House Bill 4078

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Energy, Environment and Water)

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.**

Authorizes local government to conditionally approve siting of photovoltaic solar energy facility when site certificate is not required and facility is on farmland that is not high-value farmland but is within area zoned for exclusive farm use.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to solar energy generation; creating new provisions; amending ORS 469.300; and declaring an emergency.

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

SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS chapter 215.

SECTION 2. (1) If a photovoltaic solar energy facility does not require a site certificate, as defined in ORS 469.300, the governing body of a county, or its designee, may conditionally approve under ORS 215.213 (2)(g) or 215.283 (2)(g) the siting of the photovoltaic solar energy facility on farmland that is less than two miles from available transmission or distribution lines and that contains soils determined under the Agricultural Capability Classification System in use by the Natural Resources Conservation Service of the United States Department of Agriculture to be:

(a) Predominantly in capability classes VI to VIII, if the farmland has not been irrigated for crop production for more than one of the five calendar years before installation of the proposed facility is completed; or

(b) Predominantly in capability class IV or V, if the county or its designee finds that the proposed site is not reasonably capable of supporting commercial agricultural crop production for reasons including, but not limited to, poor soil quality, rocks and inability to obtain necessary irrigation water.

(2) When a photovoltaic solar energy facility is sited pursuant to subsection (1) of this section, an exception under ORS 197.732 to a statewide land use planning goal relating to agricultural lands is not required.

(3) When a county approves an application under this section, the county shall incorporate in the terms of the approval, if necessary, a mitigation plan to:

(a) Offset adverse impacts on wildlife due to the proposed development of the photovoltaic solar energy facility; and

(b) Facilitate operation of the photovoltaic solar energy facility in compliance with state law and local ordinances and resolutions, if any, protecting fish and wildlife resources, including habitat required to sustain local or migratory fish or wildlife populations.

(4) An applicant seeking conditional approval under this section of the siting of a

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.

photovoltaic solar energy facility shall consult with the State Department of Fish and Wildlife to develop the mitigation plan described in subsection (3) of this section.

(5) If the application is approved by the county, and the applicant and the department have:

(a) Agreed to a mitigation plan, the county shall incorporate the mitigation plan into the terms of the approval.

(b) Not agreed to a mitigation plan, the county shall establish a technical advisory committee to work with the applicant and the department to reach agreement.

(6) If the applicant and the department cannot agree to a mitigation plan through interaction with and advice from the technical advisory committee, the county shall determine the appropriate mitigation requirements, if any, and incorporate the mitigation requirements into the terms of the approval.

(7) A county shall consult with the Energy Facility Siting Council regarding jurisdiction over an application to site a photovoltaic solar energy facility submitted under this section if:

(a) The proposed site is within 1,320 feet of an existing or approved photovoltaic solar energy facility; and

(b) It appears to the county that existing, approved and proposed facilities in the aggregate constitute an energy generation area, as defined in ORS 469.300.

(8) If the council asserts jurisdiction over the application, the council may, to the extent practicable, consolidate all pending applications for consideration in a single review process.

SECTION 3. 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:

(a) For wind [*or solar*] energy facilities, 3.00;

(b) For photovoltaic solar energy facilities, 1.50;

[*(b)*] **(c)** For geothermal energy facilities, 1.11; or

[*(c)*] **(d)** For all other energy facilities, 1.00.

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

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

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

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

(9) "Director" means the Director of the State Department of Energy appointed under ORS 469.040.

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

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

(A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:

(i) Thermal power; or

(ii) Combustion turbine power plant.

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

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

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

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

(D) A solar collecting facility [*using*] **that employs heliostat technology, solar thermal technology or other reflective technology and that uses** more than 100 acres of land.

(E) A pipeline that is:

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

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

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

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

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

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

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

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

(I) A surface facility related to an underground gas storage reservoir that, at design injection

or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

(i) The underground storage reservoir;

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

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

(J) An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal, **photovoltaic** solar or wind energy at a single energy facility or within a single energy generation area.

(b) "Energy facility" does not include a hydroelectric facility.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

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

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

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

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

(28) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

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

(30) "Utility" includes:

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

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

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

(31) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been

issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government.

SECTION 4. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.