

House Bill 2109

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Land Conservation and Development)

SUMMARY

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

Modifies definition of "renewable energy facility" for purposes of county permitting process for certain energy facilities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to county land use permits to establish renewable energy facilities; amending ORS 215.446;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 215.446 is amended to read:

6 215.446. (1) As used in this section:

7 *[(a) "Renewable energy facility" means an electric power generating plant that generates electricity*
8 *from a renewable energy source.]*

9 *[(b) "Renewable energy facility" does not mean:]*

10 *[(A) An energy facility as defined in ORS 469.300;]*

11 *[(B) A solar photovoltaic power generation facility using:]*

12 *[(i) 100 acres or less located on high-value farmland as defined in ORS 195.300;]*

13 *[(ii) 100 acres or less located on land that is predominantly cultivated or that, if not cultivated, is*
14 *predominantly composed of soils that are in capability classes I to IV, as specified by the National*
15 *Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States*
16 *Department of Agriculture; or]*

17 *[(iii) 320 acres or less located on any other land;]*

18 *[(C) A net metering facility as defined in ORS 757.300; or]*

19 *[(D) A community solar project as defined in ORS 757.386.]*

20 **(a) "Average electric generating capacity" has the meaning given that term in ORS**
21 **469.300.**

22 **(b) "Energy generation area" has the meaning given that term in ORS 469.300.**

23 **(c) "Renewable energy facility" means:**

24 **(A) A solar photovoltaic power generation facility using:**

25 **(i) More than 100 acres but not more than 160 acres located on high-value farmland as**
26 **defined in ORS 195.300;**

27 **(ii) More than 100 acres but not more than 1,280 acres located on land that is predomi-**
28 **nantly cultivated or that, if not cultivated, is predominantly composed of soils that are in**
29 **capability classes I to IV, as specified by the National Cooperative Soil Survey operated by**
30 **the Natural Resources Conservation Service of the United States Department of Agriculture;**

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 **or**

2 **(iii) More than 320 acres but not more than 1,920 acres located on any other land.**

3 **(B) An electric power generating plant with an average electric generating capacity of**
 4 **at least 35 megawatts but less than 50 megawatts if the power is produced from geothermal**
 5 **or wind energy at a single plant or within a single energy generation area.**

6 (2) An application for a land use permit to establish a renewable energy facility must be made
 7 under ORS 215.416. An applicant must demonstrate to the satisfaction of the county that the
 8 renewable energy facility meets the standards under subsection (3) of this section.

9 (3) In order to issue a permit, the county shall require that the applicant:

10 (a)(A) Consult with the State Department of Fish and Wildlife, prior to submitting a final appli-
 11 cation to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is
 12 necessary;

13 (B) Conduct a habitat assessment of the proposed development site;

14 (C) Develop a mitigation plan to address significant fish and wildlife habitat impacts consistent
 15 with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes
 16 of implementing ORS 496.012; and

17 (D) Follow administrative rules adopted by the State Fish and Wildlife Commission and rules
 18 adopted by the Land Conservation and Development Commission to implement the Oregon Sage-
 19 Grouse Action Plan and Executive Order 15-18.

20 (b) Demonstrate that the construction and operation of the renewable energy facility, taking into
 21 account mitigation, will not result in significant adverse impacts to historic, cultural and
 22 archaeological resources that are:

23 (A) Listed on the National Register of Historic Places under the National Historic Preservation
 24 Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

25 (B) Inventoried in a local comprehensive plan; or

26 (C) Evaluated as a significant or important archaeological object or archaeological site, as those
 27 terms are defined in ORS 358.905.

28 (c) Demonstrate that the site for a renewable energy facility, taking into account mitigation, can
 29 be restored adequately to a useful, nonhazardous condition following permanent cessation of con-
 30 struction or operation of the facility and that the applicant has a reasonable likelihood of obtaining
 31 financial assurances in a form and amount satisfactory to the county to secure restoration of the
 32 site to a useful, nonhazardous condition.

33 (d) Meet the general and specific standards for a renewable energy facility adopted by the En-
 34 ergy Facility Siting Council under ORS 469.470 (2) and 469.501 that the county determines are ap-
 35 plicable.

36 (e) Provide the financial assurances described in paragraph (c) of this subsection in the form and
 37 at the time specified by the county.

38 (4) Upon receipt of a reasonable cost estimate from the state agency or tribe, the applicant and
 39 county may jointly enter into a cost reimbursement agreement administered by the county with:

40 (a) The State Department of Fish and Wildlife to receive comments under subsection (3)(a) of
 41 this section.

42 (b) The State Historic Preservation Officer or any affected federally recognized Indian tribe to
 43 receive comments under subsection (3)(b) of this section.

44 (c) The State Department of Energy to receive comments under subsection (3)(c) and (d) of this
 45 section as well as comments regarding other matters as the county may require.

1 (5) A county that receives an application for a permit under this section shall, upon receipt of
2 the application, provide notice to persons listed in subsection (6) of this section. The notice must
3 include, at a minimum:

4 (a) A description of the proposed renewable energy facility;

5 (b) A description of the lots or parcels subject to the permit application;

6 (c) The dates, times and locations where public comments or public testimony on the permit
7 application can be submitted; and

8 (d) The contact information for the governing body of the county and the applicant.

9 (6) The notice required under subsection (5) of this section must be delivered to:

10 (a) The State Department of Fish and Wildlife;

11 (b) The State Department of Energy;

12 (c) The State Historic Preservation Officer;

13 (d) The Oregon Department of Aviation;

14 (e) The United States Department of Defense; and

15 (f) Federally recognized Indian tribes that may be affected by the application.

16 **SECTION 2. This 2021 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
18 **on its passage.**

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