AOC | Association of Oregon Counties

Testimony before the Senate Committee on Environment and Natural Resources
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Wednesday, May 15, 2013

HB 2820 B-Engrossed

I am here today representing the Association of Oregon Counties and the county planners who administer land use decisions and siting applications. With one small exception, we are supportive of HB 2820 as it proposes a pathway to siting solar photovoltaic power generation facilities in Oregon, and clearly defines the size of facilities permitted by EFSC, and thereby at the local level as well.

This bill amends Chapter 469 and is intended to establish a new jurisdictional threshold for the Energy Facilities Siting Council. Currently the counties and their planning departments participate with EFSC in providing information for use by EFSC in its determinations. As you know, counties also site energy facilities for all resources under their authority. By existing statute, counties have authority to permit smaller energy facilities (under 25 MW generating capacity or 105 MW of wind for example). Under ORS 469 EFSC has authority to permit larger projects, energy generation projects exceeding 25 MW. This bill does not amend the land use statutes, rather, only the threshold for permitting.

Arable lands issue
The B-eng version of the bill contains language that defines "arable land" (lines 14-19) . The proposed definition is tied to soil classifications 1-4. This is inconsistent with the definition of "arable lands" already found in Administrative Rule (See OAR 660). Just last year LCDC adopted administrative rules for siting solar facilities. Included in that effort was a definition of "arable lands." This is important since everyone involved in the rulemaking supported the definition in the rule. The proposed new definition will result in inconsistent definitions, one used for establishing jurisdiction and another for land use standards.

In Eastern Oregon counties, where solar facilities are likely to be built, Class IV soils could potentially be swept into the proposed definition of "arable" when in fact those soils and their lands have never been nor will be cultivated since they are more likely rangeland. This is why the DLCD solar siting rules allow some discretion at the local level for determining the more precise situation.

So in this bill, to provide for consistency at the state and local level, AOC has proposed a **B-9** amendment to HB 2820 B-eng. that would simply remove the definition of "arable land" so that only one definition remains. This will insure consistency and eliminate confusion in the siting process. By not defining "arable" in this bill, the default will be to use the DLCD definition in the solar rule, which is the pattern and practice that exists today and has not been disputed.

The current process
Today, developers come to counties to review their soils maps. That is an important first step since the rules are different based on the "predominance" of a soil type. A developer must do this before submitting an application, either to EFSC or to the county. This process works well. Under the terms of this bill, EFSC rather than the county would make the determination, and that may not be accurate

resulting in some projects unnecessarily going to EFSC for permitting rather than at the county level where it is a quicker and less expensive process.

In discussing the EFSC and local processes with counties, I am told that counties are involved in projects reviewed by EFSC but only after the application has been made to EFSC. At that point, EFSC mails counties and other agencies a Notice of Intent or NOI. At the NOI stage, each agency provides a list of "applicable, substantive criteria." The principal criteria for counties include the land use standards. If the proposed definition of "arable lands" is adopted, the result would be that a developer is subject to one definition for purposes of submitting an application, and another standard, for purposes of demonstrating compliance with the land use standard. Very confusing at best, and likely conflicting.

The current process for determining predominant soil type is not cumbersome and land use planners are accustomed to providing this information in a timely way. But with a new definition, that may change.

Perhaps EFSC is planning to change their process with regard to solar siting, but we are not aware of that. Also, if EFSC and local officials find that we need to establish more direction to developers and decision makers, it is possible for EFSC to establish a rule around these issues.

And finally, two other bills are coming through the legislature that offer assistance but will require some consistency with HB 2820. **HB 2704** establishes in the land use statute a process for siting of associated transmission lands related to energy facilities at the local level. The bill refers to arable lands, and contemplates the use of the land use definition of arable. If this bill has a different definition, we will have created confusion about which definition is to be used.

HB **2105** is a bill that the Governor and EFSC have proposed to convene a study and process for examining siting at the state and local level to attempt to streamline and make more efficient and effective our processes and thresholds. This examination will commence soon, and stakeholders will participate in this needed process. That would be an appropriate time to consider amending a definition, if a new definition is warranted.

We encourage support for HB 2820 B eng., **amended by the B9 proposal.**