

House Bill 4015

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Climate, Energy, and Environment for Representative Pam Marsh)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Permits a person who wants to build a battery energy storage system (BESS) to choose to use EFSC for the siting of the BESS. Permits the ruling body of a local body after talking with the person who wants to build a BESS to choose to use EFSC for the siting of the BESS. Permits a BESS to be built and run without its own site certificate if the BESS is subject to the site certificate of another energy facility. Defines BESS. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 64.0).

Permits a developer of a facility or the governing body of a local government after consulting with the developer to elect to defer regulatory authority to the Energy Facility Siting Council for the siting of a battery energy storage system.

Permits a battery energy storage system that is under the regulatory authority of the Energy Facility Siting Council to be constructed and operated without a separate site certificate if the battery energy storage system is subject to a site certificate for another energy facility.

Defines "battery energy storage system."

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to battery energy storage systems; creating new provisions; amending ORS 469.300, 469.320, 469.373, 469.409, 469.503, 469.504 and 498.502; and prescribing an effective date.

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

BATTERY ENERGY STORAGE SYSTEM (Energy Facility Siting Council)

SECTION 1. ORS 469.300 is amended to read:

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

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

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

(3) "Associated transmission lines" means 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.

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

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 (a) For wind facilities, 3.00;
- 2 (b) For geothermal energy facilities, 1.11; or
- 3 (c) For all other energy facilities, 1.00.

4 **(5) “Battery energy storage system” means an energy storage system that, other than**
 5 **for personal, noncommercial use:**

- 6 **(a) Collects energy from the electric grid or an energy generation facility;**
- 7 **(b) Uses rechargeable batteries to retain and store the energy for a period of time; and**
- 8 **(c) Discharges the energy after storage to provide electricity when needed.**

9 [(5)] **(6) “Combustion turbine power plant” means a thermal power plant consisting of one or**
 10 **more fuel-fired combustion turbines and any associated waste heat combined cycle generators.**

11 [(6)] **(7) “Construction” means work performed on a site, excluding surveying, exploration or**
 12 **other activities to define or characterize the site, the cost of which exceeds \$250,000.**

13 [(7)] **(8) “Council” means the Energy Facility Siting Council established under ORS 469.450.**

14 [(8)] **(9) “Department” means the State Department of Energy created under ORS 469.030.**

15 [(9)] **(10) “Director” means the Director of the State Department of Energy appointed under ORS**
 16 **469.040.**

17 [(10)] **(11) “Electric utility” means persons, regulated electrical companies, people’s utility dis-**
 18 **tricts, joint operating agencies, electric cooperatives, municipalities or any combination thereof,**
 19 **engaged in or authorized to engage in the business of generating, supplying, transmitting or dis-**
 20 **tributing electric energy.**

21 [(11)(a)] **(12)(a) “Energy facility” means any of the following:**

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

- 24 **(i) Thermal power;**
- 25 **(ii) Combustion turbine power plant; or**
- 26 **(iii) Solar thermal power plant.**

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

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

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

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

34 **(iii) Associated transmission lines.**

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

- 36 **(i) 240 acres located on high-value farmland as defined in ORS 195.300;**
- 37 **(ii) 2,560 acres located on land that is predominantly cultivated or that, if not cultivated, is**
 38 **predominantly composed of soils that are in capability classes I to IV, as specified by the National**
 39 **Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United**
 40 **States Department of Agriculture; or**

41 **(iii) 3,840 acres located on any other land.**

42 **(E) A pipeline that is:**

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

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

3 (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than
 4 50 feet from a public road, as defined in ORS 368.001; or

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

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

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

15 (G) A plant which converts biomass to a gas, liquid or solid product, or combination of such
 16 products, intended to be used as a fuel and if any one of such products is capable of being burned
 17 to produce the equivalent of six billion Btu of heat a day.

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

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

24 (i) The underground storage reservoir;

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

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

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

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

34 [(12)] (13) "Energy generation area" means an area within which the effects of two or more
 35 small generating plants may accumulate so the small generating plants have effects of a magnitude
 36 similar to a single generating plant of 35 megawatts average electric generating capacity or more.
 37 An "energy generation area" for facilities using a geothermal resource and covered by a unit
 38 agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit
 39 agreement. If no such unit agreement exists, an energy generation area for facilities using a
 40 geothermal resource shall be the area that is within two miles, measured from the electrical gener-
 41 ating equipment of the facility, of an existing or proposed geothermal electric power generating
 42 plant, not including the site of any other such plant not owned or controlled by the same person.

43 [(13)] (14) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal
 44 of source material, special nuclear material or by-product material as those terms are defined in
 45 ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that

1 the United States Nuclear Regulatory Commission or its successor determines to be substantial and
2 to have resulted in or to be likely to result in substantial damages to persons or property off-site.

3 [(14)] (15) "Facility" means an energy facility together with any related or supporting facilities.

4 [(15)] (16) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal
5 fluid.

6 [(16)] (17) "Local government" means a city or county.

7 [(17)] (18) "Nominal electric generating capacity" means the maximum net electric power output
8 of an energy facility based on the average temperature, barometric pressure and relative humidity
9 at the site during the times of the year when the facility is intended to operate.

10 [(18)] (19) "Nuclear incident" means any occurrence, including an extraordinary nuclear occur-
11 rence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss
12 of use of property due to the radioactive, toxic, explosive or other hazardous properties of source
13 material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

14 [(19)] (20) "Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nu-
15 clear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling
16 that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does
17 not include any such facilities that are part of a thermal power plant.

18 [(20)] (21) "Nuclear power plant" means an electrical or any other facility using nuclear energy
19 with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution
20 of electricity, and associated transmission lines.

21 [(21)] (22) "Person" means an individual, partnership, joint venture, private or public corpo-
22 ration, association, firm, public service company, political subdivision, municipal corporation, gov-
23 ernment agency, people's utility district, or any other entity, public or private, however organized.

24 [(22)] (23) "Project order" means the order, including any amendments, issued by the State De-
25 partment of Energy under ORS 469.330.

26 [(23)(a)] (24)(a) "Radioactive waste" includes all material which is discarded, unwanted or has
27 no present lawful economic use, and contains mined or refined naturally occurring isotopes, accel-
28 erator produced isotopes and by-product material, source material or special nuclear material as
29 those terms are defined in ORS 453.605.

30 (b) "Radioactive waste" does not include:

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

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

35 [(24)] (25) "Related or supporting facilities" means any structure, proposed by the applicant, to
36 be constructed or substantially modified in connection with the construction of an energy facility,
37 including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail
38 access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.
39 "Related or supporting facilities" does not include geothermal or underground gas storage reser-
40 vairs, production, injection or monitoring wells or wellhead equipment or pumps.

41 [(25)] (26) "Site" means any proposed location of an energy facility and related or supporting
42 facilities.

43 [(26)] (27) "Site certificate" means the binding agreement between the State of Oregon and the
44 applicant, authorizing the applicant to construct and operate a facility on an approved site, incor-
45 porating all conditions imposed by the council on the applicant.

1 [(27)] (28) “Thermal power plant” means an electrical facility using any source of thermal en-
 2 ergy with a nominal electric generating capacity of 25 megawatts or more, for generation and dis-
 3 tribution of electricity, and associated transmission lines, including but not limited to a
 4 nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power
 5 plant the principal use of which is to supply power in emergencies. “Thermal power plant” includes
 6 a nuclear-fueled thermal power plant that has ceased to operate.

7 [(28)] (29) “Transportation” means the transport within the borders of the State of Oregon of
 8 radioactive material destined for or derived from any location.

9 [(29)] (30) “Underground gas storage reservoir” means any subsurface sand, strata, formation,
 10 aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage
 11 and withdrawal of natural gas or other gaseous substances. “Underground gas storage reservoir”
 12 includes a pool as defined in ORS 520.005.

13 [(30)] (31) “Utility” includes:

14 (a) A person, a regulated electrical company, a people’s utility district, a joint operating agency,
 15 an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage
 16 in the business of generating, transmitting or distributing electric energy;

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

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

20 [(31)] (32) “Waste disposal facility” means a geographical site in or upon which radioactive
 21 waste is held or placed but does not include a site at which radioactive waste used or generated
 22 pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power
 23 plant used for the temporary storage of radioactive waste from that plant for which a site certificate
 24 has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste
 25 from a reactor operated by a college, university or graduate center for research purposes and not
 26 connected to the Northwest Power Grid. As used in this subsection, “temporary storage” includes
 27 storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site
 28 certificate has been issued until a permanent storage site is available by the federal government.

29 **SECTION 2.** ORS 469.320 is amended to read:

30 469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be
 31 constructed or expanded unless a site certificate has been issued for the site thereof in the manner
 32 provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be
 33 constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563,
 34 469.590 to 469.619, 469.930 and 469.992.

35 (2) A site certificate is not required for:

36 (a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had
 37 operable electric generating equipment for a modification that uses the same fuel type and increases
 38 electric generating capacity, if:

39 (A) The site is not enlarged; and

40 (B) The ability of the energy facility to use fuel for electricity production under peak steady
 41 state operating conditions is not more than 200 million Btu per hour greater than it was on August
 42 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy
 43 resource plan that has been acknowledged by the Public Utility Commission of Oregon.

44 (b) Construction or expansion of any interstate natural gas pipeline or associated underground
 45 natural gas storage facility authorized by and subject to the continuing regulation of the Federal

1 Energy Regulatory Commission or successor agency.

2 (c) An energy facility, except coal and nuclear power plants, if the energy facility:

3 (A) Sequentially produces electrical energy and useful thermal energy from the same fuel source;
4 and

5 (B) Under average annual operating conditions, has a nominal electric generating capacity:

6 (i) Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater
7 than 6,000 Btu per kilowatt hour;

8 (ii) Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater
9 than 5,500 Btu per kilowatt hour; or

10 (iii) Specified by the Energy Facility Siting Council by rule based on the council's determination
11 relating to emissions of the energy facility.

12 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site cer-
13 tificate has been issued by the State of Oregon, of radioactive waste from the plant.

14 (e) An energy facility as defined in ORS 469.300 [(11)(a)(G)] **(12)(a)(G)**, if the plant also produces
15 a secondary fuel used on site for the production of heat or electricity, if the output of the primary
16 fuel is less than six billion Btu of heat a day.

17 (f) An energy facility as defined in ORS 469.300 [(11)(a)(G)] **(12)(a)(G)**, if the facility:

18 (A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste
19 vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

20 (B) Has received local land use approval under the applicable acknowledged comprehensive plan
21 and land use regulations of the affected local government and the facility complies with any state-
22 wide planning goals or rules of the Land Conservation and Development Commission that are di-
23 rectly applicable to the facility;

24 (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would
25 require a site certificate under subsection (1) of this section;

26 (D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling
27 facility located within one mile of the facility or is transported from the facility by rail or barge;
28 and

29 (E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for con-
30 version energy.

31 (g) A standby generation facility, if the facility complies with all of the following:

32 (A) The facility has received local land use approval under the applicable acknowledged com-
33 prehensive plan and land use regulations of the affected local government and the facility complies
34 with all statewide planning goals and applicable rules of the Land Conservation and Development
35 Commission;

36 (B) The standby generators have been approved by the Department of Environmental Quality
37 as having complied with all applicable air and water quality requirements. For an applicant that
38 proposes to provide the physical facilities for the installation of standby generators, the requirement
39 of this subparagraph may be met by agreeing to require such a term in the lease contract for the
40 facility; and

41 (C) The standby generators are electrically incapable of being interconnected to the trans-
42 mission grid. For an applicant that proposes to provide the physical facilities for the installation of
43 standby generators, the requirement of this subparagraph may be met by agreeing to require such
44 a term in the lease contract for the facility.

45 (3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable

1 to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination,
 2 the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in
 3 subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power
 4 heat rate value for the best available, commercially viable thermal power plant technology at the
 5 time of the revision.

6 (4)(a)(A) Any person who proposes to construct or enlarge an energy facility and who claims an
 7 exemption under subsection (2)(a), (c) or (f) of this section from the requirement to obtain a site
 8 certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-
 9 cility qualifies for the claimed exemption.

10 (B) The council may not require a person who operates or proposes to construct or enlarge an
 11 energy facility to request that the council determine whether the proposed facility qualifies for ex-
 12 emption under subsection (2)(g) of this section.

13 (b) The council shall make its determination within 60 days after the request for exemption is
 14 filed. An appeal from the council's determination on a request for exemption shall be made under
 15 ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review
 16 by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the re-
 17 cord established in the council proceeding on the exemption.

18 (5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-
 19 quired for:

20 (a) Transmission lines, **battery energy storage systems**, storage facilities, pipelines or similar
 21 related or supporting facilities, if such related or supporting facilities are addressed in and are
 22 subject to a site certificate for another energy facility;

23 (b) Expansion within the site or within the energy generation area of a facility for which a site
 24 certificate has been issued, if the existing site certificate has been amended to authorize expansion;
 25 or

26 (c) Expansion, either within the site or outside the site, of an existing council certified surface
 27 facility related to an underground gas storage reservoir, if the existing site certificate is amended
 28 to authorize expansion.

29 (6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of
 30 this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this
 31 section, the electric generating facility shall cease to operate one year after the substantial loss of
 32 the steam host unless an application for a site certificate has been filed in accordance with the
 33 provisions of ORS 469.300 to 469.563.

34 (7) As used in this section:

35 (a) "Standby generation facility" means an electric power generating facility, including standby
 36 generators and the physical structures necessary to install and connect standby generators, that
 37 provides temporary electric power in the event of a power outage and that is electrically incapable
 38 of being interconnected with the transmission grid.

39 (b) "Total energy output" means the sum of useful thermal energy output and useful electrical
 40 energy output.

41 (c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial
 42 or commercial process, heating or cooling application.

43 (8)(a) If the developer of a facility elects, or the governing body of the local government after
 44 consulting with the developer elects, to defer regulatory authority to the Energy Facility Siting
 45 Council, the developer of a facility shall obtain a site certificate, in the manner provided in ORS

1 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, for a facility that, notwithstanding the
 2 definition of “energy facility” in ORS 469.300, is:

3 (A) An electric power generating plant with an average electric generating capacity of less than
 4 50 megawatts produced from wind energy at a single energy facility or within a single energy gen-
 5 eration area;

6 (B) An associated transmission line; *[or]*

7 **(C) A battery energy storage system; or**

8 *[(C)] (D)* A solar photovoltaic power generation facility that is not an energy facility as defined
 9 in ORS 469.300 *[(11)(a)(D)] (12)(a)(D)*.

10 (b) An election by a developer or a local government under this subsection is final.

11 (c) An election by a local government under this subsection is not a land use decision as defined
 12 in ORS 197.015.

13 (d) A local government may not make an election under this subsection after a permit applica-
 14 tion has been submitted under ORS 215.416 or 227.175.

15
 16 **CONFORMING AMENDMENTS**

17
 18 **SECTION 3.** ORS 469.503 is amended to read:

19 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
 20 that the preponderance of the evidence on the record supports the following conclusions:

21 (1) The facility complies with the applicable standards adopted by the council pursuant to ORS
 22 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or
 23 interest protected by the applicable standards the facility does not meet.

24 *[(2)] (2)(a)* If the energy facility is a fossil-fueled power plant, the energy facility complies with
 25 any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base
 26 load gas plants shall comply with the standard set forth in *[subsection (2)(a) of this section]* **para-**
 27 **graph (b) of this subsection.** Other fossil-fueled power plants shall comply with any applicable
 28 standard adopted by the council by rule pursuant to *[subsection (2)(b) of this section]* **paragraph (c)**
 29 **of this subsection.** *[Subsections (2)(c) and (d) of this section]* **Paragraphs (d) and (e) of this sub-**
 30 **section** prescribe the means by which an applicant may comply with the applicable standard.

31 *[(a)] (b)* The net carbon dioxide emissions rate of the proposed base load gas plant shall not
 32 exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with
 33 carbon dioxide emissions and net electric power output measured on a new and clean basis.
 34 Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions stand-
 35 ard for base load gas plants if the council finds that the most efficient stand-alone combined cycle,
 36 combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operat-
 37 ing in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating
 38 value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council
 39 shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such
 40 energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17
 41 percent below this rate.

42 *[(b)] (c)* The council shall adopt carbon dioxide emissions standards for other types of fossil-
 43 fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In
 44 adopting or amending such carbon dioxide emissions standards, the council shall consider and bal-
 45 ance at least the following principles, the findings on which shall be contained in the rulemaking

1 record:

2 (A) Promote facility fuel efficiency;

3 (B) Promote efficiency in the resource mix;

4 (C) Reduce net carbon dioxide emissions;

5 (D) Promote cogeneration that reduces net carbon dioxide emissions;

6 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding
7 carbon dioxide emissions;

8 (F) Minimize transaction costs;

9 (G) Include an alternative process that separates decisions on the form and implementation of
10 offsets from the final decision on granting a site certificate;

11 (H) Allow either the applicant or third parties to implement offsets;

12 (I) Be attainable and economically achievable for various types of power plants;

13 (J) Promote public participation in the selection and review of offsets;

14 (K) Promote prompt implementation of offset projects;

15 (L) Provide for monitoring and evaluation of the performance of offsets; and

16 (M) Promote reliability of the regional electric system.

17 [(c)] (d) The council shall determine whether the applicable carbon dioxide emissions standard
18 is met by first determining the gross carbon dioxide emissions that are reasonably likely to result
19 from the operation of the proposed energy facility. Such determination shall be based on the pro-
20 posed design of the energy facility. The council shall adopt site certificate conditions to ensure that
21 the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any re-
22 maining emissions reduction necessary to meet the applicable standard, the applicant may elect to
23 use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall
24 determine the amount of carbon dioxide or other greenhouse gas emissions reduction that is rea-
25 sonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide
26 emissions meet the applicable carbon dioxide emissions standard. For purposes of determining the
27 net carbon dioxide emissions, the council shall by rule establish the global warming potential of
28 each greenhouse gas based on a generally accepted scientific method, and convert any greenhouse
29 gas emissions to a carbon dioxide equivalent. Unless otherwise provided by the council by rule, the
30 global warming potential of methane is 23 times that of carbon dioxide, and the global warming
31 potential of nitrous oxide is 296 times that of carbon dioxide. If the council or a court on judicial
32 review concludes that the applicant has not demonstrated compliance with the applicable carbon
33 dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combina-
34 tion thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this
35 paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

36 **For purposes of this paragraph, the applicable carbon dioxide emissions standards are:**

37 (A) The facility will sequentially produce electrical and thermal energy from the same fuel
38 source, and the thermal energy will be used to displace another source of carbon dioxide emissions
39 that would have otherwise continued to occur, in which case the council shall adopt site certificate
40 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

41 (B) The applicant or a third party will implement particular offsets, in which case the council
42 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall
43 not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas
44 emissions be achieved. The council shall determine the quantity of greenhouse gas emissions re-
45 duction that is reasonably likely to result from each of the proposed offsets based on the criteria in

1 sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall
2 not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas
3 emissions reduction in another regulatory setting. In addition, the fact that an applicant or other
4 parties involved with an offset may derive benefits from the offset other than the reduction of
5 greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset. **The criteria**
6 **required under this subparagraph shall be:**

7 (i) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction
8 will be achieved by the offset;

9 (ii) The ability of the council to determine the actual quantity of greenhouse gas emissions re-
10 duction resulting from the offset, taking into consideration any proposed measurement, monitoring
11 and evaluation of mitigation measure performance; and

12 (iii) The extent to which the reduction of greenhouse gas emissions would occur in the absence
13 of the offsets.

14 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to
15 produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide
16 emissions standard, in which case the funds shall be used as specified in paragraph [(d)] (e) of this
17 subsection. Unless modified by the council as provided below, the payment of 57 cents shall be
18 deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine
19 the offset funds using the monetary offset rate and the level of emissions reduction required to meet
20 the applicable standard. If a site certificate is approved based on this subparagraph, the council may
21 not adjust the amount of such offset funds based on the actual performance of offsets. After three
22 years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of
23 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based
24 on empirical evidence of the cost of offsets and the council's finding that the standard will be eco-
25 nomically achievable with the modified rate for natural gas-fired power plants. Following the initial
26 three-year period, the council may increase or decrease the monetary offset rate no more than 50
27 percent in any two-year period.

28 (D) Any other means that the council adopts by rule for demonstrating compliance with any
29 applicable carbon dioxide emissions standard.

30 [(d)] (e) If the applicant elects to meet the applicable carbon dioxide emissions standard in
31 whole or in part under paragraph [(e)(C)] (d)(C) of this subsection, the applicant shall identify the
32 qualified organization. The applicant may identify an organization that has applied for, but has not
33 received, an exemption from federal income taxation, but the council may not find that the organ-
34 ization is a qualified organization unless the organization is exempt from federal taxation under
35 section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The
36 site certificate holder shall provide a bond or comparable security in a form reasonably acceptable
37 to the council to ensure the payment of the offset funds and the amount required under subpara-
38 graph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site
39 certificate, which shall be no later than the commencement of construction of the facility. The site
40 certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this
41 paragraph, unless the council finds that no qualified organization exists, in which case the site
42 certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this
43 paragraph.

44 (A) The site certificate holder shall disburse the offset funds and any other funds required by
45 sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

1 (i) When the site certificate holder receives written notice from the qualified organization cer-
 2 tifying that the qualified organization is contractually obligated to pay any funds to implement off-
 3 sets using the offset funds, the site certificate holder shall make the requested amount available to
 4 the qualified organization unless the total of the amount requested and any amounts previously re-
 5 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall
 6 be made available. The qualified organization shall use at least 80 percent of the offset funds for
 7 contracts to implement offsets. The qualified organization shall assess offsets for their potential to
 8 qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified or-
 9 ganization may use up to 20 percent of the offset funds for monitoring, evaluation, administration
 10 and enforcement of contracts to implement offsets.

11 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-
 12 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first
 13 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount
 14 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount
 15 compensates the qualified organization for its costs of selecting offsets and contracting for the im-
 16 plementation of offsets.

17 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-
 18 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by
 19 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization
 20 the total amount required under paragraph [(c)] (d) of this subsection and sub-subparagraph (ii) of
 21 this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the
 22 qualified organization be a basis for revocation of the site certificate or any other enforcement
 23 action by the council with respect to the site certificate holder.

24 (B) If the council finds there is no qualified organization, the site certificate holder shall select
 25 one or more offsets to be implemented pursuant to criteria established by the council. The site cer-
 26 tificate holder shall give written notice of its selections to the council and to any person requesting
 27 notice. On petition by the State Department of Energy, or by any person adversely affected or
 28 aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the
 29 council may review such selection. The petition must be received by the council within 30 days of
 30 the date the notice of selection is placed in the United States mail, with first-class postage prepaid.
 31 The council shall approve the site certificate holder's selection unless it finds that the selection is
 32 not consistent with criteria established by the council. The site certificate holder shall contract to
 33 implement the selected offsets within 18 months after commencing construction of the facility unless
 34 good cause is shown requiring additional time. The contracts shall obligate the expenditure of at
 35 least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the
 36 offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement
 37 the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set
 38 forth in paragraphs [(b)(C) and (c)(B)] (c)(C) and (d)(B) of this subsection and may also consider the
 39 costs of particular types of offsets in relation to the expected benefits of such offsets. The council's
 40 criteria shall not require the site certificate holder to select particular offsets, and shall allow the
 41 site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding
 42 any other provision of this section, the site certificate holder's financial liability for implementation,
 43 monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the
 44 amount of any offset funds not already contractually obligated. Nonperformance, negligence or mis-
 45 conduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not

1 be a basis for revocation of the site certificate or any other enforcement action by the council with
2 respect to the site certificate holder.

3 (C) Every qualified organization that has received funds under this paragraph shall, at five-year
4 intervals beginning on the date of receipt of such funds, provide the council with the information
5 the council requests about the qualified organization's performance. The council shall evaluate the
6 information requested and, based on such information, shall make any recommendations to the
7 Legislative Assembly that the council deems appropriate.

8 [(e)] (f) As used in this subsection:

9 (A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output
10 as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60
11 percent humidity.

12 (B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for
13 periods during which an alternative fuel may be used and when such alternative fuel use shall not
14 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and
15 where the applicant requests and the council adopts no condition in the site certificate for the
16 generating facility that would limit hours of operation other than restrictions on the use of alter-
17 native fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year
18 life for the plants for purposes of determining gross carbon dioxide emissions.

19 (C) "Carbon dioxide equivalent" means the global warming potential of a greenhouse gas re-
20 flected in units of carbon dioxide.

21 (D) "Fossil-fueled power plant" means a generating facility that produces electric power from
22 natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

23 (E) "Generating facility" means those energy facilities that are defined in ORS 469.300
24 [(11)(a)(A), (B) and (D)] **(12)(a)(A), (B) and (D)**.

25 (F) "Global warming potential" means the determination of the atmospheric warming resulting
26 from the release of a unit mass of a particular greenhouse gas in relation to the warming resulting
27 from the release of the equivalent mass of carbon dioxide.

28 (G) "Greenhouse gas" means carbon dioxide, methane and nitrous oxide.

29 (H) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the pro-
30 posed energy facility measured on a new and clean basis.

31 (I) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy
32 facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by
33 any combination of cogeneration or offsets.

34 (J) "New and clean basis" means the average carbon dioxide emissions rate per hour and net
35 electric power output of the energy facility, without degradation, as determined by a 100-hour test
36 at full power completed during the first 12 months of commercial operation of the energy facility,
37 with the results adjusted for the average annual site condition for temperature, barometric pressure
38 and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide
39 per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of
40 distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate
41 of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by
42 rule set carbon dioxide emissions rates for other fuels.

43 (K) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300
44 [(11)(a)(C)] **(12)(a)(C)** and (E) to (I).

45 (L) "Offset" means an action that will be implemented by the applicant, a third party or through

1 the qualified organization to avoid, sequester or displace emissions.

2 (M) "Offset funds" means the amount of funds determined by the council to satisfy the applicable
3 carbon dioxide emissions standard pursuant to paragraph [(c)(C)] (d)(C) of this subsection.

4 (N) "Qualified organization" means an entity that:

5 (i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as
6 amended and in effect on December 31, 1996;

7 (ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do
8 business in the State of Oregon;

9 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to
10 this section are used for offsets that require that decisions on the use of the offset funds are made
11 by a decision-making body composed of seven voting members of which three are appointed by the
12 council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environ-
13 mental nonprofit organization named by the body, and one is appointed by the applicants for site
14 certificates that are subject to paragraph [(d)] (e) of this subsection and the holders of such site
15 certificates, and that require nonvoting membership on the body for holders of site certificates that
16 have provided funds not yet disbursed under paragraph [(d)(A)] (e)(A) of this subsection;

17 (iv) Has made available on an annual basis, beginning after the first year of operation, a signed
18 opinion of an independent certified public accountant stating that the qualified organization's use
19 of funds pursuant to this statute conforms with generally accepted accounting procedures except
20 that the qualified organization shall have one year to conform with generally accepted accounting
21 principles in the event of a nonconforming audit;

22 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least
23 60 percent of the offset funds to implement offsets within two years after the commencement of
24 construction of the facility; and

25 (vi) Has to the extent applicable, except for good cause, complied with paragraph [(d)(A)(i)]
26 (e)(A)(i) of this subsection.

27 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and
28 rules for which the decision on compliance has been delegated by the federal government to a state
29 agency other than the council, the facility complies with all other Oregon statutes and administra-
30 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-
31 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative
32 rules, other than those involving federally delegated programs, would result in conflicting conditions
33 in the site certificate, the council may resolve the conflict consistent with the public interest. A
34 resolution may not result in the waiver of any applicable state statute.

35 (4) The facility complies with the statewide planning goals adopted by the Land Conservation
36 and Development Commission.

37 **SECTION 4.** ORS 469.504 is amended to read:

38 469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals
39 under ORS 469.503 (4) if:

40 (a) The facility has received local land use approval under the acknowledged comprehensive
41 plan and land use regulations of the affected local government; or

42 (b) The Energy Facility Siting Council determines that:

43 (A) The facility complies with applicable substantive criteria from the affected local
44 government's acknowledged comprehensive plan and land use regulations that are required by the
45 statewide planning goals and in effect on the date the application is submitted, and with any Land

1 Conservation and Development Commission administrative rules and goals and any land use statutes
2 that apply directly to the facility under ORS 197.646;

3 (B) For an energy facility or a related or supporting facility that must be evaluated against the
4 applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility
5 does not comply with one or more of the applicable substantive criteria but does otherwise comply
6 with the applicable statewide planning goals, or that an exception to any applicable statewide
7 planning goal is justified under subsection (2) of this section; or

8 (C) For a facility that the council elects to evaluate against the statewide planning goals pur-
9 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-
10 wide planning goals or that an exception to any applicable statewide planning goal is justified under
11 subsection (2) of this section.

12 (2) The council may find goal compliance for a facility that does not otherwise comply with one
13 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding
14 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process
15 or any rules of the Land Conservation and Development Commission pertaining to an exception
16 process goal, the council may take an exception to a goal if the council finds:

17 (a) The land subject to the exception is physically developed to the extent that the land is no
18 longer available for uses allowed by the applicable goal;

19 (b) The land subject to the exception is irrevocably committed as described by the rules of the
20 Land Conservation and Development Commission to uses not allowed by the applicable goal because
21 existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-
22 ticable; or

23 (c) The following standards are met:

24 (A) Reasons justify why the state policy embodied in the applicable goal should not apply;

25 (B) The significant environmental, economic, social and energy consequences anticipated as a
26 result of the proposed facility have been identified and adverse impacts will be mitigated in ac-
27 cordance with rules of the council applicable to the siting of the proposed facility; and

28 (C) The proposed facility is compatible with other adjacent uses or will be made compatible
29 through measures designed to reduce adverse impacts.

30 (3) If compliance with applicable substantive local criteria and applicable statutes and state
31 administrative rules would result in conflicting conditions in the site certificate or amended site
32 certificate, the council shall resolve the conflict consistent with the public interest. A resolution
33 may not result in a waiver of any applicable state statute.

34 (4) An applicant for a site certificate shall elect whether to demonstrate compliance with the
35 statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the
36 election on or before the date specified by the council by rule.

37 (5) Upon request by the State Department of Energy, the special advisory group established
38 under ORS 469.480 shall recommend to the council, within the time stated in the request, the ap-
39 plicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group
40 does not recommend applicable substantive criteria within the time established in the department's
41 request, the council may either determine and apply the applicable substantive criteria under sub-
42 section (1)(b) of this section or determine compliance with the statewide planning goals under sub-
43 section (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable
44 substantive criteria for an energy facility described in ORS 469.300 or a related or supporting fa-
45 cility that does not pass through more than one local government jurisdiction or more than three

1 zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 [(11)(a)(C)] **(12)(a)(C)** to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

10 (a) The number of jurisdictions and zones in question;

11 (b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

12 (c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

13 (6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

14 (7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

15 (8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

16 (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

17 **SECTION 5.** ORS 498.502 is amended to read:

18 498.502. (1) Subject to and consistent with the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and notwithstanding any provision of ORS 496.171 to 496.182:

19 (a) If a person applies for a permit, license, authorization or other form of permission required by law from a state agency for a proposed action that may affect core area habitat of sage grouse, the person may file with the State Department of Fish and Wildlife, at any time before or after the commencement of the relevant permitting, licensing, authorization or other form of permission process, a report that uses the best scientific and commercial data available to provide a description of the proposed action and its possible effects on the habitat.

20 (b) The report described in this section must describe the core area habitat of sage grouse affected by the proposed action, specify whether the habitat is essential and irreplaceable and provide proposals for off-site mitigation or a mitigation bank.

21 (c)(A) Within 60 days after the filing of the report described in this section, the department shall evaluate whether the proposals specified in the report result in a net loss of either the quality or quantity of sage grouse habitat and provide a net benefit to the quality or quantity of sage grouse

1 habitat.

2 (B)(i) If the department concludes that the proposals specified in the report do not result in a
 3 net loss of either the quality or quantity of sage grouse habitat and do provide a net benefit to the
 4 quality or quantity of sage grouse habitat, the department shall issue an order finding that the core
 5 area habitat of sage grouse affected by the proposed action is not irreplaceable. The department
 6 may not thereafter reverse or modify the order except pursuant to a judgment of a court.

7 (ii) If the department concludes that the proposals specified in the report result in a net loss
 8 of either the quality or quantity of sage grouse habitat and do not provide a net benefit to the
 9 quality or quantity of sage grouse habitat, a person affected by the action may request a contested
 10 case hearing before the State Fish and Wildlife Commission, to be conducted as provided in ORS
 11 chapter 183.

12 (2) The provisions of this section apply to a site certificate for an energy facility described in
 13 ORS 469.300 [(11)(a)(F)] **(12)(a)(F)**, but do not apply to a site certificate for any other facility under
 14 the provisions of ORS 469.300 to 469.563.

15 (3) The commission may adopt rules to carry out the provisions of this section.

16 **SECTION 6.** ORS 469.373 is amended to read:

17 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
 18 an applicant may apply under the provisions of this section for expedited review of an application
 19 for a site certificate for an energy facility if the energy facility:

20 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
 21 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
 22 power generation;

23 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
 24 hensive plan, land use regulation or federal land use plan, and is located:

25 (A) At or adjacent to an existing energy facility; or

26 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and

27 (ii) In an area currently zoned or designated for industrial use;

28 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new
 29 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;

30 or

31 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in
 32 the locating of associated transmission lines or new natural gas pipelines outside of existing rights
 33 of way;

34 (d) Requires no new water right or water right transfer;

35 (e) Provides funds to a qualified organization in an amount determined by the council to be
 36 sufficient to produce any required reduction in emissions as specified in ORS 469.503 [(2)(c)(C)]
 37 **(2)(d)(C)** and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced
 38 by the energy facility for the life of the energy facility; and

39 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing
 40 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment
 41 permit, if needed, within the expedited review process time frame and has written confirmation from
 42 the wastewater facility permit holder that the additional wastewater load will be accommodated by
 43 the facility without resulting in a significant thermal increase in the facility effluent or without re-
 44 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System
 45 permit;

1 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
 2 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-
 3 idence from the municipal corporation that:

4 (i) The municipal corporation has included, or intends to include, the process wastewater load
 5 from the energy facility in an application for a National Pollutant Discharge Elimination System
 6 permit; and

7 (ii) All conditions required of the energy facility to allow the discharge of process wastewater
 8 from the energy facility will be satisfied; or

9 (C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-
 10 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-
 11 charge can likely be permitted within the expedited review process time frame and that the
 12 discharge will not require:

13 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water
 14 general permit for construction activities; or

15 (ii) A change in any effluent limit or discharge location under an existing National Pollutant
 16 Discharge Elimination System or water pollution control facility permit.

17 (2) An applicant seeking expedited review under this section shall submit documentation to the
 18 State Department of Energy, prior to the submission of an application for a site certificate, that
 19 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
 20 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
 21 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

22 (3) If the department determines that the energy facility preliminarily qualifies for expedited
 23 review, the applicant may submit an application for expedited review. Within 30 days after the date
 24 that the application for expedited review is submitted, the department shall determine whether the
 25 application is complete. If the department determines that the application is complete, the applica-
 26 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-
 27 mination. If the department determines that the application is not complete, the department shall
 28 notify the applicant of the deficiencies in the application and shall deem the application filed on the
 29 date that the department determines that the application is complete. The department or the
 30 council may request additional information from the applicant at any time.

31 (4) The State Department of Energy shall send a copy of a filed application to the Department
 32 of Environmental Quality, the Water Resources Department, the State Department of Fish and
 33 Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agri-
 34 culture, the Department of Land Conservation and Development, the Public Utility Commission and
 35 any other state agency, city, county or political subdivision of the state that has regulatory or ad-
 36 visory responsibility with respect to the proposed energy facility. The State Department of Energy
 37 shall send with the copy of the filed application a notice specifying that:

38 (a) In the event the council issues a site certificate for the energy facility, the site certificate
 39 will bind the state and all counties, cities and political subdivisions in the state as to the approval
 40 of the site, the construction of the energy facility and the operation of the energy facility, and that
 41 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site
 42 certificate must be issued as required by ORS 469.401 (3); and

43 (b) The comments and recommendations of state agencies, counties, cities and political subdi-
 44 visions concerning whether the proposed energy facility complies with any statute, rule or local
 45 ordinance that the state agency, county, city or political subdivision would normally administer in

1 determining whether a permit, license or certificate required for the construction or operation of the
 2 energy facility should be approved will be considered only if the comments and recommendations
 3 are received by the department within a reasonable time after the date the application and notice
 4 of the application are sent by the department.

5 (5) Within 90 days after the date that the application was filed, the department shall issue a
 6 draft proposed order setting forth:

7 (a) A description of the proposed energy facility;

8 (b) A list of the permits, licenses and certificates that are addressed in the application and that
 9 are required for the construction or operation of the proposed energy facility;

10 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-
 11 proval of any permit, license or certificate addressed in the application and that are required for the
 12 construction or operation of the proposed energy facility; and

13 (d) Proposed findings specifying how the proposed energy facility complies with the applicable
 14 standards and criteria for approval of a site certificate.

15 (6) The council shall review the application for site certification in the manner set forth in
 16 subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council
 17 determines that the facility, with any required conditions to the site certificate, will comply with:

18 (a) The requirements for expedited review as specified in this section;

19 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and
 20 (L) to (o);

21 (c) The requirements of ORS 469.503 (3); and

22 (d) The requirements of ORS 469.504 (1)(b).

23 (7) Following submission of an application for a site certificate, the council shall hold a public
 24 informational meeting on the application. Following the issuance of the proposed order, the council
 25 shall hold at least one public hearing on the application. The public hearing shall be held in the area
 26 affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior
 27 to the hearing. The notice shall comply with the notice requirements of ORS 197.797 (2) and shall
 28 include, but need not be limited to, the following:

29 (a) A description of the energy facility and the general location of the energy facility;

30 (b) The name of a department representative to contact and the telephone number at which
 31 people may obtain additional information;

32 (c) A statement that copies of the application and proposed order are available for inspection
 33 at no cost and will be provided at reasonable cost; and

34 (d) A statement that the record for public comment on the application will close at the conclu-
 35 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
 36 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
 37 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the
 38 council's decision.

39 (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present
 40 additional written evidence, arguments or testimony regarding the application. In the alternative,
 41 prior to the conclusion of the hearing, the applicant may request a contested case hearing on the
 42 application. If the applicant requests an opportunity to present written evidence, arguments or tes-
 43 timony, the council shall leave the record open for that purpose only for a period not to exceed 14
 44 days after the date of the hearing. Following the close of the record, the department shall prepare
 45 a draft final order for the council. If the applicant requests a contested case hearing, the council

1 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
2 quest for a contested case hearing is granted, subsections (9) to (11) of this section do not apply,
3 and the application shall be considered under the same contested case procedures used for a non-
4 expedited application for a site certificate.

5 (9) The council shall make its decision based on the record and the draft final order prepared
6 by the department. The council shall, within six months of the date that the application is deemed
7 filed:

8 (a) Grant the application;

9 (b) Grant the application with conditions;

10 (c) Deny the application; or

11 (d) Return the application to the site certification process required by ORS 469.320.

12 (10) If the application is granted, the council shall issue a site certificate pursuant to ORS
13 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
14 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
15 application based on those standards.

16 (11) Judicial review of the approval or rejection of a site certificate by the council under this
17 section shall be as provided in ORS 469.403.

18 **SECTION 7.** ORS 469.409 is amended to read:

19 469.409. Any site certificate holder that is required by its site certificate or by law to demon-
20 strate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions
21 standard applicable to the type of facility subject to the site certificate before beginning con-
22 struction. Such a demonstration shall be made as an amendment to the site certificate.
23 Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds pursuant to
24 ORS 469.503 [(2)(c)(A)] **(2)(d)(A)** or (C), or both, the Energy Facility Siting Council shall not conduct
25 a contested case hearing on such amendment and the council's order shall not be subject to judicial
26 review. Any dispute about the site certificate holder's demonstration of compliance with the appli-
27 cable carbon dioxide emissions standard shall be settled through binding arbitration.

28
29 **CAPTIONS**

30
31 **SECTION 8.** **The unit captions used in this 2024 Act are provided only for the convenience**
32 **of the reader and do not become part of the statutory law of this state or express any leg-**
33 **islative intent in the enactment of this 2024 Act.**

34
35 **EFFECTIVE DATE**

36
37 **SECTION 9.** **This 2024 Act takes effect on the 91st day after the date on which the 2024**
38 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**