

Senate Bill 246

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Environment and Natural Resources)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies definition of radioactive waste for purposes of regulation by State Department of Energy. Requires Energy Facility Siting Council to adopt standards and rules necessary to prevent disposal of radioactive waste in Oregon. Provides Director of State Department of Energy and council additional authority for administration and enforcement of laws related to disposal of radioactive waste.

A BILL FOR AN ACT

1
2 Relating to radioactive material; creating new provisions; and amending ORS 469.300 and 469.525.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 469.300 is amended to read:

5 469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the
6 context requires otherwise:

7 (1) "Applicant" means any person who makes application for a site certificate in the manner
8 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

9 (2) "Application" means a request for approval of a particular site or sites for the construction
10 and operation of an energy facility or the construction and operation of an additional energy facility
11 upon a site for which a certificate has already been issued, filed in accordance with the procedures
12 established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

13 (3) "Associated transmission lines" means new transmission lines constructed to connect an en-
14 ergy facility to the first point of junction of such transmission line or lines with either a power
15 distribution system or an interconnected primary transmission system or both or to the Northwest
16 Power Grid.

17 (4) "Average electric generating capacity" means the peak generating capacity of the facility
18 divided by one of the following factors:

19 (a) For wind facilities, 3.00;

20 (b) For geothermal energy facilities, 1.11; or

21 (c) For all other energy facilities, 1.00.

22 (5) "Combustion turbine power plant" means a thermal power plant consisting of one or more
23 fuel-fired combustion turbines and any associated waste heat combined cycle generators.

24 (6) "Construction" means work performed on a site, excluding surveying, exploration or other
25 activities to define or characterize the site, the cost of which exceeds \$250,000.

26 (7) "Council" means the Energy Facility Siting Council established under ORS 469.450.

27 (8) "Department" means the State Department of Energy created under ORS 469.030.

28 (9) "Director" means the Director of the State Department of Energy appointed under ORS

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 469.040.

2 (10) "Electric utility" means persons, regulated electrical companies, people's utility districts,
3 joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged
4 in or authorized to engage in the business of generating, supplying, transmitting or distributing
5 electric energy.

6 (11)(a) "Energy facility" means any of the following:

7 (A) An electric power generating plant with a nominal electric generating capacity of 25 mega-
8 watts or more, including but not limited to:

9 (i) Thermal power;

10 (ii) Combustion turbine power plant; or

11 (iii) Solar thermal power plant.

12 (B) A nuclear installation as defined in this section.

13 (C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000
14 volts or more to be constructed in more than one city or county in this state, but excluding:

15 (i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by
16 high voltage transmission lines with a capacity of 230,000 volts or more;

17 (ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same
18 right of way; and

19 (iii) Associated transmission lines.

20 (D) A solar photovoltaic power generation facility using more than:

21 (i) 160 acres located on high-value farmland as defined in ORS 195.300;

22 (ii) 1,280 acres located on land that is predominantly cultivated or that, if not cultivated, is
23 predominantly composed of soils that are in capability classes I to IV, as specified by the National
24 Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United
25 States Department of Agriculture; or

26 (iii) 1,920 acres located on any other land.

27 (E) A pipeline that is:

28 (i) At least six inches in diameter, and five or more miles in length, used for the transportation
29 of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a
30 liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

31 (ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation
32 of natural or synthetic gas, but excluding:

33 (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than
34 50 feet from a public road, as defined in ORS 368.001; or

35 (II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the
36 same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies
37 and necessary mitigation conducted for the existing site certificate meet or are updated to meet
38 current site certificate standards; or

39 (iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal
40 energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal
41 heating district established under ORS chapter 523.

42 (F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal
43 or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to
44 produce the equivalent of two billion Btu of heat a day.

45 (G) A plant which converts biomass to a gas, liquid or solid product, or combination of such

1 products, intended to be used as a fuel and if any one of such products is capable of being burned
2 to produce the equivalent of six billion Btu of heat a day.

3 (H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is de-
4 signed to hold at least 70,000 gallons.

5 (I) A surface facility related to an underground gas storage reservoir that, at design injection
6 or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic
7 gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but ex-
8 cluding:

9 (i) The underground storage reservoir;

10 (ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

11 (iii) An underground gas storage reservoir into which gas is injected solely for testing or res-
12 ervoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

13 (J) An electric power generating plant with an average electric generating capacity of 50
14 megawatts or more if the power is produced from geothermal or wind energy at a single energy fa-
15 cility or within a single energy generation area.

16 (b) "Energy facility" does not include a hydroelectric facility or an energy facility under para-
17 graph (a)(A)(iii) or (D) of this subsection that is established on the site of a decommissioned United
18 States Air Force facility that has adequate transmission capacity to serve the energy facility.

19 (12) "Energy generation area" means an area within which the effects of two or more small
20 generating plants may accumulate so the small generating plants have effects of a magnitude similar
21 to a single generating plant of 35 megawatts average electric generating capacity or more. An "en-
22 ergy generation area" for facilities using a geothermal resource and covered by a unit agreement,
23 as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If
24 no such unit agreement exists, an energy generation area for facilities using a geothermal resource
25 shall be the area that is within two miles, measured from the electrical generating equipment of the
26 facility, of an existing or proposed geothermal electric power generating plant, not including the site
27 of any other such plant not owned or controlled by the same person.

28 (13) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of
29 source material, special nuclear material or by-product material as those terms are defined in ORS
30 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the
31 United States Nuclear Regulatory Commission or its successor determines to be substantial and to
32 have resulted in or to be likely to result in substantial damages to persons or property off-site.

33 (14) "Facility" means an energy facility together with any related or supporting facilities.

34 (15) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

35 (16) "Local government" means a city or county.

36 (17) "Nominal electric generating capacity" means the maximum net electric power output of
37 an energy facility based on the average temperature, barometric pressure and relative humidity at
38 the site during the times of the year when the facility is intended to operate.

39 (18) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence,
40 that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use
41 of property due to the radioactive, toxic, explosive or other hazardous properties of source material,
42 special nuclear material or by-product material as those terms are defined in ORS 453.605.

43 (19) "Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nuclear fuel
44 reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that
45 quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not

1 include any such facilities that are part of a thermal power plant.

2 (20) "Nuclear power plant" means an electrical or any other facility using nuclear energy with
3 a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of
4 electricity, and associated transmission lines.

5 (21) "Person" means an individual, partnership, joint venture, private or public corporation, as-
6 sociation, firm, public service company, political subdivision, municipal corporation, government
7 agency, people's utility district, or any other entity, public or private, however organized.

8 (22) "Project order" means the order, including any amendments, issued by the State Department
9 of Energy under ORS 469.330.

10 (23)(a) "Radioactive waste" [*means*] **includes** all material which is discarded, unwanted or has
11 no present lawful economic use, and contains mined or refined naturally occurring isotopes, accel-
12 erator produced isotopes and by-product material, source material or special nuclear material as
13 those terms are defined in ORS 453.605. [*The term does not include those radioactive materials iden-*
14 *tified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and*
15 *revised periodically for the purpose of adding additional isotopes which are not referred to in OAR*
16 *345-50 as presenting no significant danger to the public health and safety.*]

17 (b) [*Notwithstanding paragraph (a) of this subsection,*] "Radioactive waste" does not include:

18 (A) **Materials identified by the council by rule as presenting no significant danger to the**
19 **public health and safety.**

20 (B) Uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials
21 as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

22 (24) "Related or supporting facilities" means any structure, proposed by the applicant, to be
23 constructed or substantially modified in connection with the construction of an energy facility, in-
24 cluding associated transmission lines, reservoirs, storage facilities, intake structures, road and rail
25 access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.
26 "Related or supporting facilities" does not include geothermal or underground gas storage reser-
27 vairs, production, injection or monitoring wells or wellhead equipment or pumps.

28 (25) "Site" means any proposed location of an energy facility and related or supporting facilities.

29 (26) "Site certificate" means the binding agreement between the State of Oregon and the appli-
30 cant, authorizing the applicant to construct and operate a facility on an approved site, incorporating
31 all conditions imposed by the council on the applicant.

32 (27) "Thermal power plant" means an electrical facility using any source of thermal energy with
33 a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of
34 electricity, and associated transmission lines, including but not limited to a nuclear-fueled,
35 geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal
36 use of which is to supply power in emergencies. "Thermal power plant" includes a nuclear-fueled
37 thermal power plant that has ceased to operate.

38 (28) "Transportation" means the transport within the borders of the State of Oregon of radio-
39 active material destined for or derived from any location.

40 (29) "Underground gas storage reservoir" means any subsurface sand, strata, formation, aquifer,
41 cavern or void, whether natural or artificially created, suitable for the injection, storage and with-
42 drawal of natural gas or other gaseous substances. "Underground gas storage reservoir" includes a
43 pool as defined in ORS 520.005.

44 (30) "Utility" includes:

45 (a) A person, a regulated electrical company, a people's utility district, a joint operating agency,

1 an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage
2 in the business of generating, transmitting or distributing electric energy;

3 (b) A person or public agency generating electric energy from an energy facility for its own
4 consumption; and

5 (c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

6 (31) "Waste disposal facility" means a geographical site in or upon which radioactive waste is
7 held or placed but does not include a site at which radioactive waste used or generated pursuant
8 to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used
9 for the temporary storage of radioactive waste from that plant for which a site certificate has been
10 issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a
11 reactor operated by a college, university or graduate center for research purposes and not con-
12 nected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes
13 storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site
14 certificate has been issued until a permanent storage site is available by the federal government.

15 **SECTION 2.** ORS 469.525 is amended to read:

16 469.525. (1) Notwithstanding any other provision of this chapter, **no radioactive waste shall**
17 **be disposed of within this state, no person may arrange for disposal of radioactive waste**
18 **within this state, no person may transport radioactive waste for disposal in this state and**
19 **no waste disposal facility for any radioactive waste shall be established, operated or licensed within**
20 **this state, except as follows:**

21 [(1)] (a) Wastes generated before June 1, 1981, through industrial or manufacturing processes
22 which contain only naturally occurring radioactive isotopes which are disposed of at sites approved
23 by the Energy Facility Siting Council in accordance with ORS 469.375.

24 [(2)] (b) Medical, industrial and research laboratory wastes contained in small, sealed, discrete
25 containers in which the radioactive material is dissolved or dispersed in an organic solvent or bi-
26 ological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall
27 be disposed of or treated at a hazardous waste disposal facility licensed by the Department of En-
28 vironmental Quality and in a manner consistent with rules adopted by the Department of Environ-
29 mental Quality after consultation with and approval by the Oregon Health Authority.

30 [(3)] (c) Maintenance of radioactive coal ash at the site of a thermal power plant for which a
31 site certificate has been issued pursuant to this chapter shall not constitute operation of a waste
32 disposal facility so long as such coal ash is maintained in accordance with the terms of the site
33 certificate as amended from time to time as necessary to protect the public health and safety.

34 (2) **The Energy Facility Siting Council shall, in accordance with the applicable provisions**
35 **of ORS chapter 183, adopt standards and rules as necessary to prevent the disposal of ra-**
36 **dioactive waste within this state.**

37 (3) **For purposes of this section, disposal does not include the temporary storage of:**

38 (a) **Radioactive waste used or generated pursuant to a license granted under ORS 453.635;**

39 (b) **Radioactive waste from a nuclear-fueled thermal power plant for which a site certif-**
40 **icate has been issued pursuant to this chapter, on the site of that plant, until a permanent**
41 **storage site is made available by the federal government; or**

42 (c) **Radioactive waste from a reactor for which a site certificate has been issued pursuant**
43 **to this chapter that is operated by a college, university or graduate center for research**
44 **purposes and is not connected to the Northwest Power Grid.**

45 **SECTION 3.** Section 4 of this 2021 Act is added to and made a part of ORS 469.300 to

1 **469.619.**

2 **SECTION 4. (1) The Director of the State Department of Energy or the Energy Facility**
3 **Siting Council may obtain from any persons all records or information needed to carry out**
4 **and enforce ORS 469.525, 469.550 (3) and 469.607. In obtaining records or information under**
5 **this subsection, the director or the council, with the written consent of the Governor, may**
6 **subpoena witnesses, material and relevant books, papers, accounts, records and memoranda,**
7 **may administer oaths and may cause the depositions of persons residing within or without**
8 **Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts.**

9 **(2) The director or the council may require a person to take actions as necessary to**
10 **correct a past or ongoing violation of ORS 469.525, 469.550 (3) or 469.607 or to ensure future**
11 **compliance with ORS 469.525, 469.550 (3) or 469.607 or rules adopted for the purposes of car-**
12 **rying out ORS 469.525, 469.550 (3) or 469.607. The director or the council shall coordinate with**
13 **the Department of Environmental Quality prior to ordering any actions under this sub-**
14 **section.**

15 **(3)(a) At any reasonable time, an employee of or a duly authorized and identified repre-**
16 **sentative of the State Department of Energy may enter upon, inspect and obtain samples**
17 **from any public or private property, premises or place for the purpose of determining com-**
18 **pliance with ORS 469.525, 469.550 (3) or 469.607 or rules adopted for the purposes of carrying**
19 **out ORS 469.525, 469.550 (3) or 469.607.**

20 **(b) If a person refuses to comply with this subsection, the department or a duly author-**
21 **ized and identified representative of the department may obtain a warrant or subpoena to**
22 **allow the entry, inspection or sampling authorized by this subsection.**

23 **(4)(a) A person found by the director or the council to be in violation of ORS 469.525 shall**
24 **reimburse the department for all necessary, just and reasonable costs incurred by the de-**
25 **partment, excluding administrative costs, in the investigation of the violation. Department**
26 **costs may include:**

27 **(A) Legal expenses;**

28 **(B) Expenses incurred in obtaining and inspecting records, information or samples under**
29 **subsections (1) to (3) of this section; and**

30 **(C) Expenses incurred in issuing any final order or notice of violation.**

31 **(b) Upon request, the department shall provide a detailed justification for all costs**
32 **charged to a person under this subsection.**

33 **(c) If a dispute arises regarding the necessity or reasonableness of expenses charged to**
34 **a person under this subsection, the person may seek judicial review of the amount of ex-**
35 **penses charged in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the**
36 **person establishes that any of the charges are unnecessary or unreasonable, the department**
37 **shall refund the amount found to be unnecessary or unreasonable. The person may not**
38 **waive the right to judicial review by paying the portion of the fee or expense in dispute.**

39