

LC 286
2026 Regular Session
1/9/26 (CPA/ps)

D R A F T

SUMMARY

Digest: Creates an exception to needing a site certificate from EFSC. (Flesch Readability Score: 61.3).

Exempts an energy facility from needing a site certificate from the Energy Facility Siting Council if the energy facility produces power from a renewable energy source, qualifies for certain federal renewable energy tax credits and construction begins on or before December 31, 2028.

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

1 A BILL FOR AN ACT

2 Relating to the siting of renewable energy facilities; amending ORS 469.320;
3 and prescribing an effective date.

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

5 SECTION 1. ORS 469.320 is amended to read:

6 469.320. (1) Except as provided in subsections (2) and (5) of this section,
7 no facility shall be constructed or expanded unless a site certificate has been
8 issued for the site thereof in the manner provided in ORS 469.300 to 469.563,
9 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or
10 operated except in conformity with the requirements of ORS 469.300 to
11 469.563, 469.590 to 469.619, 469.930 and 469.992.

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

13 (a) An energy facility for which no site certificate has been issued that,
14 on August 2, 1993, had operable electric generating equipment for a modifi-
15 cation that uses the same fuel type and increases electric generating capac-
16 ity, if:

17 (A) The site is not enlarged; and

18 (B) The ability of the energy facility to use fuel for electricity production

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 under peak steady state operating conditions is not more than 200 million
2 Btu per hour greater than it was on August 2, 1993, or the energy facility
3 expansion is called for in the short-term plan of action of an energy resource
4 plan that has been acknowledged by the Public Utility Commission of
5 Oregon.

6 (b) Construction or expansion of any interstate natural gas pipeline or
7 associated underground natural gas storage facility authorized by and sub-
8 ject to the continuing regulation of the Federal Energy Regulatory Com-
9 mission or successor agency.

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

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

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

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

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

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

22 (d) Temporary storage, at the site of a nuclear-fueled thermal power plant
23 for which a site certificate has been issued by the State of Oregon, of ra-
24 dioactive waste from the plant.

25 (e) An energy facility as defined in ORS 469.300 (12)(a)(G), if the plant
26 also produces a secondary fuel used on site for the production of heat or
27 electricity, if the output of the primary fuel is less than six billion Btu of
28 heat a day.

29 (f) An energy facility as defined in ORS 469.300 (12)(a)(G), if the facility:

30 (A) Exclusively uses biomass, including but not limited to grain, whey,
31 potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source

1 of material for conversion to a liquid fuel;

2 (B) Has received local land use approval under the applicable acknowledg-
3 ed comprehensive plan and land use regulations of the affected local
4 government and the facility complies with any statewide planning goals or
5 rules of the Land Conservation and Development Commission that are di-
6 rectly applicable to the facility;

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

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

13 (E) Emits less than 118 pounds of carbon dioxide per million Btu from
14 fossil fuel used for conversion energy.

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

17 (A) The facility has received local land use approval under the applicable
18 acknowledged comprehensive plan and land use regulations of the affected
19 local government and the facility complies with all statewide planning goals
20 and applicable rules of the Land Conservation and Development Commission;

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

27 (C) The standby generators are:

28 (i) Electrically incapable of being interconnected to the transmission grid.
29 For an applicant that proposes to provide the physical facilities for the in-
30 stallation of standby generators under this sub subparagraph, the require-
31 ment of this sub subparagraph may be met by agreeing to require such a term

1 in the lease contract for the facility; or
2 (ii) Electrically capable of being interconnected to the grid but are dis-
3 patched to the grid by a local transmission and distribution grid operator
4 or balancing authority to support grid reliability, are operated consistent
5 with 40 C.F.R. 63.6640(f), as in effect on March 27, 2024, and are exclusively
6 using renewable fuels, including renewable diesel, renewable natural gas or
7 renewable hydrogen, if such fuels are available and if their use does not vi-
8 olate the warranty or certification of the generator.

9 **(h) An energy facility if:**

10 **(A) The facility produces power exclusively from one or more of the**
11 **following:**

12 **(i) Solar photovoltaic or thermal energy;**
13 **(ii) Wind energy;**
14 **(iii) Geothermal energy; or**
15 **(iv) Marine energy;**

16 **(B) On or before December 31, 2028, the developer of the facility:**

17 **(i) Submits a land use application to construct or operate the fa-**
18 **cility to, and receives approval from, the local government within**
19 **whose jurisdiction the facility is proposed to be located; and**

20 **(ii) Provides a written or electronic notification to the local gov-**
21 **ernment, and a copy of the notification to the Energy Facility Siting**
22 **Council, that:**

23 **(I) Confirms that construction of the facility has begun such that**
24 **the facility qualifies for a tax credit authorized under section 45, 45Y,**
25 **48 or 48E of the Internal Revenue Code;**

26 **(II) Identifies the applicant and facility;**

27 **(III) Identifies the applicable federal tax credits; and**

28 **(IV) Includes a brief description of actions taken to begin con-**
29 **struction, within the meaning of the applicable notices, regulations**
30 **or rulings of the United States Department of the Treasury or Internal**
31 **Revenue Service; and**

1 **(C) Construction or operation of the facility is substantially con-**
2 **sistent with the approved application or permit.**

3 (3) The Energy Facility Siting Council may review and, if necessary, re-
4 vise the fuel chargeable to power heat rate value set forth in subsection
5 (2)(c)(B) of this section. In making its determination, the council shall ensure
6 that the fuel chargeable to power heat rate value for facilities set forth in
7 subsection (2)(c)(B) of this section remains significantly lower than the fuel
8 chargeable to power heat rate value for the best available, commercially vi-
9 able thermal power plant technology at the time of the revision.

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

15 (B) The council may not require a person who operates or proposes to
16 construct or enlarge an energy facility to request that the council determine
17 whether the proposed facility qualifies for exemption under subsection (2)(g)
18 of this section.

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

25 (5) Notwithstanding subsection (1) of this section, a separate site certif-
26 icate shall not be required for:

27 (a) Transmission lines, battery energy storage systems, storage facilities,
28 pipelines or similar related or supporting facilities, if such related or sup-
29 porting facilities are addressed in and are subject to a site certificate for
30 another energy facility;

31 (b) Expansion within the site or within the energy generation area of a

1 facility for which a site certificate has been issued, if the existing site cer-
2 tificate has been amended to authorize expansion; or

3 (c) Expansion, either within the site or outside the site, of an existing
4 council certified surface facility related to an underground gas storage res-
5 ervoir, if the existing site certificate is amended to authorize expansion.

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

12 (7) As used in this section:

13 (a) "Standby generation facility" means an electric power generating fa-
14 cility, including standby generators and the physical structures necessary to
15 install and connect standby generators, that provides temporary electric
16 power:

17 (A) In the event of a power outage and that is electrically incapable of
18 being interconnected with the transmission grid; or

19 (B) Consistent with 40 C.F.R. 63.6640(f), as in effect on March 27, 2024.

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

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

24 (8)(a) If the developer of a facility elects, or the governing body of the
25 local government after consulting with the developer elects, to defer regula-
26 tory authority to the Energy Facility Siting Council, the developer of a fa-
27 cility shall obtain a site certificate, in the manner provided in ORS 469.300
28 to 469.563, 469.590 to 469.619, 469.930 and 469.992, for a facility that, not-
29 withstanding the definition of "energy facility" in ORS 469.300, is:

30 (A) An electric power generating plant with an average electric generat-
31 ing capacity of less than 100 megawatts produced from wind energy at a

1 single energy facility or within a single energy generation area;

2 (B) An associated transmission line;

3 (C) A battery energy storage system; or

4 (D) A solar photovoltaic power generation facility that is not an energy

5 facility as defined in ORS 469.300 (12)(a)(D).

6 (b) An election by a developer or a local government under this sub-

7 section is final.

8 (c) An election by a local government under this subsection is not a land

9 use decision as defined in ORS 197.015.

10 (d) A local government may not make an election under this subsection

11 after a permit application has been submitted under ORS 215.416 or 227.175.

12 **SECTION 2. This 2026 Act takes effect on the 91st day after the date**

13 **on which the 2026 regular session of the Eighty-third Legislative As-**

14 **sembly adjourns sine die.**

15 _____