

**PROPOSED AMENDMENTS TO
HOUSE BILL 2106**

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

3 **SECTION 1.** ORS 469.501 is amended to read:

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

7 “(a) The organizational, managerial and technical expertise of the appli-
8 cant to construct and operate the proposed facility.

9 “(b) Seismic hazards.

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

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

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

16 “(f) Impacts of the facility on historic, cultural or archaeological re-
17 sources listed on, or determined by the State Historic Preservation Officer
18 to be eligible for listing on, the National Register of Historic Places or the
19 Oregon State Register of Historic Properties.

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

22 “(h) The accumulation, storage, disposal and transportation of nuclear

1 waste.

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

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

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

8 “(L) The need for proposed nongenerating facilities as defined in ORS
9 469.503, consistent with the state energy policy set forth in ORS 469.010 and
10 469.310. The council may consider least-cost plans when adopting a need
11 standard or in determining whether an applicable need standard has been
12 met. The council shall not adopt a standard requiring a showing of need or
13 cost-effectiveness for generating facilities as defined in ORS 469.503.

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

16 “(n) Soil protection.

17 “(o) For energy facilities that emit carbon dioxide, the impacts of those
18 emissions on climate change. For fossil-fueled power plants, as defined in
19 ORS 469.503, the council shall apply a standard as provided for by ORS
20 469.503 (2).

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

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

30 “(b) **The council by rule shall specify the criteria by which the**

1 **council makes the determination described in paragraph (a) of this**
2 **subsection.**

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

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

11 “469.503. In order to issue a site certificate, the Energy Facility Siting
12 Council shall determine that the preponderance of the evidence on the record
13 supports the following conclusions:

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

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

26 “(a) The net carbon dioxide emissions rate of the proposed base load gas
27 plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt
28 hour of net electric power output, with carbon dioxide emissions and net
29 electric power output measured on a new and clean basis. Notwithstanding
30 the foregoing, the council may by rule modify the carbon dioxide emissions

1 standard for base load gas plants if the council finds that the most efficient
2 stand-alone combined cycle, combustion turbine, natural gas-fired energy fa-
3 cility that is commercially demonstrated and operating in the United States
4 has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating
5 value adjusted to ISO conditions. In modifying the carbon dioxide emission
6 standard, the council shall determine the rate of carbon dioxide emissions
7 per kilowatt hour of net electric output of such energy facility, adjusted to
8 ISO conditions, and reset the carbon dioxide emissions standard at 17 percent
9 below this rate.

10 “(b) The council shall adopt carbon dioxide emissions standards for other
11 types of fossil-fueled power plants. Such carbon dioxide emissions standards
12 shall be promulgated by rule. In adopting or amending such carbon dioxide
13 emissions standards, the council shall consider and balance at least the fol-
14 lowing principles, the findings on which shall be contained in the rulemaking
15 record:

16 “(A) Promote facility fuel efficiency;

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

18 “(C) Reduce net carbon dioxide emissions;

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

20 “(E) Promote innovative technologies and creative approaches to miti-
21 gating, reducing or avoiding carbon dioxide emissions;

22 “(F) Minimize transaction costs;

23 “(G) Include an alternative process that separates decisions on the form
24 and implementation of offsets from the final decision on granting a site cer-
25 tificate;

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

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

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

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

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

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

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

30 “(A) The facility will sequentially produce electrical and thermal energy

1 from the same fuel source, and the thermal energy will be used to displace
2 another source of carbon dioxide emissions that would have otherwise con-
3 tinued to occur, in which case the council shall adopt site certificate condi-
4 tions ensuring that the carbon dioxide emissions reduction will be achieved.

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

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

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

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

26 “(C) The applicant or a third party agrees to provide funds in an amount
27 deemed sufficient to produce the reduction in greenhouse gas emissions nec-
28 essary to meet the applicable carbon dioxide emissions standard, in which
29 case the funds shall be used as specified in paragraph (d) of this subsection.
30 Unless modified by the council as provided below, the payment of 57 cents

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

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

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

1 exists, in which case the site certificate shall require that the offset funds
2 be disbursed as specified in subparagraph (B) of this paragraph.

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

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

19 “(ii) At the request of the qualified organization and in addition to the
20 offset funds, the site certificate holder shall pay the qualified organization
21 an amount equal to 10 percent of the first \$500,000 of the offset funds and
22 4.286 percent of any offset funds in excess of \$500,000. This amount shall not
23 be less than \$50,000 unless a lesser amount is specified in the site certificate.
24 This amount compensates the qualified organization for its costs of selecting
25 offsets and contracting for the implementation of offsets.

26 “(iii) Notwithstanding any provision to the contrary, a site certificate
27 holder subject to this subparagraph shall have no obligation with regard to
28 offsets, the offset funds or the funds required by sub-subparagraph (ii) of this
29 subparagraph other than to make available to the qualified organization the
30 total amount required under paragraph (c) of this subsection and sub-

1 subparagraph (ii) of this subparagraph, nor shall any nonperformance,
2 negligence or misconduct on the part of the qualified organization be a basis
3 for revocation of the site certificate or any other enforcement action by the
4 council with respect to the site certificate holder.

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

1 shall be limited to the amount of any offset funds not already contractually
2 obligated. Nonperformance, negligence or misconduct by the entity or enti-
3 ties implementing, monitoring or evaluating the selected offset shall not be
4 a basis for revocation of the site certificate or any other enforcement action
5 by the council with respect to the site certificate holder.

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

12 “(e) As used in this subsection:

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

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

25 “(C) ‘Carbon dioxide equivalent’ means the global warming potential of
26 a greenhouse gas reflected in units of carbon dioxide.

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

30 “(E) ‘Generating facility’ means those energy facilities that are defined

1 in ORS 469.300 (11)(a)(A), (B) and (D).

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

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

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

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

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

25 “(K) ‘Nongenerating facility’ means those energy facilities that are de-
26 fined in ORS 469.300 (11)(a)(C) and (E) to (I).

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

30 “(M) ‘Offset funds’ means the amount of funds determined by the council

1 to satisfy the applicable carbon dioxide emissions standard pursuant to par-
2 agraph (c)(C) of this subsection.

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

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

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

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

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

25 “(v) Has to the extent applicable, except for good cause, entered into
26 contracts obligating at least 60 percent of the offset funds to implement off-
27 sets within two years after the commencement of construction of the facility;
28 and

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

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

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

14 “**SECTION 3. The amendments to ORS 469.501 and 469.503 by**
15 **sections 1 and 2 of this 2013 Act apply to all applications for site cer-**
16 **tificates made to the Energy Facility Siting Council under ORS 469.350**
17 **on or after the effective date of this 2013 Act.**

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

21
