12 (b) Grant the application with conditions;
- 13 (c) Deny the application; or
- 14 (d) Return the application to the site certification process required by ORS 469.320.

15 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS
 16 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
 17 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
 18 application based on those standards.

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

21 **SECTION 2.** ORS 469.407 is amended to read:

22 469.407. (1) A recipient may by amendment of its application for a site certificate or by amend-
 23 ment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council
 24 finds that:

- 25 (a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the
 26 council;
- 27 (b) The enlarged facility does not exceed 500 megawatts and meets the applicable [*carbon*
 28 *dioxide*] **greenhouse gas emissions** standard provided for in ORS 469.503 (2) for any increase in
 29 capacity beyond the capacity of the 500-megawatt exemption; and
- 30 (c) The enlarged facility meets all other applicable council standards.

31 (2) A recipient is deemed to meet any applicable need standard and [*carbon dioxide*] **greenhouse**
 32 **gas** emissions standard for the nominal generating capacity of the 500-megawatt exemption provided
 33 that the recipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies
 34 the conditions.

35 (3) As used in this section:

- 36 (a) "Recipient" means any base load gas plant, as defined in ORS 469.503, determined by the
 37 council to have the lowest net monetized air emissions among the applicants participating in a
 38 contested case proceeding.
- 39 (b) "500-megawatt exemption" means the council order in which a recipient was determined to
 40 have the lowest net monetized air emissions.

41 **SECTION 3.** ORS 469.409 is amended to read:

42 469.409. Any site certificate holder that is required by its site certificate or by law to demon-
 43 strate need for the facility shall instead demonstrate compliance with the [*carbon dioxide*]
 44 **greenhouse gas** emissions standard applicable to the type of facility subject to the site certificate
 45 before beginning construction. Such a demonstration shall be made as an amendment to the site

1 certificate. Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds
 2 pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the Energy Facility Siting Council shall not con-
 3 duct a contested case hearing on such amendment and the council's order shall not be subject to
 4 judicial review. Any dispute about the site certificate holder's demonstration of compliance with the
 5 applicable [*carbon dioxide*] **greenhouse gas** emissions standard shall be settled through binding ar-
 6 bitration.

7 **SECTION 4.** ORS 469.501 is amended to read:

8 469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction,
 9 operation and retirement of facilities. The standards may address but need not be limited to the
 10 following subjects:

11 (a) The organizational, managerial and technical expertise of the applicant to construct and
 12 operate the proposed facility.

13 (b) Seismic hazards.

14 (c) Areas designated for protection by the state or federal government, including but not limited
 15 to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

16 (d) The financial ability and qualifications of the applicant.

17 (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threat-
 18 ened and endangered fish, wildlife or plant species.

19 (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or deter-
 20 mined by the State Historic Preservation Officer to be eligible for listing on, the National Register
 21 of Historic Places or the Oregon State Register of Historic Properties.

22 (g) Protection of public health and safety, including necessary safety devices and procedures.

23 (h) The accumulation, storage, disposal and transportation of nuclear waste.

24 (i) Impacts of the facility on recreation, scenic and aesthetic values.

25 (j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

26 (k) Ability of the communities in the affected area to provide sewers and sewage treatment,
 27 water, storm water drainage, solid waste management, housing, traffic safety, police and fire pro-
 28 tection, health care and schools.

29 (L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the
 30 state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans
 31 when adopting a need standard or in determining whether an applicable need standard has been met.
 32 The council shall not adopt a standard requiring a showing of need or cost-effectiveness for gener-
 33 ating facilities as defined in ORS 469.503.

34 (m) Compliance with the statewide planning goals adopted by the Land Conservation and De-
 35 velopment Commission as specified by ORS 469.503.

36 (n) Soil protection.

37 (o) For energy facilities that emit [*carbon dioxide*] **any greenhouse gas as defined in ORS**
 38 **469.503**, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined
 39 in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).

40 (2) The council may adopt exemptions from any need standard adopted under subsection (1)(L)
 41 of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010
 42 and 469.310.

43 (3) The council may issue a site certificate for a facility that does not meet one or more of the
 44 standards adopted under subsection (1) of this section if the council determines that the overall
 45 public benefits of the facility outweigh the damage to the resources protected by the standards the

1 facility does not meet.

2 (4) Notwithstanding subsection (1) of this section, the council may not impose any standard de-
 3 veloped under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for
 4 an energy facility producing power from wind, solar or geothermal energy. However, the council
 5 may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b),
 6 (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

7 **SECTION 5.** ORS 469.503 is amended to read:

8 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
 9 that the preponderance of the evidence on the record supports the following conclusions:

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

13 (2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any
 14 applicable [*carbon dioxide*] **greenhouse gas** emissions standard adopted by the council or enacted
 15 by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this
 16 section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the
 17 council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section
 18 prescribe the means by which an applicant may comply with the applicable standard.

19 (a) The net [*carbon dioxide*] **greenhouse gas** emissions rate of the proposed base load gas plant
 20 shall not exceed 0.70 pounds of [*carbon dioxide*] **greenhouse gas** emissions per kilowatt hour of net
 21 electric power output, with [*carbon dioxide*] **greenhouse gas** emissions and net electric power out-
 22 put measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule
 23 modify the [*carbon dioxide*] **greenhouse gas** emissions standard for base load gas plants if the
 24 council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-
 25 fired energy facility that is commercially demonstrated and operating in the United States has a net
 26 heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions.
 27 In modifying the [*carbon dioxide*] **greenhouse gas** emission standard, the council shall determine the
 28 rate of [*carbon dioxide*] **greenhouse gas** emissions per kilowatt hour of net electric output of such
 29 energy facility, adjusted to ISO conditions, and reset the [*carbon dioxide*] **greenhouse gas** emissions
 30 standard at 17 percent below this rate.

31 (b) The council shall adopt [*carbon dioxide*] **greenhouse gas** emissions standards for other types
 32 of fossil-fueled power plants. Such [*carbon dioxide*] **greenhouse gas** emissions standards shall be
 33 promulgated by rule. In adopting or amending such [*carbon dioxide*] **greenhouse gas** emissions
 34 standards, the council shall consider and balance at least the following principles, the findings on
 35 which shall be contained in the rulemaking record:

36 (A) Promote facility fuel efficiency;

37 (B) Promote efficiency in the resource mix;

38 (C) Reduce net [*carbon dioxide*] **greenhouse gas** emissions;

39 (D) Promote cogeneration that reduces net [*carbon dioxide*] **greenhouse gas** emissions;

40 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding
 41 [*carbon dioxide*] **greenhouse gas** emissions;

42 (F) Minimize transaction costs;

43 (G) Include an alternative process that separates decisions on the form and implementation of
 44 offsets from the final decision on granting a site certificate;

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

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

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

3 (K) Promote prompt implementation of offset projects;

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

5 (M) Promote reliability of the regional electric system.

6 (c) The council shall determine whether the applicable [*carbon dioxide*] **greenhouse gas** emis-
7 sions standard is met by first determining the gross [*carbon dioxide*] **greenhouse gas** emissions that
8 are reasonably likely to result from the operation of the proposed energy facility. Such determi-
9 nation shall be based on the proposed design of the energy facility. The council shall adopt site
10 certificate conditions to ensure that the predicted [*carbon dioxide*] **greenhouse gas** emissions are
11 not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet
12 the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this par-
13 agraph, or any combination thereof. The council shall determine the amount of [*carbon dioxide*]
14 **greenhouse gas** emissions reduction that is reasonably likely to result from the applicant's offsets
15 and whether the resulting net [*carbon dioxide*] **greenhouse gas** emissions meet the applicable [*car-*
16 *bon dioxide*] **greenhouse gas** emissions standard. If the council or a court on judicial review con-
17 cludes that the applicant has not demonstrated compliance with the applicable [*carbon dioxide*]
18 **greenhouse gas** emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any
19 combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of
20 this paragraph for any deficiency, the council or a court shall find compliance based on such
21 agreement.

22 (A) The facility will sequentially produce electrical and thermal energy from the same fuel
23 source, and the thermal energy will be used to displace another source of [*carbon dioxide*]
24 **greenhouse gas** emissions that would have otherwise continued to occur, in which case the council
25 shall adopt site certificate conditions ensuring that the [*carbon dioxide*] **greenhouse gas** emissions
26 reduction will be achieved.

27 (B) The applicant or a third party will implement particular offsets, in which case the council
28 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall
29 not require that predicted levels of avoidance, displacement or sequestration of [*carbon dioxide*]
30 **greenhouse gas** emissions be achieved. The council shall determine the quantity of [*carbon*
31 *dioxide*] **greenhouse gas** emissions reduction that is reasonably likely to result from each of the
32 proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In
33 making this determination, the council shall not allow credit for offsets that have already been al-
34 located or awarded credit for [*carbon dioxide*] **greenhouse gas** emissions reduction in another reg-
35 ulatory setting. In addition, the fact that an applicant or other parties involved with an offset may
36 derive benefits from the offset other than the reduction of [*carbon dioxide*] **greenhouse gas** emis-
37 sions is not, by itself, a basis for withholding credit for an offset.

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

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

43 (iii) The extent to which the reduction of [*carbon dioxide*] **greenhouse gas** emissions would oc-
44 cur in the absence of the offsets.

45 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to

1 produce the reduction in [*carbon dioxide*] **greenhouse gas** emissions necessary to meet the appli-
 2 cable [*carbon dioxide*] **greenhouse gas** emissions standard, in which case the funds shall be used
 3 as specified in paragraph (d) of this subsection.

4 (i) Unless modified by the council as provided below, the payment of 57 cents shall be deemed
 5 to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the
 6 offset funds using the monetary offset rate and the level of emissions reduction required to meet the
 7 applicable standard. If a site certificate is approved based on this subparagraph, the council may
 8 not adjust the amount of such offset funds based on the actual performance of offsets. After three
 9 years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of
 10 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based
 11 on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the stand-
 12 ard will be economically achievable with the modified rate for natural gas-fired power plants. Fol-
 13 lowing the initial three-year period, the council may increase or decrease the monetary offset rate
 14 no more than 50 percent in any two-year period.

15 (ii) **By rule the council shall determine the payment that is deemed to result in a re-**
 16 **duction of one ton of emissions of each greenhouse gas other than carbon dioxide.**

17 (D) Any other means that the council adopts by rule for demonstrating compliance with any
 18 applicable [*carbon dioxide*] **greenhouse gas** emissions standard.

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

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

35 (i) When the site certificate holder receives written notice from the qualified organization cer-
 36 tifying that the qualified organization is contractually obligated to pay any funds to implement off-
 37 sets using the offset funds, the site certificate holder shall make the requested amount available to
 38 the qualified organization unless the total of the amount requested and any amounts previously re-
 39 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall
 40 be made available. The qualified organization shall use at least 80 percent of the offset funds for
 41 contracts to implement offsets. The qualified organization may use up to 20 percent of the offset
 42 funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

43 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-
 44 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first
 45 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount

1 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount
2 compensates the qualified organization for its costs of selecting offsets and contracting for the im-
3 plementation of offsets.

4 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-
5 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by
6 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization
7 the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this
8 subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified
9 organization be a basis for revocation of the site certificate or any other enforcement action by the
10 council with respect to the site certificate holder.

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

35 (C) Every qualified organization that has received funds under this paragraph shall, at five-year
36 intervals beginning on the date of receipt of such funds, provide the council with the information
37 the council requests about the qualified organization's performance. The council shall evaluate the
38 information requested and, based on such information, shall make any recommendations to the
39 Legislative Assembly that the council deems appropriate.

40 (e) As used in this subsection:

41 (A) "Adjusted to ISO conditions" means [*carbon dioxide*] **greenhouse gas** emissions and net
42 electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmo-
43 spheric pressure and 60 percent humidity.

44 (B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for
45 periods during which an alternative fuel may be used and when such alternative fuel use shall not

1 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and
 2 where the applicant requests and the council adopts no condition in the site certificate for the
 3 generating facility that would limit hours of operation other than restrictions on the use of alter-
 4 native fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year
 5 life for the plants for purposes of determining gross [*carbon dioxide*] **greenhouse gas** emissions.

6 (C) “Fossil-fueled power plant” means a generating facility that produces electric power from
 7 natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

8 (D) “Generating facility” means those energy facilities that are defined in ORS 469.300 (11)(a)(A),
 9 (B) and (D).

10 (E) “**Greenhouse gas**” means **carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,**
 11 **perfluorocarbons and sulfur hexafluoride.**

12 [(E)] (F) “Gross [*carbon dioxide*] **greenhouse gas** emissions” means the predicted [*carbon*
 13 *dioxide*] **greenhouse gas** emissions of the proposed energy facility measured on a new and clean
 14 basis.

15 [(F)] (G) “Net [*carbon dioxide*] **greenhouse gas** emissions” means gross [*carbon dioxide*]
 16 **greenhouse gas** emissions of the proposed energy facility, less [*carbon dioxide*] **greenhouse gas**
 17 emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

18 [(G)] (H) “New and clean basis” means the average [*carbon dioxide*] **greenhouse gas** emissions
 19 rate per hour and net electric power output of the energy facility, without degradation, as deter-
 20 mined by a 100-hour test at full power completed during the first 12 months of commercial operation
 21 of the energy facility, with the results adjusted for the average annual site condition for temper-
 22 ature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of
 23 117 pounds of [*carbon dioxide*] **greenhouse gas** per million Btu of natural gas fuel and a rate of 161
 24 pounds of [*carbon dioxide*] **greenhouse gas** per million Btu of distillate fuel, if such fuel use is
 25 proposed by the applicant. The council may by rule adjust the rate of pounds of [*carbon dioxide*]
 26 **greenhouse gas** per million Btu for natural gas or distillate fuel. The council may by rule set
 27 [*carbon dioxide*] **greenhouse gas** emissions rates for other fuels.

28 [(H)] (I) “Nongenerating facility” means those energy facilities that are defined in ORS 469.300
 29 (11)(a)(C) and (E) to (I).

30 [(I)] (J) “Offset” means an action that will be implemented by the applicant, a third party or
 31 through the qualified organization to avoid, sequester or displace **greenhouse gas** emissions [*of*
 32 *carbon dioxide*].

33 [(J)] (K) “Offset funds” means the amount of funds determined by the council to satisfy the ap-
 34 plicable [*carbon dioxide*] **greenhouse gas** emissions standard pursuant to paragraph (c)(C) of this
 35 subsection.

36 [(K)] (L) “Qualified organization” means an entity that:

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

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

41 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to
 42 this section are used for offsets that will result in the direct reduction, elimination, sequestration
 43 or avoidance of [*carbon dioxide*] **greenhouse gas** emissions, that require that decisions on the use
 44 of such funds are made by a body composed of seven voting members of which three are appointed
 45 by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative

1 environmental nonprofit organization named by the body, and one is appointed by the applicants for
 2 site certificates that are subject to paragraph (d) of this subsection and the holders of such site
 3 certificates, and that require nonvoting membership on the decision-making body for holders of site
 4 certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

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

10 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least
 11 60 percent of the offset funds to implement offsets within two years after the commencement of
 12 construction of the facility; and

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

15 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and
 16 rules for which the decision on compliance has been delegated by the federal government to a state
 17 agency other than the council, the facility complies with all other Oregon statutes and administra-
 18 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-
 19 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative
 20 rules, other than those involving federally delegated programs, would result in conflicting conditions
 21 in the site certificate, the council may resolve the conflict consistent with the public interest. A
 22 resolution may not result in the waiver of any applicable state statute.

23 (4) The facility complies with the statewide planning goals adopted by the Land Conservation
 24 and Development Commission.

25 **(5) By rule the council shall establish emission levels of methane, nitrous oxide,
 26 hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride that produce equivalent envi-
 27 ronmental effects to those produced by the same level of carbon dioxide emissions.**

28 **SECTION 6. (1) Except as provided in subsection (2) of this section, the amendments to
 29 ORS 469.373, 469.407, 469.409, 469.501 and 469.503 by sections 1 to 5 of this 2011 Act become
 30 operative on January 1, 2012.**

31 **(2) The Energy Facility Siting Council may adopt rules before the operative date specified
 32 in subsection (1) of this section, or take any other action before the operative date specified
 33 in subsection (1) of this section, that is necessary to implement, on or after the operative
 34 date specified in subsection (1) of this section, the amendments to ORS 469.373, 469.407,
 35 469.409, 469.501 and 469.503 by sections 1 to 5 of this 2011 Act.**

36 **SECTION 7. The amendments to ORS 469.373, 469.407, 469.409, 469.501 and 469.503 by
 37 sections 1 to 5 of this 2011 Act apply to all site certificates or amended site certificates ap-
 38 proved by the Energy Facility Siting Council on or after the operative date specified in sec-
 39 tion 6 (1) of this 2011 Act.**

40 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public
 41 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
 42 on its passage.**