

HB 2109 (LC 649) - Relating to Renewable Energy Facilities (ORS 215.446)

2019 Legislation: HB 2329 (2019) created a new exemption for certain renewable energy applications from the jurisdiction of the Energy Facility Siting Council (EFSC). The Department understands that the intended effect was to allow local government to preside over the review of larger solar photovoltaic, geothermal, and wind energy projects on lands zoned for exclusive farm use that would have otherwise been subject to EFSC review. The trade-off for allowing local review of larger projects was to require additional review criteria relating to wildlife habitat, cultural and historic resources, bonding, and retirement similar to those required by EFSC siting standards.

Issue: In addition to adjusting the jurisdictional thresholds for solar photovoltaic, geothermal, and wind projects, HB 2329 also amended ORS Chapter 215. Rather than identify the three specific energy generation types, the new statute, ORS 215.446, created a definition for “renewable energy facility.” This definition does not exclude other types of energy generation that may occur on lands zoned for exclusive farm use (solar thermal energy, certain biomass products, including woody biomass and animal manure, landfill gas and other biogases, small hydropower, thermal energy, etc...) that would unmistakably constitute “renewable energy,” nor does it limit the definition to only lands zoned for exclusive farm use. In other words, all renewable energy facilities in all county zoning designations would be subject to the additional review criteria specified by ORS 215.446.

Concern: Applying additional review criteria to all renewable energy projects in every rural zoning category was not discussed during the debate on HB 2329 nor was that the Legislature’s intent. Furthermore, this additional review criteria triggers the notice provisions of Measure 56¹. The Department estimates that fulfilling the notice requirements could cost as much as \$750,000, and the Legislature nor Department budgeted for this expense.

Solution: HB 2109 modifies the definition of “renewable energy facilities” within ORS 215.446 to clarify that the review criteria applies only to solar projects of a certain size located on exclusive farm lands or geothermal and wind projects that generate a specific range of power. Consistent with the legislative intent of HB 2329, these projects are removed from EFSC jurisdiction and must be reviewed by the counties using the new criteria.

Legislative & Stakeholder Outreach: DLCD has talked with legislators involved in HB 2329, and they agree that legislation was not intended to require Measure 56 notices. DLCD has also discussed LC 649 (which became HB 2109) with key stakeholders, and most organizations support this technical fix. These stakeholders include the Oregon Farm Bureau, Association of Oregon Counties, Renewable NW, 1000 Friends of Oregon and the Oregon Department of Energy.

Fiscal Impact: No fiscal Impact. HB 2019 actually avoids an unbudgeted fiscal impact to DLCD for Measure 56 notices.

¹ Measure 56 requires cities and counties to provide affected property owners with notice when there is a change in the zoning classification for their property. This can be the result of an adoption or amendment of a comprehensive plan or an adoption or change of an ordinance in a manner that changes the underlying zone or limits or prohibits previously allowed uses. The Department must notify cities and counties when the legislature enacts a new law or the Department adopts a new administrative rule that limits or prohibits previously permissible land uses.