

HB 2816-3  
(LC 1335)  
3/8/23 (CPA/ps)

Requested by Representative MARSH

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2816**

1 On page 1 of the printed bill, line 2, delete “285C.180 and” and insert  
2 “468.140, 469A.052 and 469A.055”.

3 In line 3, delete “469.992”.

4 After line 5, insert:

5 “(a) ‘Backup power generation’ means equipment, whether located on-site  
6 or off-site, that is used by a high energy use facility solely to provide power  
7 during a temporary or emergency power outage, including brief periods for  
8 testing or maintenance.”.

9 In line 6, delete “(a)” and insert “(b)”.

10 In line 8, delete “(b)” and insert “(c)”.

11 In line 10, delete “(c)” and insert “(d)”.

12 In line 14, delete “(d)” and insert “(e)”.

13 In line 15, after “uses” delete the rest of the line and insert “10 or more  
14 average megawatts of electricity per year;”.

15 Delete line 25.

16 In line 26, delete “(b)” and insert “(a)”.

17 On page 2, line 1, delete “(c)” and insert “(b)”.

18 In line 2, delete “(d)” and insert “(c)”.

19 After line 21, insert:

20 “(c) The department shall publish and make public, for each high energy  
21 use facility:

1 “(A) The annual amount of greenhouse emissions associated with the  
2 electricity used by the high energy use facility; and

3 “(B) The average amount of greenhouse emissions associated with a  
4 megawatt-hour of electricity used by the high energy use facility.

5 “(4) A copy of a power purchase agreement or other contract for supply-  
6 ing electricity provided to the department pursuant to subsection (3)(a) of  
7 this section is confidential and exempt from disclosure under ORS 192.311 to  
8 192.478.”.

9 In line 22, delete “(4)” and insert “(5)”.

10 After line 30, insert:

11 “(6)(a) Renewable energy certificates that are used for electricity received  
12 by a high energy use facility through a local utility’s distribution system  
13 may be used to comply with the requirements set forth in subsection (2) of  
14 this section.

15 “(b) Renewable energy certificates that are used for electricity derived  
16 from fossil fuels that is generated on site of a high energy use facility may  
17 not be used to comply with the requirements set forth in subsection (2) of  
18 this section.

19 “(c) A person who owns, operates or controls a high energy use facility  
20 shall provide the commission with an annual accounting report regarding the  
21 renewable energy certificates used by the person, if any, to comply with the  
22 requirements set forth in subsection (2) of this section.

23 “(d) The commission shall adopt rules establishing additional require-  
24 ments regarding the eligibility, reporting and treatment of renewable energy  
25 certificates under this section.

26 “(7) The requirements under this section do not apply to:

27 “(a) High energy use facilities that first become operational before Janu-  
28 ary 1, 2024; or

29 “(b) Greenhouse gas emissions associated with the use by a high energy  
30 use facility of backup power generation during a temporary or emergency

1 power outage, including brief periods for testing or maintenance.”.

2 In line 31, delete “(5)” and insert “(8)”.

3 In line 32, delete “469.992” and insert “468.140”.

4 Delete line 33 and insert “(9) The commission may adopt rules to imple-  
5 ment this section and section 2 of this 2023 Act.”.

6 Delete lines 34 through 45 and insert:

7 **“SECTION 2. (1) On its own or at the request of a person who owns,  
8 operates or controls a high energy use facility, the Department of  
9 Environmental Quality may grant a temporary exemption to a  
10 person’s compliance with one or more of the requirements under sec-  
11 tion 1 of this 2023 Act.**

12 **“(2) The department shall grant a temporary exemption if the de-  
13 partment finds, in consultation with the State Department of Energy,  
14 that a person is unable to comply because of significant constraints  
15 or disruptions to one or more of the following:**

16 **“(a) Renewable energy markets or the reasonable commercial  
17 availability of renewable energy certificates;**

18 **“(b) The procurement or delivery of electricity as a result of a na-  
19 tural or man-made disaster; or**

20 **“(c) The ability of a utility provider to provide electricity to a high  
21 energy use facility due to the utility provider’s obligations to provide  
22 affordable and reliable electricity service to other customers.**

23 **“(3) If the Department of Environmental Quality finds, under sub-  
24 section (2) of this section, that a person is unable to comply, the de-  
25 partment shall:**

26 **“(a) Temporarily exempt the person from one or more of the re-  
27 quirements under section 1 of this 2023 Act for a length of time suffi-  
28 cient to allow the person to achieve full compliance; and**

29 **“(b) Direct the person to take specific actions to achieve full com-  
30 pliance.**

1       **“SECTION 3.** ORS 468.140 is amended to read:

2       “468.140. (1) In addition to any other penalty provided by law, any person  
3 who violates any of the following shall incur a civil penalty for each day  
4 of violation in the amount prescribed by the schedule adopted under ORS  
5 468.130:

6       “(a) The terms or conditions of any permit required or authorized by law  
7 and issued by the Department of Environmental Quality or a regional air  
8 quality control authority.

9       “(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to  
10 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and ORS  
11 chapter 467 and ORS chapters 468, 468A and 468B **and section 1 of this 2023**  
12 **Act.**

13       “(c) Any rule or standard or order of the Environmental Quality Com-  
14 mission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205  
15 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and 783.625 to 783.640 and  
16 ORS chapter 467 and ORS chapters 468, 468A and 468B **and section 1 of this**  
17 **2023 Act.**

18       “(d) Any term or condition of a variance granted by the commission or  
19 department pursuant to ORS 467.060.

20       “(e) Any rule or standard or order of a regional authority adopted or is-  
21 sued under authority of ORS 468A.135.

22       “(f) The financial assurance requirement under ORS 468B.390 and  
23 468B.485 or any rule related to the financial assurance requirement under  
24 ORS 468B.390.

25       “(2) Each day of violation under subsection (1) of this section constitutes  
26 a separate offense.

27       “(3)(a) In addition to any other penalty provided by law, any person who  
28 intentionally or negligently causes or permits the discharge of oil or haz-  
29 arduous material into the waters of the state or intentionally or negligently  
30 fails to clean up a spill or release of oil or hazardous material into the wa-

1 ters of the state as required by ORS 466.645 shall incur a civil penalty not  
2 to exceed the amount of \$100,000 for each violation.

3 “(b) In addition to any other penalty provided by law, the following per-  
4 sons shall incur a civil penalty not to exceed the amount of \$25,000 for each  
5 day of violation:

6 “(A) Any person who violates the terms or conditions of a permit au-  
7 thorizing waste discharge into the air or waters of the state.

8 “(B) Any person who violates any law, rule, order or standard in ORS  
9 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to  
10 454.755 and 783.625 to 783.640 and ORS chapters 468, 468A and 468B relating  
11 to air or water pollution.

12 “(C) Any person who violates the provisions of a rule adopted or an order  
13 issued under ORS 459A.590.

14 “(4) In addition to any other penalty provided by law, any person who  
15 violates the provisions of ORS 468B.130 shall incur a civil penalty not to  
16 exceed the amount of \$1,000 for each day of violation.

17 “(5) Notwithstanding subsection (1)(c) and (e) of this section, the owner  
18 or lessee of a motor vehicle may not incur a civil penalty for a violation of  
19 the requirement that the owner or lessee obtain a motor vehicle pollution  
20 control system certificate of compliance issued under ORS 468A.380.

21 “(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any  
22 other penalty provided by law, any person who intentionally or negligently  
23 causes or permits open field burning contrary to the provisions of ORS  
24 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by  
25 the department a civil penalty of at least \$20 but not more than \$40 for each  
26 acre so burned. Any amounts collected by the department pursuant to this  
27 subsection shall be deposited with the State Treasurer to the credit of the  
28 General Fund and shall be available for general governmental expense. As  
29 used in this subsection, ‘open field burning’ does not include propane flaming  
30 of mint stubble.

1       **“SECTION 4.** ORS 469A.052 is amended to read:

2       “469A.052. (1) The large utility renewable portfolio standard imposes the  
3 following requirements on an electric utility that makes sales of electricity  
4 to retail electricity consumers in an amount that equals three percent or  
5 more of all electricity sold to retail electricity consumers:

6       “(a) At least five percent of the electricity sold by the electric utility to  
7 retail electricity consumers in each of the calendar years 2011, 2012, 2013 and  
8 2014 must be qualifying electricity;

9       “(b) At least 15 percent of the electricity sold by the electric utility to  
10 retail electricity consumers in each of the calendar years 2015, 2016, 2017,  
11 2018 and 2019 must be qualifying electricity;

12       “(c) At least 20 percent of the electricity sold by the electric utility to  
13 retail electricity consumers in each of the calendar years 2020, 2021, 2022,  
14 2023 and 2024 must be qualifying electricity;

15       “(d) At least 25 percent of the electricity sold by a consumer-owned utility  
16 to retail electricity consumers in the calendar year 2025 and subsequent  
17 calendar years must be qualifying electricity;

18       “(e) At least 27 percent of the electricity sold by an electric company to  
19 retail electricity consumers in each of the calendar years 2025, 2026, 2027,  
20 2028 and 2029 must be qualifying electricity;

21       “(f) At least 35 percent of the electricity sold by an electric company to  
22 retail electricity consumers in each of the calendar years 2030, 2031, 2032,  
23 2033 and 2034 must be qualifying electricity;

24       “(g) At least 45 percent of the electricity sold by an electric company to  
25 retail electricity consumers in each of the calendar years 2035, 2036, 2037,  
26 2038 and 2039 must be qualifying electricity; and

27       “(h) At least 50 percent of the electricity sold by an electric company to  
28 retail electricity consumers in the calendar year 2040 and subsequent calen-  
29 dar years must be qualifying electricity.

30       “(2) If, on June 6, 2007, an electric utility makes sales of electricity to

1 retail electricity consumers in an amount that equals less than three percent  
2 of all electricity sold to retail electricity consumers, but in any three con-  
3 secutive calendar years thereafter makes sales of electricity to retail elec-  
4 tricity consumers in amounts that average three percent or more of all  
5 electricity sold to retail electricity consumers, the electric utility is subject  
6 to the renewable portfolio standard described in subsection (3) of this sec-  
7 tion. The electric utility becomes subject to the renewable portfolio standard  
8 described in subsection (3) of this section in the calendar year following the  
9 three-year period during which the electric utility makes sales of electricity  
10 to retail electricity consumers in amounts that average three percent or more  
11 of all electricity sold to retail electricity consumers.

12 “(3) An electric utility described in subsection (2) of this section must  
13 comply with the following renewable portfolio standard:

14 “(a) Beginning in the fourth calendar year after the calendar year in  
15 which the electric utility becomes subject to the renewable portfolio stand-  
16 ard described in this subsection, at least five percent of the electricity sold  
17 by the electric utility to retail electricity consumers in a calendar year must  
18 be qualifying electricity;

19 “(b) Beginning in the 10th calendar year after the calendar year in which  
20 the electric utility becomes subject to the renewable portfolio standard de-  
21 scribed in this subsection, at least 15 percent of the electricity sold by the  
22 electric utility to retail electricity consumers in a calendar year must be  
23 qualifying electricity;

24 “(c) Beginning in the 15th calendar year after the calendar year in which  
25 the electric utility becomes subject to the renewable portfolio standard de-  
26 scribed in this subsection, at least 20 percent of the electricity sold by the  
27 electric utility to retail electricity consumers in a calendar year must be  
28 qualifying electricity; and

29 “(d) Beginning in the 20th calendar year after the calendar year in which  
30 the electric utility becomes subject to the renewable portfolio standard de-

1 scribed in this subsection, at least 25 percent of the electricity sold by the  
2 electric utility to retail electricity consumers in a calendar year must be  
3 qualifying electricity.

4 **“(4) The sales of electricity that an electric utility makes for use**  
5 **by a high energy use facility, as defined in section 1 of this 2023 Act,**  
6 **do not count towards determining the amount of the sales of elec-**  
7 **tricity to retail electricity consumers that an electric utility makes**  
8 **under this section.**

9 **“SECTION 5.** ORS 469A.055 is amended to read:

10 “469A.055. (1) Except as provided in this section, an electric utility that  
11 makes sales of electricity to retail electricity consumers in an amount that  
12 equals less than three percent of all electricity sold to retail electricity  
13 consumers is not subject to ORS 469A.005 to 469A.210.

14 “(2) Beginning in calendar year 2025, at least five percent of the elec-  
15 tricity sold to retail electricity consumers in a calendar year by an electric  
16 utility must be qualifying electricity if the electric utility makes sales of  
17 electricity to retail electricity consumers in an amount that equals less than  
18 one and one-half percent of all electricity sold to retail electricity consumers.

19 “(3) Beginning in calendar year 2025, at least 10 percent of the electricity  
20 sold to retail electricity consumers in a calendar year by an electric utility  
21 must be qualifying electricity if the electric utility makes sales of electricity  
22 to retail electricity consumers in an amount that equals or is more than one  
23 and one-half percent, and less than three percent, of all electricity sold to  
24 retail electricity consumers.

25 “(4) The exemption provided by subsection (1) of this section terminates  
26 if an electric utility, or a joint operating entity that includes the electric  
27 utility as a member, acquires electricity from an electricity generating fa-  
28 cility that uses coal as an energy source or makes an investment on or after  
29 June 6, 2007, in an electricity generating facility that uses coal as an energy  
30 source. Beginning in the calendar year following the year in which an elec-



1 tric utility's exemption terminates under this subsection, the electric utility  
2 is subject to the renewable portfolio standard described in ORS 469A.052 (3)  
3 and the provisions of ORS 469A.005 to 469A.210 that apply to ORS 469A.052  
4 (3). This subsection does not apply to:

5 “(a) A wholesale market purchase by an electric utility for which the  
6 energy source for the electricity is not known;

7 “(b) BPA electricity;

8 “(c) Acquisition of electricity under a contract entered into before June  
9 6, 2007;

10 “(d) A renewal or replacement contract for a contract for purchase of  
11 electricity described in paragraph (c) of this subsection;

12 “(e) A purchase of electricity if the electricity is included in a contract  
13 for the purchase of qualifying electricity and is necessary to shape, firm or  
14 integrate the qualifying electricity;

15 “(f) Electricity provided to an electric utility under a contract for the  
16 acquisition of an interest in an electricity generating facility that was en-  
17 tered into by the electric utility before June 6, 2007, or entered into before  
18 June 6, 2007, by an electric cooperative organized under ORS chapter 62 of  
19 which the electric utility is a member, without regard to whether the elec-  
20 tricity is being used to serve the load of the electric utility on June 6, 2007;  
21 or

22 “(g) Investments in an electricity generating facility that uses coal as an  
23 energy source if the investments are for the purpose of improving the  
24 facility's pollution mitigation equipment or the facility's efficiency or are  
25 necessary to comply with requirements or standards imposed by govern-  
26 mental entities.

27 “(5) The exemption provided by subsection (1) of this section terminates  
28 for a consumer-owned utility if the consumer-owned utility acquires service  
29 territory of an electric utility without the consent of the electric utility.  
30 Except as provided in subsection (6) of this section, beginning in the calen-

1 dar year following the year in which a consumer-owned utility’s exemption  
2 terminates under this subsection, the consumer-owned utility is subject to  
3 the renewable portfolio standard described in ORS 469A.052 (3) and the pro-  
4 visions of ORS 469A.005 to 469A.210 that apply to ORS 469A.052 (3).

5 “(6) If an electric utility acquires service territory of another electric  
6 utility without the consent of the electric utility from which service territory  
7 was acquired, then beginning in the calendar year following the acquisition,  
8 the percentage of the acquiring electric utility’s electricity sold to all retail  
9 electricity consumers of the acquiring electric utility that is sold to retail  
10 electricity consumers that are located in the acquired service territory is  
11 subject to the renewable portfolio standard that is applicable to the electric  
12 utility from which service territory was acquired and the provisions of ORS  
13 469A.005 to 469A.210 that apply to the renewable portfolio standard.

14 “(7) The provisions of this section do not authorize the acquisition by a  
15 municipal electric utility of service territory of a people’s utility district  
16 organized under ORS chapter 261.

17 “(8) The provisions of this section do not affect the requirement that  
18 electric utilities offer a green power rate under ORS 469A.205.

19 **“(9) The sales of electricity that an electric utility makes for use**  
20 **by a high energy use facility, as defined in section 1 of this 2023 Act,**  
21 **do not count towards determining the amount of the sales of elec-**  
22 **tricity to retail electricity consumers that an electric utility makes**  
23 **under this section.”.**

24 Delete pages 3 and 4.

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