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## House Bill 2106

Sponsored by Representative HUFFMAN (Pre-session filed.)

### 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 Director of State Department of Energy, after consultation with other state agencies and parties, to develop map that identifies areas east of summit of Cascade Mountains that are appropriate for siting of energy facilities and any related or supporting facilities. Specifies contents of map.

Requires State Department of Fish and Wildlife, after consultation with State Department of Energy, to develop mitigation bank.

Modifies provisions related to Energy Facility Siting Council's adoption of standards related to siting, construction, operation and retirement of facilities.

Requires State Department of Energy to undertake study regarding types of facilities subject to authority of Energy Facility Siting Council and to report to Legislative Assembly.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

Relating to the siting of facilities; creating new provisions; amending ORS 469.501 and 469.503; and declaring an emergency.

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

### MAP CONCERNING SITING OF ENERGY FACILITIES

**SECTION 1. (1) As used in this section, "energy facility" and "facility" have the meanings given those terms in ORS 469.300.**

~~———— (2) The provisions of this section do not affect the authority of the Energy Facility Siting Council under ORS 469.300 to 469.563.~~

~~———— (3) The Director of the State Department of Energy shall develop a map that identifies areas of this state east of the summit of the Cascade Mountains that are potentially appropriate for the siting of energy facilities and any related or supporting facilities. The map must also provide information regarding any anticipated environmental effects from the siting of energy facilities and any related or supporting facilities in areas identified in the map. The map must include all lands east of the~~

1 ~~summit of the Cascade Mountains, including those administered by the~~  
2 ~~United States Forest Service and the Bureau of Land Management.~~

3 ~~—— (4) The director shall develop the map described in subsection (3) of~~  
4 ~~this section after consultation with affected landowners and land~~  
5 ~~managers, energy developers, local governments, conservation interests,~~  
6 ~~other state agencies and the federal government.~~

7 ~~SECTION 21. (1) As used in this section, “energy facility” and~~  
8 ~~“facility” have the meanings given those terms in ORS 469.300.~~

9 ~~—— (2) If the Energy Facility Siting Council approves the siting of any~~  
10 ~~energy facilities and any related or supporting facilities in areas of this~~  
11 ~~state east of the summit of the Cascade Mountains that are identified in~~  
12 ~~the map developed under section 1 of this 2013 Act, tThe State~~  
13 ~~Department of Fish and Wildlife, inafter consultation with the State~~  
14 ~~Department of Energy, the Department of Land Conservation and~~  
15 ~~Development, the Department of Geology and Mineral Industries, the~~  
16 ~~Department of Agriculture, the Department of Transportation, affected~~  
17 ~~local governments, and affected federal agencies shall adept rules to~~  
18 ~~develop and administer at least one mitigation bank forto assist~~  
19 ~~developers of the energy new large-scale facilities proposed to be located~~  
20 ~~in sage grouse habitat in central and eastern Oregon and related or~~  
21 ~~supporting facilities to meet the requirements of this state, local~~  
22 ~~governments and the federal government concerning mitigation of the~~  
23 ~~adverse effects on fish and wildlife. State agencies shall, to the greatest~~  
24 ~~extent practicable, encourage the use of the mitigation bank described in~~  
25 ~~this subsection.~~

26 ~~(32) The State Fish and Wildlife Departmentireector shall develop the~~  
27 ~~mitigation bank described in subsection (2) of this section after~~  
28 ~~consultation with affected landowners and land managers, energy~~  
29 ~~developers, local governments, conservation interests, other state~~  
30 ~~agencies and the federal government.~~

31 **STUDY**

32 ~~—— SECTION 3. (1) The State Department of Energy, after consultation with~~  
33 ~~the Department of Land Conservation and Development and local governments,~~  
34 ~~shall undertake a study of issues, and include recommendations for legislation,~~  
35 ~~related to:~~

36 ~~—— (a) The types of energy facilities and related or supporting facilities~~  
37 ~~subject to the authority of the Energy Facility Siting Council under ORS~~  
38 ~~469.300 to 469.563.~~

39 ~~—— (b) The role of local governments with respect to the siting of energy~~  
40 ~~facilities and related or supporting facilities.~~

1 ~~— (2) The State Department of Energy shall report the results of the study~~  
2 ~~to the interim committees of the Legislative Assembly related to environment~~  
3 ~~and natural resources on or before November 1, 2013.~~

4 ~~— SECTION 4. Section 3 of this 2013 Act is repealed on January 2, 2015.~~

5 ~~ENERGY FACILITY SITING COUNCIL~~

6 - SECTION 25. ORS 469.501 is amended to read:

7 469.501. (1) The Energy Facility Siting Council shall adopt standards for  
8 the siting, construction, operation and retirement of facilities. The standards  
9 may address but need not be limited to the following subjects:

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

12 (b) Seismic hazards.

13 (c) Areas designated for protection by the state or federal government,  
14 including but not limited to monuments, wilderness areas, wildlife refuges,  
15 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  
18 wildlife, including threatened and endangered fish, wildlife or plant species.

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

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

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

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

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

30 (k) Ability of the communities in the affected area to provide sewers and  
31 sewage treatment, water, storm water drainage, solid waste management,  
32 housing, traffic safety, police and fire protection, health care and schools.

33 (L) The need for proposed nongenerating facilities as defined in ORS  
34 469.503, consistent with the state energy policy set forth in ORS 469.010 and  
35 469.310. The council may consider least-cost plans when adopting a need  
36 standard or in determining whether an applicable need standard has been met.  
37 The council shall not adopt a standard requiring a showing of need or cost-  
38 effectiveness for generating facilities as defined in ORS 469.503.

39 (m) Compliance with the statewide planning goals adopted by the Land  
40 Conservation and Development Commission as specified by ORS 469.503.

1 (n) Soil protection.

2 (o) For energy facilities that emit carbon dioxide, the impacts of those  
3 emissions on climate change. For fossil-fueled power plants, as defined in ORS  
4 469.503, the council shall apply a standard  
5 as provided for by ORS 469.503 (2).

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

9 (3)(a) The council may issue a site certificate for a facility that does not  
10 meet one or more of the **applicable** standards adopted under subsection (1) of  
11 this section if the council determines that the overall public benefits of the  
12 facility outweigh *[the damage to the resources]* **any adverse effects on a**  
13 **resource or interest** protected by the **applicable** standards the facility does  
14 not meet.

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15 (b) **The council by rule shall specify the criteria by which the council**  
16 **makes the determination described in paragraph (a) of this subsection.**

17 (4) Notwithstanding subsection (1) of this section, the council may not  
18 impose any standard developed under subsection (1)(b), (f), (j) or (k) of this  
19 section to approve or deny an application for an energy facility producing power  
20 from wind, solar or geothermal energy. However, the council may, to the extent  
21 it determines appropriate, apply any standards adopted under subsection  
22 (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate  
23 issued for any energy facility.

24 **SECTION 63.** ORS 469.503 is amended to read:

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25 469.503. In order to issue a site certificate, the Energy Facility Siting Council  
26 shall determine that the preponderance of the evidence on the record supports  
27 the following conclusions:

28 (1) The facility complies with the **applicable** standards adopted by the  
29 council pursuant to ORS 469.501 or the overall public benefits of the facility  
30 outweigh *[the damage to the resources]* **any adverse effects on a resource or**  
31 **interest** protected by the **applicable** standards the facility does not meet.

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32 (2) If the energy facility is a fossil-fueled power plant, the energy facility  
33 complies with any applicable carbon dioxide emissions standard adopted by  
34 the council or enacted by statute. Base load gas plants shall comply with the  
35 standard set forth in subsection (2)(a) of this section. Other fossil-fueled power  
36 plants shall comply with any applicable standard adopted by the council by  
37 rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of  
38 this section prescribe the means by which an applicant may comply with the  
39 applicable standard.

1 (a) The net carbon dioxide emissions rate of the proposed base load gas  
2 plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt  
3 hour of net electric power output, with carbon dioxide emissions and net  
4 electric power output measured on a new and clean basis. Notwithstanding the  
5 foregoing, the council may by rule modify the carbon dioxide emissions  
6 standard for base load gas plants if the council finds that the most efficient  
7 stand-alone combined cycle, combustion turbine, natural gas-fired energy  
8 facility that is commercially demonstrated and operating in the United States  
9 has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating  
10 value adjusted to ISO conditions. In modifying the carbon dioxide emission  
11 standard, the council shall determine the rate of carbon dioxide emissions per  
12 kilowatt hour of net electric output of such energy facility, adjusted to ISO  
13 conditions, and reset the carbon dioxide emissions standard at 17 percent  
14 below this rate.

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

- 21 (A) Promote facility fuel efficiency;
- 22 (B) Promote efficiency in the resource mix;
- 23 (C) Reduce net carbon dioxide emissions;
- 24 (D) Promote cogeneration that reduces net carbon dioxide emissions;
- 25 (E) Promote innovative technologies and creative approaches to  
26 mitigating, reducing or avoiding carbon dioxide emissions;
- 27 (F) Minimize transaction costs;
- 28 (G) Include an alternative process that separates decisions on the form  
29 and implementation of offsets from the final decision on granting a site  
30 certificate;
- 31 (H) Allow either the applicant or third parties to implement offsets;
- 32 (I) Be attainable and economically achievable for various types of power  
33 plants;
- 34 (J) Promote public participation in the selection and review of offsets;
- 35 (K) Promote prompt implementation of offset projects;
- 36 (L) Provide for monitoring and evaluation of the performance of offsets;
- 37 and
- 38 (M) Promote reliability of the regional electric system.

39 (c) The council shall determine whether the applicable carbon dioxide  
40 emissions standard is met by first determining the gross carbon dioxide

1 emissions that are reasonably likely to result from the operation of the  
2 proposed energy facility. Such determination shall be based on the proposed  
3 design of the energy facility. The council shall adopt site certificate conditions  
4 to ensure that the predicted carbon dioxide emissions are not exceeded on a  
5 new and clean basis. For any remaining emissions reduction necessary to meet  
6 the applicable standard, the applicant may elect to use any of subparagraphs  
7 (A) to (D) of this paragraph, or any combination thereof. The council shall  
8 determine the amount of carbon dioxide or other greenhouse gas emissions  
9 reduction that is reasonably likely to result from the applicant's offsets and  
10 whether the resulting net carbon dioxide emissions meet the applicable carbon  
11 dioxide emissions standard. For purposes of determining the net carbon  
12 dioxide emissions, the council shall by rule establish the global warming  
13 potential of each greenhouse gas based on a generally accepted scientific  
14 method, and convert any greenhouse gas emissions to a carbon dioxide  
15 equivalent. Unless otherwise provided by the council by rule, the global  
16 warming potential of methane is 23 times that of carbon dioxide, and the global  
17 warming potential of nitrous oxide is 296 times that of carbon dioxide. If the  
18 council or a court on judicial review concludes that the applicant has not  
19 demonstrated compliance with the applicable carbon dioxide emissions  
20 standard under subparagraphs (A), (B) or (D) of this paragraph, or any  
21 combination thereof, and the applicant has agreed to meet the requirements of  
22 subparagraph (C) of this paragraph for any deficiency, the council or a court  
23 shall find compliance based on such agreement.

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

30 (B) The applicant or a third party will implement particular offsets, in  
31 which case the council may adopt site certificate conditions ensuring that the  
32 proposed offsets are implemented but shall not require that predicted levels of  
33 avoidance, displacement or sequestration of greenhouse gas emissions be  
34 achieved. The council shall determine the quantity of greenhouse gas emissions  
35 reduction that is reasonably likely to result from each of the proposed offsets  
36 based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In  
37 making this determination, the council shall not allow credit for offsets that  
38 have already been allocated or awarded credit for greenhouse gas emissions  
39 reduction in another regulatory setting. In addition, the fact that an applicant  
40 or other parties involved with an offset may derive benefits from the offset other

1 than the reduction of greenhouse gas emissions is not, by itself, a basis for  
2 withholding credit for an offset.

3 (i) The degree of certainty that the predicted quantity of greenhouse gas  
4 emissions reduction will be achieved by the offset;

5 (ii) The ability of the council to determine the actual quantity of  
6 greenhouse gas emissions reduction resulting from the offset, taking into  
7 consideration any proposed measurement, monitoring and evaluation of  
8 mitigation measure performance; and

9 (iii) The extent to which the reduction of greenhouse gas emissions would  
10 occur in the absence of the offsets.

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

29 (D) Any other means that the council adopts by rule for  
30 demonstrating compliance with any applicable carbon dioxide emissions  
31 standard.

32 (d) If the applicant elects to meet the applicable carbon dioxide emissions  
33 standard in whole or in part under paragraph (c)(C) of this subsection, the  
34 applicant shall identify the qualified organization. The applicant may identify  
35 an organization that has applied for, but has not received, an exemption from  
36 federal income taxation, but the council may not find that the organization is a  
37 qualified organization unless the organization is exempt from federal taxation  
38 under section 501(c)(3) of the Internal Revenue Code as amended and in effect  
39 on December 31, 1996. The site certificate holder shall provide a bond or  
40 comparable security in a form reasonably acceptable to the council to ensure

1 the payment of the offset funds and the amount required under subparagraph  
2 (A)(ii) of this paragraph. Such security shall be provided by the date specified in  
3 the site certificate, which shall be no later than the commencement of  
4 construction of the facility. The site certificate shall require that the offset  
5 funds be disbursed as specified in subparagraph (A) of this paragraph, unless  
6 the council finds that no qualified organization exists, in which case the site  
7 certificate shall require that the offset funds be disbursed as specified in  
8 subparagraph (B) of this paragraph.

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

12 (i) When the site certificate holder receives written notice from the  
13 qualified organization certifying that the qualified organization is contractually  
14 obligated to pay any funds to implement offsets using the offset funds, the site  
15 certificate holder shall make the requested amount available to the qualified  
16 organization unless the total of the amount requested and any amounts  
17 previously requested exceeds the offset funds, in which case only the remaining  
18 amount of the offset funds shall be made available. The qualified organization  
19 shall use at least 80 percent of the offset funds for contracts to implement  
20 offsets. The qualified organization shall assess offsets for their potential to  
21 qualify in, generate credits in or reduce obligations in other regulatory settings.  
22 The qualified organization may use up to 20 percent of the offset funds for  
23 monitoring, evaluation, administration and enforcement of contracts to  
24 implement offsets.

25 (ii) At the request of the qualified organization and in addition to the  
26 offset funds, the site certificate holder shall pay the qualified organization an  
27 amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286  
28 percent of any offset funds in excess of \$500,000. This amount shall not be  
29 less than \$50,000 unless a lesser amount is specified in the site certificate.  
30 This amount compensates the qualified organization for its costs of selecting  
31 offsets and contracting for the implementation of offsets.

32 (iii) Notwithstanding any provision to the contrary, a site certificate  
33 holder subject to this subparagraph shall have no obligation with regard to  
34 offsets, the offset funds or the funds required by sub-subparagraph (ii) of this  
35 subparagraph other than to make available to the qualified organization the  
36 total amount required under paragraph (c) of this subsection and  
37 subsubparagraph (ii) of this subparagraph, nor shall any nonperformance,  
38 negligence or misconduct on the part of the qualified organization be a basis for  
39 revocation of the site certificate or any other enforcement action by the council  
40 with respect to the site certificate holder.



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

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

39 (e) As used in this subsection:

1 (A) "Adjusted to ISO conditions" means carbon dioxide emissions and net  
2 electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per  
3 square inch atmospheric pressure and 60 percent humidity.

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

13 (C) "Carbon dioxide equivalent" means the global warming potential of a  
14 greenhouse gas reflected in units of carbon dioxide.

15 (D) "Fossil-fueled power plant" means a generating facility that produces  
16 electric power from natural gas, petroleum, coal or any form of solid, liquid or  
17 gaseous fuel derived from such material.

18 (E) "Generating facility" means those energy facilities that are defined in  
19 ORS 469.300 (11)(a)(A), (B) and (D).

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

24 (G) "Greenhouse gas" means carbon dioxide, methane and nitrous oxide.

25 (H) "Gross carbon dioxide emissions" means the predicted carbon dioxide  
26 emissions of the proposed energy facility measured on a new and clean basis.

27 (I) "Net carbon dioxide emissions" means gross carbon dioxide emissions  
28 of the proposed energy facility, less carbon dioxide or other greenhouse gas  
29 emissions avoided, displaced or sequestered by any combination of  
30 cogeneration or offsets.

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

1 rate of pounds of carbon dioxide per million Btu for natural gas or distillate  
2 fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

3 (K) "Nongenerating facility" means those energy facilities that are defined  
4 in ORS 469.300(11)(a)(C) and (E) to (I).

5 (L) "Offset" means an action that will be implemented by the applicant, a  
6 third party or through the qualified organization to avoid, sequester or displace  
7 emissions.

8 (M) "Offset funds" means the amount of funds determined by the council  
9 to satisfy the applicable carbon dioxide emissions standard pursuant to  
10 paragraph (c)(C) of this subsection.

11 (N) "Qualified organization" means an entity that:

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

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

16 (iii) Has in effect articles of incorporation that require that offset funds  
17 received pursuant to this section are used for offsets that require that decisions  
18 on the use of the offset funds are made by a decision-making body composed of  
19 seven voting members of which three are appointed by the council, three are  
20 Oregon residents appointed by the Bullitt Foundation or an alternative  
21 environmental nonprofit organization named by the body, and one is appointed  
22 by the applicants for site certificates that are subject to paragraph (d) of this  
23 subsection and the holders of such site certificates, and that require nonvoting  
24 membership on the body for holders of site certificates that have provided  
25 funds not yet disbursed under paragraph (d)(A) of this subsection;

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

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

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

37 (3) Except as provided in ORS 469.504 for land use compliance and  
38 except for those statutes and rules for which the decision on compliance has  
39 been delegated by the federal government to a state agency other than the  
40 council, the facility complies with all other Oregon statutes and administrative

1 rules identified in the project order, as amended, as applicable to the issuance  
2 of a site certificate for the proposed facility. If compliance with applicable  
3 Oregon statutes and administrative rules, other than those involving federally  
4 delegated programs, would result in conflicting conditions in the site certificate,  
5 the council may resolve the conflict consistent with the public interest. A  
6 resolution may not result in the waiver of any applicable state statute.

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

9 MISCELLANEOUS

10 ~~SECTION 7. The unit captions used in this 2013 Act are provided only~~  
11 ~~for the convenience of the reader and do not become part of the statutory law of~~  
12 ~~this state or express any legislative intent in the enactment of this 2013 Act.~~

13 **SECTION 84. The amendments to ORS 469.501 and 469.503 by**  
14 **sections 25 and 36 of this 2013 Act apply to all applications for site**  
15 **certificates made to the Energy Facility Siting Council under ORS**  
16 **469.350 on or after the effective date of this 2013 Act.**

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17 **SECTION 95. This 2013 Act being necessary for the immediate**  
18 **preservation of the public peace, health and safety, an emergency is**  
19 **declared to exist, and this 2013 Act takes effect on its passage.**

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