



# Oregon

Kate Brown, Governor



**To:** House Committee on Energy and Environment  
**From:** Todd Cornett, Assistant Director, Energy Siting Division  
**Date:** February 28, 2019  
**Re:** HB 2329 – Energy Facility Siting Council Jurisdictional Changes

550 Capitol St. NE  
Salem, OR 97301  
Phone: 503-378-4040  
Toll Free: 1-800-221-8035  
FAX: 503-373-7806  
[www.oregon.gov/energy](http://www.oregon.gov/energy)

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## Introduction

HB 2329 makes several changes to how the Energy Facility Siting Council sites large renewable energy facilities in Oregon. The Oregon Department of Energy has no position on this bill as introduced.

## State Energy Siting

The Oregon Department of Energy's Energy Siting Division provides staffing for Oregon's Energy Facility Siting Council, which facilitates the siting of certain energy facilities in the state. The purpose of the state energy siting program is to review large scale energy projects that are: 1) important to the state; and/or 2) have the potential for significant impacts to natural, human, and built environments. The state first created the energy siting program over 60 years ago, and the current version of the program was established in 1975 with the staffing and funding resources to ensure its ability to oversee these large scale energy projects through a consistent evaluation of application and amendment requests; monitoring approved facilities annually; and requiring them to be removed from the landscape in a safe and environmentally conscious manner at the conclusion of their lifecycle. Key elements of the program include:

Energy Facility Siting Council (EFSC): The Council includes seven Governor-appointed, Senate-confirmed members from around the state. EFSC is an independent body of decision makers who focus their work on energy facility siting applications, amendments, and rulemakings. While EFSC can delegate some technical and administrative review to Oregon Department of Energy staff through conditions of approval, they cannot go as far as to delegate their authority to determine whether a standard is met. EFSC members are volunteers who serve the public interest and receive reimbursements for travel when they are performing council business.

Jurisdiction: State jurisdictional energy projects are some of the biggest infrastructure projects in Oregon and justify the robust review that is required by the state. For wind projects, the state jurisdictional threshold is 105 MW maximum capacity; for solar PV, it is greater than 100 acres on either high value or arable farmland, and 320 acres on any other land. Current state

jurisdictional solar PV projects either approved or under review are equivalent to 24 square miles, roughly equivalent to the city of Medford or Hillsboro.

Local governments are well positioned with the resources, standards, and procedures available to them to review energy projects below these statutorily defined state jurisdictional thresholds.

Standards: In general, the standards require the Council to ask three fundamental questions:

1. Does the applicant have the necessary ability to build the energy facility?
2. Is the proposed site suitable for construction of a facility?
3. What impacts would the facility have on the environment and the community?

Every state jurisdictional energy project is required to meet the same 14 EFSC standards, while some types of projects are required to meet additional standards. The burden to prove that a standard has been met is commensurate with the type, scope, and location of the project. For example, meeting the fish and wildlife habitat standard in an industrial zoned area would be relatively easy, whereas meeting that standard in a natural, undeveloped setting may require numerous on the ground surveys and compensatory mitigation. A detailed description of these standards are included “EFSC Standards in Oregon Administrative Rule” handout.

Applicant’s Burden of Proof: The state energy siting program was designed to be evidence-based. This means that in order to receive an approval, the applicant has to provide enough information in the record to show each standard is met. This allows a full review by the public; reviewing agencies including tribal governments, local governments and state agencies such as Oregon Department of Fish and Wildlife, State Historic Preservation Office, Department of Agriculture, Department of Land Conservation and Development, Oregon Water Resources Department, Department of Geology and Mineral Industries, Department of Environmental Quality DEQ; and EFSC.

Consolidated Review: State jurisdictional energy projects are some of the largest infrastructure projects in the state, and they require a multitude of permits from various state agencies and local governments. The state review was designed to consolidate and streamline the multitude of individual reviews and resolve any potential conflicts between them by making them all EFSC jurisdictional. The larger and more complex and controversial a project is, the greater likelihood of conflict between the jurisdictions – some permits could be approved while others get denied. Approved permits may not be compatible with each other, and timelines and appeal paths may not align. The state siting program has been structured to ensure the fidelity of each individual permit review, and each state agency and local government that would have had jurisdiction over a project is requested to evaluate and comment on both the applicant and staff documents at multiple times throughout the state review process. In addition, a challenged EFSC decision goes directly to the Oregon Supreme Court, and there is a requirement that a decision be issued within six months of the filing of the petition for review.

A detailed description of the review steps of the state energy facility siting program is included in the “EFSC Process Flowchart” handout.

**Notice:** The state energy siting program includes numerous notices and opportunities for review and comment, and staff has made changes over the years to increase transparency and public involvement. The chart below indicates the points in the process where notice is provided. Bold font indicates where comments are specifically requested.

**Public:** Includes property owners within a specified distance of the project based on zoning; individuals who are signed up to receive all EFSC notices (there are currently 1,421 people on the list, including several branches of the military who evaluate projects for potential conflicts with their installations); and individuals signed up to receive notices for individual projects.

**Reviewing Agencies (Rev. Ag.):** Includes all state natural resource agencies – such as ODFW, DEQ, DOGAMI, DSL, and SHPO – and other specifically identified state agencies; affected tribal governments as identified by the Legislative Commission on Indian Services; and all local governments within whose jurisdiction the project is located and those located within 10 miles of the project boundary.



**Available Resources:** Just as important as the standards is the expertise leveraged in evaluating each proposed energy project against them. There are five categories of reviewers on each project:

**Siting Division Staff:** Six of the 13 positions are devoted solely to the review of these projects and several other positions spend large portions of their time in reviewing them.

**Reviewing Agencies:** Collectively, reviewing agencies are state agencies, tribal governments, and local governments. They are incorporated into the state review based on their knowledge and expertise on specific resources protected by Council standards, as well as any permits that are consolidated into Council’s review. In addition to reviewing and commenting on specific application materials, ODOE staff are dedicated to coordinating with specific reviewing agencies based on the needs of the application. The Siting Division and Council work closely with Tribal Government staff, including Tribal Historic Preservation Offices and natural resource staff members, during the review of application materials. Siting Division staff coordinate and meet with Tribal Government staff to discuss issues of concern to the Tribe related to energy facilities.

**The Public:** At numerous stages within the state review process, the public is notified and their input is requested. Based on their understanding of local circumstances, members of the public and interest groups frequently identify critical issues that result in significant changes to findings of facts and conditions of approval.

Energy Facility Siting Council: In addition to its role as the final decision-maker on all energy facility applications and rulemakings, the Council also presides over a mandatory public hearing as part of the review process for new facility applications. At these hearings, the public and the applicants can testify directly to the Council. Council members also regularly receive updates from staff, and are charged with reviewing all materials in the record of a facility application and are the final decision makers.

Hearing Officer: During each application review, there is a mandatory contested case where issues raised during the hearing phase can be further evaluated. The contested case is conducted by an independent hearing officer appointed by the Council. A contested case is not a mandatory step in an amendment request.

Cost Recovery: ODOE has statutory authority to be reimbursed for all costs associated with the application reviews and compliance responsibilities of state jurisdictional energy projects as long as those costs are necessary, just, and reasonable. These costs include the reimbursement of any state agency, tribal government, or local government whose review and comments are necessary to fully evaluate the proposed project.

Compliance: Once an application is approved, monitoring the project during pre-construction, construction, and operation is the responsibility of a Compliance Officer, who is part of the Siting Division staff. Oregon has 31 approved energy facilities. For the lifespan of each project, the Compliance Officer conducts site inspections as frequently as necessary to ensure consistency with all conditions of approval.

Decommissioning: Each facility has a designated lifespan, and there is a corresponding Council standard made up of two parts related to facility retirement and decommissioning. The first is for the facility owner to remove the facility and restore the site to a useful, non-hazardous condition at the end of its lifecycle. The second is for the facility owner to maintain a bond or letter of credit in the amount necessary to remove the facility and return the site to a useful non-hazardous condition. This bond is important in case the Council is required to decommission the facility in the absence of the facility owner – which could occur in the circumstances of bankruptcy or other abandonment. Staff currently maintain bonds and letters of credit in the amount of \$132,750,000 for 19 facilities, or an average of nearly \$7 million per facility. Staff works with each facility owner annually to update each bond and letter of credit for inflation and evaluates every bond guarantor to ensure they have an acceptable credit rating.

State Jurisdictional Renewable Energy Projects: The following table summarizes renewable energy projects under state jurisdiction.

Status	MW	Facility Type
Operational	2,018	Wind
In Construction	202	Wind
Approved but not Constructed:	125	Solar PV
	1,493	Wind
Under Review (Application or Amendment)	910	Solar PV
	202	Wind/Solar PV
<b>Total</b>	<b>5,300</b>	

See “State Jurisdictional Renewable Energy Projects” handout for more details.

Balancing Different Interests: Numerous stakeholders with varying interests participate in the review of state jurisdictional energy projects. Some of these interests may conflict with others. State agencies and tribal governments have expressed interest in enhancing specific standards to increase the protection of resources that are important to them. Members of the public have advocated for more opportunities to participate in the review of projects to increase their ability to influence decisions made by EFSC. Project developers frequently advocate for the review process to be shorter and cost less. The Siting Division continuously evaluates ways to address these interests in a manner such that a change for the benefit of one stakeholder group does not have a significantly negative impact on the interests of another stakeholder group. Siting staff has been and continues to be open to working with all stakeholder groups to implement the state energy siting program as it is designed in the most timely, efficient, inclusive, and transparent way possible while ensuring resources valued by Oregonians are protected.

Timelines and Costs of Reviews: There can be a lot of variation in the time and costs associated with different projects. The following factors influence these variations:

- Complexity: Are there potential issues related to standards such as cultural or natural resources that require a high level of coordination with state agencies and tribal governments to conduct the necessary evaluation?
- Size and nature: While size alone does not increase the complexity, the larger it is in terms of electricity output or physical size, the greater opportunity there is for complexity.
- Opposition: Interest in projects can range from one or two comments to thousands of comments. For example, the recent Summit Ridge Wind Farm facility construction time extension amendment request resulted in over 1,000 comments in opposition to the facility. Meaningfully evaluating and responding to comments is critical but requires more resources. If there are parties to a contested case, that can add six months to a year or more to the review time.
- Staffing availability: The state Siting Division’s funding model means maintaining a staffing level commensurate with forecasted workload. The program is therefore staffed

on the margins of capacity. A higher than normal number of projects can impact timelines based on the number of projects each staff member is assigned.

- Council availability: Council members are volunteers, and EFSC meetings occur monthly at most. Sometimes circumstances result in a lack of quorum, which can add 30 – 60 days to a project.
- Application submittal: Each applicant controls the information submitted in their preliminary application. Getting to a complete application can take as little as 90 days or as long as a year or more. An application is complete when the Department finds the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards.

## **HB 2329 Overview – What the bill does**

HB 2329 does the following:

1. Removes all renewable energy projects from state jurisdiction with the exception of Solar PV projects on more than 200 acres of high value farm land.  
Current thresholds that put a project in state jurisdiction include:
  - solar PV facilities over 100 acres on “predominantly cultivated” or “class I-IV soils”
  - solar PV facilities over 320 acres on “other land”
  - wind facilities over 105 MW maximum capacity or 35 MW average capacity
  - geothermal facilities over 38.8 MW maximum capacity or 35 MW average capacity
  - solar thermal power plant facilities of 25 MW or more

HB 2329 would make these all of these projects except Solar PV projects on more than 200 acres of high value farm land local jurisdiction by default.

2. Removes the possibility that “associated transmission lines” could be a state jurisdictional “high voltage transmission line.”

Currently, a “high voltage transmission line” is a state jurisdictional “energy facility” if it meets the following: 1) 230 KV or greater; and 2) more than 10 miles in length; and 3) in more than one city or county.

Current statute defines an “associated transmission line” as:

*“new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.”*

If an “associated transmission line” is large enough to meet the definition of a “high voltage transmission line,” it would be within state jurisdiction even if the project that it was associated with is local jurisdictional. This bill eliminates “associated transmission lines” from being “high voltage transmission lines.”

3. Adds the ability for renewable energy project developers to opt in to state jurisdiction since nearly all renewable energy projects would be local jurisdictional by default.

Currently, only developers of wind projects have the ability to opt in to state jurisdiction even if their projects do not meet the minimum state jurisdictional threshold.

## **HB 2329 Overview – Potential impacts**

1. HB 2329 closely models Washington States’s energy facility siting program. In consultation with our counterparts at the Washington Energy Facility Site Evaluation Council (EFSEC), some of their experiences with this type of program gives us an indication of how HB 2329 could impact Oregon’s ability to site large renewable energy facilities.
  - In Washington, when siting renewable energy projects, the developers generally come to EFSEC when they want the state to overrule local land use requirements or issue a finding that the project is consistent with state requirements, even though the local jurisdiction disagrees.
  - Their opt-in model creates staffing uncertainty. This model does not allow looking ahead at planned facilities and whether they will be seeking certification through EFSEC. Only four wind facilities and one solar facility have gone through the EFSEC process. This is a small percentage of the number actually operating or undergoing review in the state. As a result, Washington’s EFSEC maintains a very small staff and often only hires specialists on a limited time basis to help with reviews. They have indicated this can present challenges in retaining professional staff with the appropriate level of expertise.
2. Review variation. Counties in Oregon will frequently say that if you know one county, you know one county. This saying is meant to convey that each of Oregon’s 36 counties is unique. This variation also applies to implementation of the land use program.

Counties have different levels of staffing and resources and different standards beyond the specific renewable energy siting requirements of the Land Conservation and Development statutes and rules. Large scale energy projects are important to the economy of the state and also have the potential to impact resources that are important to the state and the region. Currently, because the Siting Division has the singular purpose of reviewing and overseeing these large scale energy projects, there is consistency of review. This includes: noticing the public, state agencies, and tribal governments to evaluate the standards; leveraging the expertise of state agencies and tribal governments in the review of projects to protect important state resources; and requiring conditions. The bill could result in a significant variation in the review of and conditions applied to renewable energy projects.

## **Summary**

HB 2329 makes several changes to how the Energy Facility Siting Council currently sites large renewable energy facilities. The Oregon Department of Energy would welcome the opportunity to work with the Chair and members of the committee as they contemplate changes to how Oregon sites renewable energy facilities.