

**PROPOSED AMENDMENTS TO
HOUSE BILL 2820**

1 In line 2 of the printed bill, after “energy;” insert “creating new pro-
2 visions; amending ORS 469.300, 469.320, 469.503 and 469.504;”.

3 Delete lines 4 through 15 and insert:

4 **“SECTION 1.** ORS 469.300 is amended to read:

5 “469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and
6 469.992, unless the context requires otherwise:

7 “(1) ‘Applicant’ means any person who makes application for a site cer-
8 tificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619,
9 469.930 and 469.992.

10 “(2) ‘Application’ means a request for approval of a particular site or sites
11 for the construction and operation of an energy facility or the construction
12 and operation of an additional energy facility upon a site for which a cer-
13 tificate has already been issued, filed in accordance with the procedures es-
14 tablished pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and
15 469.992.

16 **“(3) ‘Arable land’ means land in a tract, as defined in ORS 215.010,
17 that is:**

18 **“(a) High-value farmland as defined in ORS 195.300;**

19 **“(b) Predominantly cultivated; or**

20 **“(c) Predominantly composed of soils that are suitable for culti-
21 vation as specified in the comprehensive plan of the governing body
22 of the city or county with land use jurisdiction, and land use regu-**

1 **lations implementing the plan.**

2 “[3] (4) ‘Associated transmission lines’ means new transmission lines
3 constructed to connect an energy facility to the first point of junction of
4 such transmission line or lines with either a power distribution system or
5 an interconnected primary transmission system or both or to the Northwest
6 Power Grid.

7 “[4] (5) ‘Average electric generating capacity’ means the peak generating
8 capacity of the facility divided by one of the following factors:

9 “(a) For wind [*or solar energy*] facilities, 3.00;

10 “(b) For geothermal energy facilities, 1.11; or

11 “(c) For all other energy facilities, 1.00.

12 “[5] (6) ‘Combustion turbine power plant’ means a thermal power plant
13 consisting of one or more fuel-fired combustion turbines and any associated
14 waste heat combined cycle generators.

15 “[6] (7) ‘Construction’ means work performed on a site, excluding sur-
16 veying, exploration or other activities to define or characterize the site, the
17 cost of which exceeds \$250,000.

18 “[7] (8) ‘Council’ means the Energy Facility Siting Council established
19 under ORS 469.450.

20 “[8] (9) ‘Department’ means the State Department of Energy created
21 under ORS 469.030.

22 “[9] (10) ‘Director’ means the Director of the State Department of En-
23 ergy appointed under ORS 469.040.

24 “[10] (11) ‘Electric utility’ means persons, regulated electrical compa-
25 nies, people’s utility districts, joint operating agencies, electric cooperatives,
26 municipalities or any combination thereof, engaged in or authorized to en-
27 gage in the business of generating, supplying, transmitting or distributing
28 electric energy.

29 “[11(a)] (12)(a) ‘Energy facility’ means any of the following:

30 “(A) An electric power generating plant with a nominal electric generat-

1 ing capacity of 25 megawatts or more, including but not limited to:

2 “(i) Thermal power; *[or]*

3 “(ii) Combustion turbine power plant[.]; **or**

4 **“(iii) Solar thermal power plant.**

5 “(B) A nuclear installation as defined in this section.

6 “(C) A high voltage transmission line of more than 10 miles in length
7 with a capacity of 230,000 volts or more to be constructed in more than one
8 city or county in this state, but excluding:

9 “(i) Lines proposed for construction entirely within 500 feet of an existing
10 corridor occupied by high voltage transmission lines with a capacity of
11 230,000 volts or more; and

12 “(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000
13 volts along the same right of way.

14 “(D) A solar *[collecting]* **photovoltaic power generation** facility using
15 more than *[100 acres of land.]*:

16 **“(i) 100 acres located on arable land; or**

17 **“(ii) 640 acres located on nonarable land.**

18 “(E) A pipeline that is:

19 “(i) At least six inches in diameter, and five or more miles in length, used
20 for the transportation of crude petroleum or a derivative thereof, liquefied
21 natural gas, a geothermal energy form in a liquid state or other fossil energy
22 resource, excluding a pipeline conveying natural or synthetic gas;

23 “(ii) At least 16 inches in diameter, and five or more miles in length, used
24 for the transportation of natural or synthetic gas, but excluding:

25 “(I) A pipeline proposed for construction of which less than five miles of
26 the pipeline is more than 50 feet from a public road, as defined in ORS
27 368.001; or

28 “(II) A parallel or upgraded pipeline up to 24 inches in diameter that is
29 constructed within the same right of way as an existing 16-inch or larger
30 pipeline that has a site certificate, if all studies and necessary mitigation

1 conducted for the existing site certificate meet or are updated to meet cur-
2 rent site certificate standards; or

3 “(iii) At least 16 inches in diameter and five or more miles in length used
4 to carry a geothermal energy form in a gaseous state but excluding a pipeline
5 used to distribute heat within a geothermal heating district established un-
6 der ORS chapter 523.

7 “(F) A synthetic fuel plant which converts a natural resource including,
8 but not limited to, coal or oil to a gas, liquid or solid product intended to
9 be used as a fuel and capable of being burned to produce the equivalent of
10 two billion Btu of heat a day.

11 “(G) A plant which converts biomass to a gas, liquid or solid product, or
12 combination of such products, intended to be used as a fuel and if any one
13 of such products is capable of being burned to produce the equivalent of six
14 billion Btu of heat a day.

15 “(H) A storage facility for liquefied natural gas constructed after Sep-
16 tember 29, 1991, that is designed to hold at least 70,000 gallons.

17 “(I) A surface facility related to an underground gas storage reservoir
18 that, at design injection or withdrawal rates, will receive or deliver more
19 than 50 million cubic feet of natural or synthetic gas per day, or require
20 more than 4,000 horsepower of natural gas compression to operate, but ex-
21 cluding:

22 “(i) The underground storage reservoir;

23 “(ii) The injection, withdrawal or monitoring wells and individual
24 wellhead equipment; and

25 “(iii) An underground gas storage reservoir into which gas is injected
26 solely for testing or reservoir maintenance purposes or to facilitate the sec-
27 ondary recovery of oil or other hydrocarbons.

28 “(J) An electric power generating plant with an average electric gener-
29 ating capacity of 35 megawatts or more if the power is produced from
30 geothermal[, solar] or wind energy at a single energy facility or within a

1 single energy generation area.

2 “(b) ‘Energy facility’ does not include a hydroelectric facility.

3 “[~~(12)~~] **(13)** ‘Energy generation area’ means an area within which the ef-
4 fects of two or more small generating plants may accumulate so the small
5 generating plants have effects of a magnitude similar to a single generating
6 plant of 35 megawatts average electric generating capacity or more. An ‘en-
7 ergy generation area’ for facilities using a geothermal resource and covered
8 by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law,
9 shall be defined in that unit agreement. If no such unit agreement exists, an
10 energy generation area for facilities using a geothermal resource shall be the
11 area that is within two miles, measured from the electrical generating
12 equipment of the facility, of an existing or proposed geothermal electric
13 power generating plant, not including the site of any other such plant not
14 owned or controlled by the same person.

15 “[~~(13)~~] **(14)** ‘Extraordinary nuclear occurrence’ means any event causing
16 a discharge or dispersal of source material, special nuclear material or by-
17 product material as those terms are defined in ORS 453.605, from its intended
18 place of confinement off-site, or causing radiation levels off-site, that the
19 United States Nuclear Regulatory Commission or its successor determines
20 to be substantial and to have resulted in or to be likely to result in sub-
21 stantial damages to persons or property off-site.

22 “[~~(14)~~] **(15)** ‘Facility’ means an energy facility together with any related
23 or supporting facilities.

24 “[~~(15)~~] **(16)** ‘Geothermal reservoir’ means an aquifer or aquifers containing
25 a common geothermal fluid.

26 “[~~(16)~~] **(17)** ‘Local government’ means a city or county.

27 “[~~(17)~~] **(18)** ‘Nominal electric generating capacity’ means the maximum net
28 electric power output of an energy facility based on the average temperature,
29 barometric pressure and relative humidity at the site during the times of the
30 year when the facility is intended to operate.

1 “(19) ‘Nonarable land’ means land in a tract, as defined in ORS
2 215.010, that is:

3 “(a) Predominantly uncultivated.

4 “(b) Predominantly composed of soils in capability classes V to VIII
5 as specified by the National Resources Conservation Service of the
6 United States Department of Agriculture.

7 “(c) Composed of other soils as specified in the comprehensive plan
8 of the governing body of the city or county with land use jurisdiction,
9 and land use regulations implementing the plan.

10 “[(18)] (20) ‘Nuclear incident’ means any occurrence, including an ex-
11 traordinary nuclear occurrence, that results in bodily injury, sickness, dis-
12 ease, death, loss of or damage to property or loss of use of property due to
13 the radioactive, toxic, explosive or other hazardous properties of source ma-
14 terial, special nuclear material or by-product material as those terms are
15 defined in ORS 453.605.

16 “[(19)] (21) ‘Nuclear installation’ means any power reactor, nuclear fuel
17 fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for
18 radioactive waste, and any facility handling that quantity of fissionable ma-
19 terials sufficient to form a critical mass. ‘Nuclear installation’ does not in-
20 clude any such facilities that are part of a thermal power plant.

21 “[(20)] (22) ‘Nuclear power plant’ means an electrical or any other facility
22 using nuclear energy with a nominal electric generating capacity of 25
23 megawatts or more, for generation and distribution of electricity, and asso-
24 ciated transmission lines.

25 “[(21)] (23) ‘Person’ means an individual, partnership, joint venture, pri-
26 vate or public corporation, association, firm, public service company, poli-
27 tical subdivision, municipal corporation, government agency, people’s utility
28 district, or any other entity, public or private, however organized.

29 “[(22)] (24) ‘Project order’ means the order, including any amendments,
30 issued by the State Department of Energy under ORS 469.330.

1 “[~~(23)~~(a)] **(25)(a)** ‘Radioactive waste’ means all material which is dis-
2 carded, unwanted or has no present lawful economic use, and contains mined
3 or refined naturally occurring isotopes, accelerator produced isotopes and
4 by-product material, source material or special nuclear material as those
5 terms are defined in ORS 453.605. The term does not include those radioac-
6 tive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted
7 by the council on December 12, 1978, and revised periodically for the purpose
8 of adding additional isotopes which are not referred to in OAR 345-50 as
9 presenting no significant danger to the public health and safety.

10 “(b) Notwithstanding paragraph (a) of this subsection, ‘radioactive
11 waste’ does not include uranium mine overburden or uranium mill tailings,
12 mill wastes or mill by-product materials as those terms are defined in Title
13 42, United States Code, section 2014, on June 25, 1979.

14 “[~~(24)~~] **(26)** ‘Related or supporting facilities’ means any structure, pro-
15 posed by the applicant, to be constructed or substantially modified in con-
16 nection with the construction of an energy facility, including associated
17 transmission lines, reservoirs, storage facilities, intake structures, road and
18 rail access, pipelines, barge basins, office or public buildings, and commercial
19 and industrial structures. ‘Related or supporting facilities’ does not include
20 geothermal or underground gas storage reservoirs, production, injection or
21 monitoring wells or wellhead equipment or pumps.

22 “[~~(25)~~] **(27)** ‘Site’ means any proposed location of an energy facility and
23 related or supporting facilities.

24 “[~~(26)~~] **(28)** ‘Site certificate’ means the binding agreement between the
25 State of Oregon and the applicant, authorizing the applicant to construct and
26 operate a facility on an approved site, incorporating all conditions imposed
27 by the council on the applicant.

28 “[~~(27)~~] **(29)** ‘Thermal power plant’ means an electrical facility using any
29 source of thermal energy with a nominal electric generating capacity of 25
30 megawatts or more, for generation and distribution of electricity, and asso-

1 ciated transmission lines, including but not limited to a nuclear-fueled,
2 geothermal-fueled or fossil-fueled power plant, but not including a portable
3 power plant the principal use of which is to supply power in emergencies.
4 ‘Thermal power plant’ includes a nuclear-fueled thermal power plant that has
5 ceased to operate.

6 “[28] **(30)** ‘Transportation’ means the transport within the borders of the
7 State of Oregon of radioactive material destined for or derived from any lo-
8 cation.

9 “[29] **(31)** ‘Underground gas storage reservoir’ means any subsurface
10 sand, strata, formation, aquifer, cavern or void, whether natural or arti-
11 ficially created, suitable for the injection, storage and withdrawal of natural
12 gas or other gaseous substances. ‘Underground gas storage reservoir’ in-
13 cludes a pool as defined in ORS 520.005.

14 “[30] **(32)** ‘Utility’ includes:

15 “(a) A person, a regulated electrical company, a people’s utility district,
16 a joint operating agency, an electric cooperative, municipality or any com-
17 bination thereof, engaged in or authorized to engage in the business of gen-
18 erating, transmitting or distributing electric energy;

19 “(b) A person or public agency generating electric energy from an energy
20 facility for its own consumption; and

21 “(c) A person engaged in this state in the transmission or distribution of
22 natural or synthetic gas.

23 “[31] **(33)** ‘Waste disposal facility’ means a geographical site in or upon
24 which radioactive waste is held or placed but does not include a site at
25 which radioactive waste used or generated pursuant to a license granted
26 under ORS 453.635 is stored temporarily, a site of a thermal power plant used
27 for the temporary storage of radioactive waste from that plant for which a
28 site certificate has been issued pursuant to this chapter or a site used for
29 temporary storage of radioactive waste from a reactor operated by a college,
30 university or graduate center for research purposes and not connected to the

1 Northwest Power Grid. As used in this subsection, ‘temporary storage’ in-
2 cludes storage of radioactive waste on the site of a nuclear-fueled thermal
3 power plant for which a site certificate has been issued until a permanent
4 storage site is available by the federal government.

5 **“SECTION 2.** ORS 469.320 is amended to read:

6 “469.320. (1) Except as provided in subsections (2) and (5) of this section,
7 no facility shall be constructed or expanded unless a site certificate has been
8 issued for the site thereof in the manner provided in ORS 469.300 to 469.563,
9 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or
10 operated except in conformity with the requirements of ORS 469.300 to
11 469.563, 469.590 to 469.619, 469.930 and 469.992.

12 “(2) A site certificate is not required for:

13 “(a) An energy facility for which no site certificate has been issued that,
14 on August 2, 1993, had operable electric generating equipment for a modifi-
15 cation that uses the same fuel type and increases electric generating capac-
16 ity, if:

17 “(A) The site is not enlarged; and

18 “(B) The ability of the energy facility to use fuel for electricity pro-
19 duction under peak steady state operating conditions is not more than 200
20 million Btu per hour greater than it was on August 2, 1993, or the energy
21 facility expansion is called for in the short-term plan of action of an energy
22 resource plan that has been acknowledged by the Public Utility Commission
23 of Oregon.

24 “(b) Construction or expansion of any interstate natural gas pipeline or
25 associated underground natural gas storage facility authorized by and sub-
26 ject to the continuing regulation of the Federal Energy Regulatory Com-
27 mission or successor agency.

28 “(c) An energy facility, except coal and nuclear power plants, if the en-
29 ergy facility:

30 “(A) Sequentially produces electrical energy and useful thermal energy

1 from the same fuel source; and

2 “(B) Under average annual operating conditions, has a nominal electric
3 generating capacity:

4 “(i) Of less than 50 megawatts and the fuel chargeable to power heat rate
5 value is not greater than 6,000 Btu per kilowatt hour;

6 “(ii) Of 50 megawatts or more and the fuel chargeable to power heat rate
7 value is not greater than 5,500 Btu per kilowatt hour; or

8 “(iii) Specified by the Energy Facility Siting Council by rule based on the
9 council’s determination relating to emissions of the energy facility.

10 “(d) Temporary storage, at the site of a nuclear-fueled thermal power
11 plant for which a site certificate has been issued by the State of Oregon, of
12 radioactive waste from the plant.

13 “(e) An energy facility as defined in ORS 469.300 [(11)(a)(G)] **(12)(a)(G)**,
14 if the plant also produces a secondary fuel used on site for the production
15 of heat or electricity, if the output of the primary fuel is less than six billion
16 Btu of heat a day.

17 “(f) An energy facility as defined in ORS 469.300 [(11)(a)(G)] **(12)(a)(G)**,
18 if the facility:

19 “(A) Exclusively uses biomass, including but not limited to grain, whey,
20 potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source
21 of material for conversion to a liquid fuel;

22 “(B) Has received local land use approval under the applicable acknowl-
23 edged comprehensive plan and land use regulations of the affected local
24 government and the facility complies with any statewide planning goals or
25 rules of the Land Conservation and Development Commission that are di-
26 rectly applicable to the facility;

27 “(C) Requires no new electric transmission lines or gas or petroleum
28 product pipelines that would require a site certificate under subsection (1)
29 of this section;

30 “(D) Produces synthetic fuel, at least 90 percent of which is used in an

1 industrial or refueling facility located within one mile of the facility or is
2 transported from the facility by rail or barge; and

3 “(E) Emits less than 118 pounds of carbon dioxide per million Btu from
4 fossil fuel used for conversion energy.

5 “(g) A standby generation facility, if the facility complies with all of the
6 following:

7 “(A) The facility has received local land use approval under the applicable
8 acknowledged comprehensive plan and land use regulations of the affected
9 local government and the facility complies with all statewide planning goals
10 and applicable rules of the Land Conservation and Development Commission;

11 “(B) The standby generators have been approved by the Department of
12 Environmental Quality as having complied with all applicable air and water
13 quality requirements. For an applicant that proposes to provide the physical
14 facilities for the installation of standby generators, the requirement of this
15 subparagraph may be met by agreeing to require such a term in the lease
16 contract for the facility; and

17 “(C) The standby generators are electrically incapable of being intercon-
18 nected to the transmission grid. For an applicant that proposes to provide
19 the physical facilities for the installation of standby generators, the re-
20 quirement of this subparagraph may be met by agreeing to require such a
21 term in the lease contract for the facility.

22 “(3) The Energy Facility Siting Council may review and, if necessary,
23 revise the fuel chargeable to power heat rate value set forth in subsection
24 (2)(c)(B) of this section. In making its determination, the council shall ensure
25 that the fuel chargeable to power heat rate value for facilities set forth in
26 subsection (2)(c)(B) of this section remains significantly lower than the fuel
27 chargeable to power heat rate value for the best available, commercially vi-
28 able thermal power plant technology at the time of the revision.

29 “(4) Any person who proposes to construct or enlarge an energy facility
30 and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this

1 section from the requirement to obtain a site certificate shall request the
2 Energy Facility Siting Council to determine whether the proposed facility
3 qualifies for the claimed exemption. The council shall make its determination
4 within 60 days after the request for exemption is filed. An appeal from the
5 council's determination on a request for exemption shall be made under ORS
6 469.403, except that the scope of review by the Supreme Court shall be the
7 same as a review by a circuit court under ORS 183.484. The record on review
8 by the Supreme Court shall be the record established in the council pro-
9 ceeding on the exemption.

10 “(5) Notwithstanding subsection (1) of this section, a separate site certifi-
11 cate shall not be required for:

12 “(a) Transmission lines, storage facilities, pipelines or similar related or
13 supporting facilities, if such related or supporting facilities are addressed in
14 and are subject to a site certificate for another energy facility;

15 “(b) Expansion within the site or within the energy generation area of a
16 facility for which a site certificate has been issued, if the existing site cer-
17 tificate has been amended to authorize expansion; or

18 “(c) Expansion, either within the site or outside the site, of an existing
19 council certified surface facility related to an underground gas storage res-
20 ervoir, if the existing site certificate is amended to authorize expansion.

21 “(6) If the substantial loss of the steam host causes a facility exempt un-
22 der subsection (2)(c) of this section to substantially fail to meet the ex-
23 emption requirements under subsection (2)(c) of this section, the electric
24 generating facility shall cease to operate one year after the substantial loss
25 of the steam host unless an application for a site certificate has been filed
26 in accordance with the provisions of ORS 469.300 to 469.563.

27 “(7) As used in this section:

28 “(a) ‘Standby generation facility’ means an electric power generating fa-
29 cility, including standby generators and the physical structures necessary to
30 install and connect standby generators, that provides temporary electric

1 power in the event of a power outage and that is electrically incapable of
2 being interconnected with the transmission grid.

3 “(b) ‘Total energy output’ means the sum of useful thermal energy output
4 and useful electrical energy output.

5 “(c) ‘Useful thermal energy’ means the verifiable thermal energy used in
6 any viable industrial or commercial process, heating or cooling application.

7 “(8) Notwithstanding the definition of ‘energy facility’ in ORS 469.300
8 [(11)(a)(J)] **(12)(a)(J)**, an electric power generating plant with an average
9 electric generating capacity of less than 35 megawatts produced from wind
10 energy at a single energy facility or within a single energy generation area
11 may elect to obtain a site certificate in the manner provided in ORS 469.300
12 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site
13 certificate under this subsection shall be final upon submission of an appli-
14 cation for a site certificate.

15 **“SECTION 3.** ORS 469.503 is amended to read:

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

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

23 “(2) If the energy facility is a fossil-fueled power plant, the energy facility
24 complies with any applicable carbon dioxide emissions standard adopted by
25 the council or enacted by statute. Base load gas plants shall comply with
26 the standard set forth in subsection (2)(a) of this section. Other fossil-fueled
27 power plants shall comply with any applicable standard adopted by the
28 council by rule pursuant to subsection (2)(b) of this section. Subsections
29 (2)(c) and (d) of this section prescribe the means by which an applicant may
30 comply with the 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
5 the 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 fa-
8 cility 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
12 per kilowatt hour of net electric output of such energy facility, adjusted to
13 ISO 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 fol-
19 lowing 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 miti-
26 gating, 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 cer-
30 tificate;

- 1 “(H) Allow either the applicant or third parties to implement offsets;
- 2 “(I) Be attainable and economically achievable for various types of power
- 3 plants;
- 4 “(J) Promote public participation in the selection and review of offsets;
- 5 “(K) Promote prompt implementation of offset projects;
- 6 “(L) Provide for monitoring and evaluation of the performance of offsets;
- 7 and
- 8 “(M) Promote reliability of the regional electric system.

9 “(c) The council shall determine whether the applicable carbon dioxide

10 emissions standard is met by first determining the gross carbon dioxide

11 emissions that are reasonably likely to result from the operation of the pro-

12 posed energy facility. Such determination shall be based on the proposed

13 design of the energy facility. The council shall adopt site certificate condi-

14 tions to ensure that the predicted carbon dioxide emissions are not exceeded

15 on a new and clean basis. For any remaining emissions reduction necessary

16 to meet the applicable standard, the applicant may elect to use any of sub-

17 paragraphs (A) to (D) of this paragraph, or any combination thereof. The

18 council shall determine the amount of carbon dioxide or other greenhouse

19 gas emissions reduction that is reasonably likely to result from the

20 applicant’s offsets and whether the resulting net carbon dioxide emissions

21 meet the applicable carbon dioxide emissions standard. For purposes of de-

22 termining the net carbon dioxide emissions, the council shall by rule estab-

23 lish the global warming potential of each greenhouse gas based on a

24 generally accepted scientific method, and convert any greenhouse gas emis-

25 sions to a carbon dioxide equivalent. Unless otherwise provided by the

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

27 carbon dioxide, and the global warming potential of nitrous oxide is 296

28 times that of carbon dioxide. If the council or a court on judicial review

29 concludes that the applicant has not demonstrated compliance with the ap-

30 plicable carbon dioxide emissions standard under subparagraphs (A), (B) or

1 (D) of this paragraph, or any combination thereof, and the applicant has
2 agreed to meet the requirements of subparagraph (C) of this paragraph for
3 any deficiency, the council or a court shall find compliance based on such
4 agreement.

5 “(A) The facility will sequentially produce electrical and thermal energy
6 from the same fuel source, and the thermal energy will be used to displace
7 another source of carbon dioxide emissions that would have otherwise con-
8 tinued to occur, in which case the council shall adopt site certificate condi-
9 tions ensuring that the carbon dioxide emissions reduction will be achieved.

10 “(B) The applicant or a third party will implement particular offsets, in
11 which case the council may adopt site certificate conditions ensuring that
12 the proposed offsets are implemented but shall not require that predicted
13 levels of avoidance, displacement or sequestration of greenhouse gas emis-
14 sions be achieved. The council shall determine the quantity of greenhouse
15 gas emissions reduction that is reasonably likely to result from each of the
16 proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this
17 subparagraph. In making this determination, the council shall not allow
18 credit for offsets that have already been allocated or awarded credit for
19 greenhouse gas emissions reduction in another regulatory setting. In addi-
20 tion, the fact that an applicant or other parties involved with an offset may
21 derive benefits from the offset other than the reduction of greenhouse gas
22 emissions is not, by itself, a basis for withholding credit for an offset.

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

25 “(ii) The ability of the council to determine the actual quantity of
26 greenhouse gas emissions reduction resulting from the offset, taking into
27 consideration any proposed measurement, monitoring and evaluation of mit-
28 igation measure performance; and

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

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

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

21 “(d) If the applicant elects to meet the applicable carbon dioxide emis-
22 sions standard in whole or in part under paragraph (c)(C) of this subsection,
23 the applicant shall identify the qualified organization. The applicant may
24 identify an organization that has applied for, but has not received, an ex-
25 emption from federal income taxation, but the council may not find that the
26 organization is a qualified organization unless the organization is exempt
27 from federal taxation under section 501(c)(3) of the Internal Revenue Code
28 as amended and in effect on December 31, 1996. The site certificate holder
29 shall provide a bond or comparable security in a form reasonably acceptable
30 to the council to ensure the payment of the offset funds and the amount re-

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

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

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

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

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

10 “(B) If the council finds there is no qualified organization, the site cer-
11 tificate holder shall select one or more offsets to be implemented pursuant
12 to criteria established by the council. The site certificate holder shall give
13 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
15 adversely affected or aggrieved by the site certificate holder’s selection of
16 offsets, or on the council’s own motion, the council may review such se-
17 lection. The petition must be received by the council within 30 days of the
18 date the notice of selection is placed in the United States mail, with first-
19 class postage prepaid. The council shall approve the site certificate holder’s
20 selection unless it finds that the selection is not consistent with criteria es-
21 tablished by the council. The site certificate holder shall contract to imple-
22 ment the selected offsets within 18 months after commencing construction
23 of the facility unless good cause is shown requiring additional time. The
24 contracts shall obligate the expenditure of at least 85 percent of the offset
25 funds for the implementation of offsets. No more than 15 percent of the offset
26 funds may be spent on monitoring, evaluation and enforcement of the con-
27 tract to implement the selected offsets. The council’s criteria for selection
28 of offsets shall be based on the criteria set forth in paragraphs (b)(C) and
29 (c)(B) of this subsection and may also consider the costs of particular types
30 of offsets in relation to the expected benefits of such offsets. The council’s

1 criteria shall not require the site certificate holder to select particular off-
2 sets, and shall allow the site certificate holder a reasonable range of choices
3 in selecting offsets. In addition, notwithstanding any other provision of this
4 section, the site certificate holder's financial liability for implementation,
5 monitoring, evaluation and enforcement of offsets pursuant to this subsection
6 shall be limited to the amount of any offset funds not already contractually
7 obligated. Nonperformance, negligence or misconduct by the entity or enti-
8 ties implementing, monitoring or evaluating the selected offset shall not be
9 a basis for revocation of the site certificate or any other enforcement action
10 by the council with respect to the site certificate holder.

11 “(C) Every qualified organization that has received funds under this par-
12 agraph shall, at five-year intervals beginning on the date of receipt of such
13 funds, provide the council with the information the council requests about
14 the qualified organization's performance. The council shall evaluate the in-
15 formation requested and, based on such information, shall make any recom-
16 mendations to the Legislative Assembly that the council deems appropriate.

17 “(e) As used in this subsection:

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

21 “(B) ‘Base load gas plant’ means a generating facility that is fueled by
22 natural gas, except for periods during which an alternative fuel may be used
23 and when such alternative fuel use shall not exceed 10 percent of expected
24 fuel use in Btu, higher heating value, on an average annual basis, and where
25 the applicant requests and the council adopts no condition in the site cer-
26 tificate for the generating facility that would limit hours of operation other
27 than restrictions on the use of alternative fuel. The council shall assume a
28 100 percent capacity factor for such plants and a 30-year life for the plants
29 for purposes of determining gross carbon dioxide emissions.

30 “(C) ‘Carbon dioxide equivalent’ means the global warming potential of

1 a greenhouse gas reflected in units of carbon dioxide.

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

5 “(E) ‘Generating facility’ means those energy facilities that are defined
6 in ORS 469.300 [(11)(a)(A)] **(12)(a)(A)**, (B) and (D).

7 “(F) ‘Global warming potential’ means the determination of the atmo-
8 spheric warming resulting from the release of a unit mass of a particular
9 greenhouse gas in relation to the warming resulting from the release of the
10 equivalent mass of carbon dioxide.

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

12 “(H) ‘Gross carbon dioxide emissions’ means the predicted carbon dioxide
13 emissions of the proposed energy facility measured on a new and clean basis.

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

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

30 “(K) ‘Nongenerating facility’ means those energy facilities that are de-

1 fined in ORS 469.300 [(11)(a)(C)] **(12)(a)(C)** and (E) to (I).

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

5 “(M) ‘Offset funds’ means the amount of funds determined by the council
6 to satisfy the applicable carbon dioxide emissions standard pursuant to par-
7 agraph (c)(C) of this subsection.

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

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

11 “(ii) Either is incorporated in the State of Oregon or is a foreign corpo-
12 ration authorized to do business in the State of Oregon;

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

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

30 “(v) Has to the extent applicable, except for good cause, entered into

1 contracts obligating at least 60 percent of the offset funds to implement off-
2 sets within two years after the commencement of construction of the facility;
3 and

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

6 “(3) Except as provided in ORS 469.504 for land use compliance and except
7 for those statutes and rules for which the decision on compliance has been
8 delegated by the federal government to a state agency other than the council,
9 the facility complies with all other Oregon statutes and administrative rules
10 identified in the project order, as amended, as applicable to the issuance of
11 a site certificate for the proposed facility. If compliance with applicable
12 Oregon statutes and administrative rules, other than those involving feder-
13 ally delegated programs, would result in conflicting conditions in the site
14 certificate, the council may resolve the conflict consistent with the public
15 interest. A resolution may not result in the waiver of any applicable state
16 statute.

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

19 **“SECTION 4.** ORS 469.504 is amended to read:

20 “469.504. (1) A proposed facility shall be found in compliance with the
21 statewide planning goals under ORS 469.503 (4) if:

22 “(a) The facility has received local land use approval under the acknowl-
23 edged comprehensive plan and land use regulations of the affected local
24 government; or

25 “(b) The Energy Facility Siting Council determines that:

26 “(A) The facility complies with applicable substantive criteria from the
27 affected local government’s acknowledged comprehensive plan and land use
28 regulations that are required by the statewide planning goals and in effect
29 on the date the application is submitted, and with any Land Conservation
30 and Development Commission administrative rules and goals and any land

1 use statutes that apply directly to the facility under ORS 197.646;

2 “(B) For an energy facility or a related or supporting facility that must
3 be evaluated against the applicable substantive criteria pursuant to sub-
4 section (5) of this section, that the proposed facility does not comply with
5 one or more of the applicable substantive criteria but does otherwise comply
6 with the applicable statewide planning goals, or that an exception to any
7 applicable statewide planning goal is justified under subsection (2) of this
8 section; or

9 “(C) For a facility that the council elects to evaluate against the state-
10 wide planning goals pursuant to subsection (5) of this section, that the pro-
11 posed facility complies with the applicable statewide planning goals or that
12 an exception to any applicable statewide planning goal is justified under
13 subsection (2) of this section.

14 “(2) The council may find goal compliance for a facility that does not
15 otherwise comply with one or more statewide planning goals by taking an
16 exception to the applicable goal. Notwithstanding the requirements of ORS
17 197.732, the statewide planning goal pertaining to the exception process or
18 any rules of the Land Conservation and Development Commission pertaining
19 to an exception process goal, the council may take an exception to a goal if
20 the council finds:

21 “(a) The land subject to the exception is physically developed to the ex-
22 tent that the land is no longer available for uses allowed by the applicable
23 goal;

24 “(b) The land subject to the exception is irrevocably committed as de-
25 scribed by the rules of the Land Conservation and Development Commission
26 to uses not allowed by the applicable goal because existing adjacent uses and
27 other relevant factors make uses allowed by the applicable goal impractica-
28 ble; or

29 “(c) The following standards are met:

30 “(A) Reasons justify why the state policy embodied in the applicable goal

1 should not apply;

2 “(B) The significant environmental, economic, social and energy conse-
3 quences anticipated as a result of the proposed facility have been identified
4 and adverse impacts will be mitigated in accordance with rules of the council
5 applicable to the siting of the proposed facility; and

6 “(C) The proposed facility is compatible with other adjacent uses or will
7 be made compatible through measures designed to reduce adverse impacts.

8 “(3) If compliance with applicable substantive local criteria and applica-
9 ble statutes and state administrative rules would result in conflicting con-
10 ditions in the site certificate or amended site certificate, the council shall
11 resolve the conflict consistent with the public interest. A resolution may not
12 result in a waiver of any applicable state statute.

13 “(4) An applicant for a site certificate shall elect whether to demonstrate
14 compliance with the statewide planning goals under subsection (1)(a) or (b)
15 of this section. The applicant shall make the election on or before the date
16 specified by the council by rule.

17 “(5) Upon request by the State Department of Energy, the special advisory
18 group established under ORS 469.480 shall recommend to the council, within
19 the time stated in the request, the applicable substantive criteria under
20 subsection (1)(b)(A) of this section. If the special advisory group does not
21 recommend applicable substantive criteria within the time established in the
22 department’s request, the council may either determine and apply the appli-
23 cable substantive criteria under subsection (1)(b) of this section or determine
24 compliance with the statewide planning goals under subsection (1)(b)(B) or
25 (C) of this section. If the special advisory group recommends applicable
26 substantive criteria for an energy facility described in ORS 469.300 or a re-
27 lated or supporting facility that does not pass through more than one local
28 government jurisdiction or more than three zones in any one jurisdiction, the
29 council shall apply the criteria recommended by the special advisory group.
30 If the special advisory group recommends applicable substantive criteria for

1 an energy facility as defined in ORS 469.300 [(11)(a)(C)] **(12)(a)(C)** to (E) or
2 a related or supporting facility that passes through more than one jurisdic-
3 tion or more than three zones in any one jurisdiction, the council shall re-
4 view the recommended criteria and determine whether to evaluate the
5 proposed facility against the applicable substantive criteria recommended by
6 the special advisory group, against the statewide planning goals or against
7 a combination of the applicable substantive criteria and statewide planning
8 goals. In making its determination, the council shall consult with the spe-
9 cial advisory group and shall consider:

10 “(a) The number of jurisdictions and zones in question;

11 “(b) The degree to which the applicable substantive criteria reflect local
12 government consideration of energy facilities in the planning process; and

13 “(c) The level of consistency of the applicable substantive criteria from
14 the various zones and jurisdictions.

15 “(6) The council is not subject to ORS 197.180 and a state agency may not
16 require an applicant for a site certificate to comply with any rules or pro-
17 grams adopted under ORS 197.180.

18 “(7) On or before its next periodic review, each affected local government
19 shall amend its comprehensive plan and land use regulations as necessary
20 to reflect the decision of the council pertaining to a site certificate or
21 amended site certificate.

22 “(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law,
23 the affected local government’s land use approval of a proposed facility under
24 subsection (1)(a) of this section and the special advisory group’s recommen-
25 dation of applicable substantive criteria under subsection (5) of this section
26 shall be subject to judicial review only as provided in ORS 469.403. If the
27 applicant elects to comply with subsection (1)(a) of this section, the pro-
28 visions of this subsection shall apply only to proposed projects for which the
29 land use approval of the local government occurs after the date a notice of
30 intent or an application for expedited processing is submitted to the State

1 Department of Energy.

2 “(9) The State Department of Energy, in cooperation with other state
3 agencies, shall provide, to the extent possible, technical assistance and in-
4 formation about the siting process to local governments that request such
5 assistance or that anticipate having a facility proposed in their jurisdiction.

6 **“SECTION 5. The amendments to ORS 469.300 by section 1 of this**
7 **2013 Act apply to notices of intent to file an application for a site**
8 **certificate under ORS 469.330 that are submitted to the Energy Facility**
9 **Siting Council on or after the effective date of this 2013 Act.**

10 **“SECTION 6. This 2013 Act being necessary for the immediate**
11 **preservation of the public peace, health and safety, an emergency is**
12 **declared to exist, and this 2013 Act takes effect on its passage.”.**

13
