

HB 2329 -3 STAFF MEASURE SUMMARY
House Committee On Energy and Environment

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Meeting Dates: 2/28, 3/5, 4/9

WHAT THE MEASURE DOES:

Modifies the definition of an energy facility subject to site certificate requirements in ORS 469.300. Exempts solar photovoltaic power generation facilities from requirements if they are less than 200 acres in size and located on high-value farmland as defined in ORS 19.5300, or any size if located on land other than high-value farmland. Exempts solar thermal power plants; certain transmission lines associated with a high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts to be constructed in more than one city or county; and electric power generating plants with an average generating capacity of 35 megawatts or more using geothermal or wind energy at a single facility or within a single energy generation area. Establishes that an energy facility exempted from site certificate requirements may elect to obtain a site certificate through the Energy Facility Siting Council.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Modifies definition of energy facility to include solar thermal power plant. Changes definition of energy facility by removing a solar photovoltaic power generation facility using more than 200 acres located on high-value farmland as defined in ORS 195.300 and replacing it with a solar photovoltaic power generation facility using: (1) more than 160 acres located on high-value farmland as defined in ORS 195.300; (2) 1,280 acres located on land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture; or (3) 1,920 acres located on any other land. Restores definition of energy facility to include an electric power generating plant with an average electric generating capacity of 35 megawatts or more if power is produced from geothermal or wind energy at a single energy facility or within a single energy generation area. Replaces the average electric generating capacity of an electric power generating plant from 35 megawatts to 50 megawatts. Changes who may elect to obtain a site certificate from an electric power generating plant that is not an energy facility as defined in ORS 469.300 to the developer of a facility that is described as: (1) an electric power generating plant with an average electric generating capacity of less than 50 megawatts produced from wind energy at a single energy facility or within a single energy generation area; (2) an associated transmission line; or (3) a solar photovoltaic power generation facility that is not an energy facility as defined in ORS 469.300 (11)(a)(D).

Defines habitat category 1, habitat category 2, habitat category 3, habitat category 4, habitat category 5, and habitat category 6. Defines renewable energy facility subject to provisions.

Requires application for land use approval establish renewable energy facility be made through permit application under ORS 215.402 to 215.438 and meet specified criteria. Requires applicant demonstrate to county that: (1) renewable energy facility will comply with any standards and rules adopted by Energy Facility Siting Council under ORS 469.501 that the county considers to be applicable to renewable energy facility; (2) the construction and operation of renewable energy facility will not result in significant adverse impacts to historic cultural and archeological resources that are listed on the National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.), inventoried in a local comprehensive plan, or evaluated

HB 2329 -3 STAFF MEASURE SUMMARY

as a significant or important archeological object or archeological site, as those terms are defined in ORS 358.905; (3) a habitat assessment and habitat mitigation plan have been conducted for site of renewable energy facility; and (4) following permanent cessation of operation of renewable energy facility, site can be adequately restored to a usable, nonhazardous condition. Requires applicant provide financial assurance or sureties in an amount and form acceptable to the county as a condition of approval of permit application for renewable energy facility. Authorizes applicant and governing body of county to enter into cost reimbursement agreement with State Historic Preservation Officer or any affected federally recognized Indian tribe in order for officer or tribe to provide comments on potential for significant adverse impacts. Requires applicant consult with Oregon Department of Fish and Wildlife (ODFW) to assess habitat that would potentially be impacted by renewable energy facility. Requires assessment result in identification of habitat categories 1 through 6 applicable to all habitat potentially impacted by renewable energy facility. Requires applicant consult with ODFW to develop habitat mitigation plan for habitat potentially impacted by renewable energy facility.

Requires the following conditions for habitat mitigation plan:

- For habitat category 1: ensure no loss of either habitat quantity or quality by prohibiting development unless all impacts can be avoided;
- For habitat category 2: ensure no net loss of either habitat quantity or quality and a net benefit of habitat quantity or quality by prohibiting development unless mitigation of any unavoidable impacts can be made through reliable in-kind, in-proximity habitat mitigation that achieves no net loss of either predevelopment habitat quantity or quality and provides a net benefit of habitat quantity or quality;
- For habitat category 3, ensure no net loss of either habitat quantity or quality by prohibiting development unless mitigation of any unavoidable impacts can be made through reliable in-kind, in-proximity habitat mitigation that achieves no net loss of either development habitat quantity or quality;
- For habitat category 4, ensure no net loss in either habitat quantity or quality by prohibiting development unless mitigation of any unavoidable impacts can be made through reliable in-kind or out-of-kind, in-proximity or off-proximity habitat mitigation that achieves no net loss in either predevelopment habitat quantity or quality;
- For habitat category 5, ensure a net benefit in either habitat quantity or quality by requiring mitigation of any unavoidable impacts through actions that contribute to essential or important habitat;
- For habitat category 6, minimize impacts by requiring actions that minimize direct habitat loss and avoid impacts to off-site habitat; and for greater sage grouse habitat, address, avoid, or mitigate impacts as described in the Oregon Sage-Grouse Action Plan adopted under Executive Order 15-18, dated September 16, 2015.

Requires mitigation measures be implemented and completed either prior to or concurrent with development of renewable energy facility. Requires progress towards achieving mitigation goals and standards be reported as scheduled pursuant to performance measures provided for in mitigation plan. Allows for the use of mitigation banks or payment-to-provide mitigation based on the nature, extent, and duration of impact of renewable energy facility or on risk of habitat mitigation plan not achieving mitigation goals if mitigation is allowed.

Requires county that receives application for permit provide notice to: ODFW, Oregon Department of Energy, Oregon Historic Preservation Officer, Oregon Department of Aviation, United States Department of Defense, and federally recognized Indian tribes that may be affected by application. Requires notice include, at a minimum: description of proposed renewable energy facility; description of lots or parcels subject to permit application; dates, times, and locations where public comments or public testimony can be submitted on permit application; and contact information for governing body of county and applicant.

BACKGROUND:

HB 2329 -3 STAFF MEASURE SUMMARY

Before a large energy facility is built in Oregon, the developer must apply for a site certificate from the Energy Facility Siting Council (EFSC). The types of energy facilities requiring a site certificate include:

- Electric power plants with a nominal electric generating capacity of 25 megawatts or more from thermal power, a combustion turbine power plant or a solar thermal power plant
- Electric power plants with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal or wind energy at a single energy facility or within a single energy generation area
- A solar photovoltaic power generation facility using more than: 100 acres located on high-value farmland as defined in ORS 195.300; 100 acres located on land that is predominantly cultivated or that, if cultivated, is predominantly composed of class I-IV soils; or 320 acres located on any other land
- Transmission lines of 230 kilovolts or more that are more than 10 miles in length and that are to be constructed in more than one city or county in the state
- Surface facilities associated with underground natural gas storage facilities with capacity greater than 50 million cubic feet per day
- Liquid fuel pipelines that are six inches or larger in diameter and five miles or more in length
- Liquefied natural gas storage facilities with capacity of 70,000 gallons or more
- Intrastate natural gas pipelines that are 16 inches or more in diameter and five miles or more in length
- Synthetic fuel plants that produce gas, liquid, or solid fuel capable of being burned to produce the equivalent of two billion Btu of heat per day
- Plants that convert biomass to gas, liquid, or solid fuel products if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat per day
- Small generating plants within an energy generation area, as described in OAR 345-001-0200, if the accumulated effects of development are similar to a single plant with an average electric generating capacity of 35 megawatts or more
- Radioactive waste disposal sites and nuclear installations

House Bill 2329 would modify the definition of an energy facility subject to the EFSC site certificate requirements. The bill would exempt solar photovoltaic power generation facilities from requirements if they are less than 200 acres in size and located on high-value farmland as defined in ORS 19.5300, or any size if located on land other than high-value farmland. The bill would also exempt solar thermal power plants; certain transmission lines associated with a high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts to be constructed in more than one city or county; and certain electric power generating plants using geothermal or wind energy. HB 2329 would allow energy facilities that are exempted from requirements to obtain a site certificate through EFSC.