

## HOUSE AMENDMENTS TO HOUSE BILL 2329

By COMMITTEE ON ENERGY AND ENVIRONMENT

April 16

- 1 On page 1 of the printed bill, line 2, after “facilities;” insert “creating new provisions; and”.
- 2 On page 2, line 6, delete the boldfaced material.
- 3 In lines 7 and 8, restore the bracketed material.
- 4 Delete lines 17 through 23 and insert:
- 5 “(D) A solar photovoltaic power generation facility using more than:
- 6 “(i) 160 acres located on high-value farmland as defined in ORS 195.300;
- 7 “(ii) 1,280 acres located on land that is predominantly cultivated or that, if not cultivated, is
- 8 predominantly composed of soils that are in capability classes I to IV, as specified by the National
- 9 Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United
- 10 States Department of Agriculture; or
- 11 “(iii) 1,920 acres located on any other land.”.
- 12 On page 3, lines 10 through 12, restore the bracketed material.
- 13 In line 10, delete “35” and insert “50”.
- 14 On page 7, delete lines 20 through 26 and insert:
- 15 “(8)(a) Notwithstanding the definition of ‘energy facility’ in ORS 469.300, the developer of a fa-
- 16 cility described as follows may elect to obtain a site certificate in the manner provided in ORS
- 17 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992:
- 18 “(A) An electric power generating plant with an average electric generating capacity of less
- 19 than 50 megawatts produced from wind energy at a single energy facility or within a single energy
- 20 generation area;
- 21 “(B) An associated transmission line; or
- 22 “(C) A solar photovoltaic power generation facility that is not an energy facility as defined in
- 23 ORS 469.300 (11)(a)(D).
- 24 “(b) An election to obtain a site certificate under this subsection shall be final upon submission
- 25 of an application for a site certificate.
- 26 “**SECTION 3. Sections 4 to 6 of this 2019 Act are added to and made a part of ORS**
- 27 **chapter 215.**
- 28 “**SECTION 4. As used in sections 4 to 6 of this 2019 Act:**
- 29 “(1) ‘**Habitat category 1**’ means habitat that is irreplaceable or essential habitat for a fish
- 30 or wildlife species or population, or a unique assemblage of fish or wildlife species, and that
- 31 is limited on either a physiographic province or site-specific basis, depending on the individ-
- 32 ual species, population or unique assemblage.
- 33 “(2) ‘**Habitat category 2**’ means habitat that is essential habitat for a fish or wildlife
- 34 species or population, or a unique assemblage of fish or wildlife species, and that is limited
- 35 on either a physiographic province or site-specific basis, depending on the individual species,

1 population or unique assemblage.

2 “(3) ‘Habitat category 3’ means essential habitat for a fish or wildlife species or popu-  
3 lation, or important habitat for a fish or wildlife species or population that is limited on ei-  
4 ther a physiographic province or site-specific basis, depending on the individual species or  
5 population.

6 “(4) ‘Habitat category 4’ means important habitat for a fish or wildlife species.

7 “(5) ‘Habitat category 5’ means habitat for fish and wildlife having high potential to be-  
8 come either essential or important habitat for fish and wildlife.

9 “(6) ‘Habitat category 6’ means habitat for fish and wildlife that has low potential to be-  
10 come essential or important habitat for fish and wildlife.

11 “(7)(a) ‘Renewable energy facility’ means an electric power generating plant that gener-  
12 ates electricity from a renewable energy source.

13 “(b) ‘Renewable energy facility’ does not mean:

14 “(A) An energy facility as defined in ORS 469.300;

15 “(B) A solar photovoltaic power generation facility using:

16 “(i) 100 acres or less located on high-value farmland as defined in ORS 195.300;

17 “(ii) 100 acres or less located on land that is predominantly cultivated or that, if not  
18 cultivated, is predominantly composed of soils that are in capability classes I to IV, as  
19 specified by the National Cooperative Soil Survey operated by the Natural Resources Con-  
20 servation Service of the United States Department of Agriculture; or

21 “(iii) 320 acres or less located on any other land;

22 “(c) A net metering facility as defined in ORS 757.300; or

23 “(d) A community solar project as defined in ORS 757.386.

24 “SECTION 5. (1) An application for land use approval to establish a renewable energy  
25 facility must be made through a permit application under ORS 215.402 to 215.438 and meet  
26 the criteria under this section. The applicant shall demonstrate to the county that:

27 “(a) The renewable energy facility will comply with any standards and rules adopted by  
28 the Energy Facility Siting Council under ORS 469.501 that the county considers to be appli-  
29 cable to the renewable energy facility.

30 “(b) The construction and operation of the renewable energy facility will not result in  
31 significant adverse impacts to historic, cultural and archeological resources that are:

32 “(A) Listed on the National Register of Historic Places under the National Historic  
33 Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

34 “(B) Inventoried in a local comprehensive plan; or

35 “(C) Evaluated as a significant or important archeological object or archeological site,  
36 as those terms are defined in ORS 358.905.

37 “(c) A habitat assessment and habitat mitigation plan have been conducted for the site  
38 of the renewable energy facility as described in subsection (4) of this section.

39 “(d) Following the permanent cessation of operation of the renewable energy facility, the  
40 site can be adequately restored to a usable, nonhazardous condition.

41 “(2) As a condition of approval of a permit application for a renewable energy facility, the  
42 applicant shall provide financial assurances or sureties in an amount and form acceptable to  
43 the county.

44 “(3) The applicant and the governing body of the county may enter into a cost re-  
45 imbursement agreement with the State Historic Preservation Officer or any affected feder-

1 ally recognized Indian tribe in order for the officer or tribe to provide comments on the  
2 potential for significant adverse impacts described in subsection (1)(b) of this section.

3 “(4)(a) The applicant shall consult with the State Department of Fish and Wildlife to as-  
4 sess habitat that would potentially be impacted by the renewable energy facility. The as-  
5 sessment shall result in identification of the habitat categories defined in section 4 (1) to (6)  
6 of this 2019 Act applicable to all habitat potentially impacted by the renewable energy facility.

7 “(b) The applicant shall consult with the department to develop a habitat mitigation plan  
8 for habitat potentially impacted by the renewable energy facility. The habitat mitigation plan  
9 must:

10 “(A) For habitat category 1, ensure no loss of either habitat quantity or quality by pro-  
11 hibiting development unless all impacts can be avoided.

12 “(B) For habitat category 2, ensure no net loss of either habitat quantity or quality and  
13 a net benefit of habitat quantity or quality by prohibiting development unless mitigation of  
14 any unavoidable impacts can be made through reliable in-kind, in-proximity habitat miti-  
15 gation that achieves no net loss of either predevelopment habitat quantity or quality and  
16 provides a net benefit of habitat quantity or quality.

17 “(C) For habitat category 3, ensure no net loss of either habitat quantity or quality by  
18 prohibiting development unless mitigation of any unavoidable impacts can be made through  
19 reliable in-kind, in-proximity habitat mitigation that achieves no net loss of either predevel-  
20 opment habitat quantity or quality.

21 “(D) For habitat category 4, ensure no net loss in either habitat quantity or quality by  
22 prohibiting development unless mitigation of any unavoidable impacts can be made through  
23 reliable in-kind or out-of-kind, in-proximity or off-proximity habitat mitigation that achieves  
24 no net loss in either predevelopment habitat quantity or quality.

25 “(E) For habitat category 5, ensure a net benefit in either habitat quantity or quality by  
26 requiring mitigation of any unavoidable impacts through actions that contribute to essential  
27 or important habitat.

28 “(F) For habitat category 6, minimize impacts by requiring actions that minimize direct  
29 habitat loss and avoid impacts to off-site habitat.

30 “(G) For greater sage grouse habitat, address, avoid or mitigate impacts as described in  
31 the Oregon Sage-Grouse Action Plan adopted under Executive Order 15-18, dated September  
32 16, 2015.

33 “(c) Mitigation measures allowed under paragraph (b)(B), (C), (D), (E) or (G) of this  
34 subsection must be implemented and completed either prior to or concurrent with develop-  
35 ment of the renewable energy facility. Progress toward achieving mitigation goals and stan-  
36 dards must be reported as scheduled pursuant to performance measures provided for in the  
37 mitigation plan. If mitigation is allowed pursuant to this subsection, the mitigation plan may  
38 allow for the use of mitigation banks or payment-to-provide mitigation based on the nature,  
39 extent and duration of the impact of the renewable energy facility or on the risk of the  
40 habitat mitigation plan not achieving mitigation goals.

41 “SECTION 6. (1) A county that receives an application for a permit under section 5 of  
42 this 2019 Act shall provide notice to persons listed in subsection (2) of this section. The no-  
43 tice shall include, at a minimum:

44 “(a) A description of the proposed renewable energy facility;

45 “(b) A description of the lots or parcels subject to the permit application;

1       **“(c) The dates, times and locations where public comments or public testimony can be**  
2 **submitted on the permit application; and**  
3       **“(d) The contact information for the governing body of the county and the applicant.**  
4       **“(2) The notice required under subsection (1) of this section shall be delivered to:**  
5       **“(a) The State Department of Fish and Wildlife;**  
6       **“(b) The State Department of Energy;**  
7       **“(c) The State Historic Preservation Officer;**  
8       **“(d) The Oregon Department of Aviation;**  
9       **“(e) The United States Department of Defense; and**  
10       **“(f) Federally recognized Indian tribes that may be affected by the application.”.**

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