

## HOUSE AMENDMENTS TO HOUSE BILL 2106

By COMMITTEE ON LAND USE

April 24

1 On page 1 of the printed bill, delete lines 5 through 26 and delete pages 2 through 9 and insert:

2 “**SECTION 1.** ORS 469.501 is amended to read:

3 “469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, con-  
4 struction, operation and retirement of facilities. The standards may address but need not be limited  
5 to the following subjects:

6 “(a) The organizational, managerial and technical expertise of the applicant to construct and  
7 operate the proposed facility.

8 “(b) Seismic hazards.

9 “(c) Areas designated for protection by the state or federal government, including but not lim-  
10 ited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

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

12 “(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including  
13 threatened and endangered fish, wildlife or plant species.

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

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

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

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

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

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

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

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

31 “(n) Soil protection.

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

35 “(2) The council may adopt exemptions from any need standard adopted under subsection (1)(L)

1 of this section if the exemption is consistent with the state’s energy policy set forth in ORS 469.010  
2 and 469.310.

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

7 “(b) **The council by rule shall specify the criteria by which the council makes the deter-**  
8 **mination described in paragraph (a) of this subsection.**

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

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

15 “469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine  
16 that the preponderance of the evidence on the record supports the following conclusions:

17 “(1) The facility complies with the **applicable** standards adopted by the council pursuant to ORS  
18 469.501 or the overall public benefits of the facility outweigh [*the damage to the resources*] **any ad-**  
19 **verse effects on a resource or interest** protected by the **applicable** standards the facility does  
20 not meet.

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

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

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

42 “(A) Promote facility fuel efficiency;

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

44 “(C) Reduce net carbon dioxide emissions;

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

1 “(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoid-  
2 ing carbon dioxide emissions;

3 “(F) Minimize transaction costs;

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

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

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

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

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

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

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

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

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

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

45 “(i) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction

1 will be achieved by the offset;

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

5 “(iii) The extent to which the reduction of greenhouse gas emissions would occur in the absence  
6 of the offsets.

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

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

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

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

38 “(i) When the site certificate holder receives written notice from the qualified organization  
39 certifying that the qualified organization is contractually obligated to pay any funds to implement  
40 offsets using the offset funds, the site certificate holder shall make the requested amount available  
41 to the qualified organization unless the total of the amount requested and any amounts previously  
42 requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall  
43 be made available. The qualified organization shall use at least 80 percent of the offset funds for  
44 contracts to implement offsets. The qualified organization shall assess offsets for their potential to  
45 qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified or-

1 organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration  
2 and enforcement of contracts to implement offsets.

3 “(ii) At the request of the qualified organization and in addition to the offset funds, the site  
4 certificate holder shall pay the qualified organization an amount equal to 10 percent of the first  
5 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount  
6 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount  
7 compensates the qualified organization for its costs of selecting offsets and contracting for the im-  
8 plementation of offsets.

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

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

40 “(C) Every qualified organization that has received funds under this paragraph shall, at five-year  
41 intervals beginning on the date of receipt of such funds, provide the council with the information  
42 the council requests about the qualified organization’s performance. The council shall evaluate the  
43 information requested and, based on such information, shall make any recommendations to the  
44 Legislative Assembly that the council deems appropriate.

45 “(e) As used in this subsection:

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

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

11 “(C) ‘Carbon dioxide equivalent’ means the global warming potential of a greenhouse gas re-  
12 flected in units of carbon dioxide.

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

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

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

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

21 “(H) ‘Gross carbon dioxide emissions’ means the predicted carbon dioxide emissions of the pro-  
22 posed energy facility measured on a new and clean basis.

23 “(I) ‘Net carbon dioxide emissions’ means gross carbon dioxide emissions of the proposed energy  
24 facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by  
25 any combination of cogeneration or offsets.

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

35 “(K) ‘Nongenerating facility’ means those energy facilities that are defined in ORS 469.300  
36 (11)(a)(C) and (E) to (I).

37 “(L) ‘Offset’ means an action that will be implemented by the applicant, a third party or through  
38 the qualified organization to avoid, sequester or displace emissions.

39 “(M) ‘Offset funds’ means the amount of funds determined by the council to satisfy the applicable  
40 carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

41 “(N) ‘Qualified organization’ means an entity that:

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

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

1           “(iii) Has in effect articles of incorporation that require that offset funds received pursuant to  
2 this section are used for offsets that require that decisions on the use of the offset funds are made  
3 by a decision-making body composed of seven voting members of which three are appointed by the  
4 council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environ-  
5 mental nonprofit organization named by the body, and one is appointed by the applicants for site  
6 certificates that are subject to paragraph (d) of this subsection and the holders of such site certifi-  
7 cates, and that require nonvoting membership on the body for holders of site certificates that have  
8 provided funds not yet disbursed under paragraph (d)(A) of this subsection;

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

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

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

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

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

29           “**SECTION 3. The amendments to ORS 469.501 and 469.503 by sections 1 and 2 of this 2013**  
30 **Act apply to all applications for site certificates made to the Energy Facility Siting Council**  
31 **under ORS 469.350 on or after the effective date of this 2013 Act.**

32           “**SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**  
33 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
34 **on its passage.”.**