HB 3180-1
(LC 2831)
2/16/23 (RLM/ps)

Requested by Representative HELM

PROPOSED AMENDMENTS TO
HOUSE BILL 3180

In line 3 of the printed bill, after "facilities" insert "creating new provisions; and amending ORS 215.446 and 469.300".

Delete lines 5 through 10 and insert:

"SECTION 1. ORS 215.446 is amended to read:

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

"**(a) 'Arable land' means land, except for constrained land, that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture.**

"[*(a)*] **(b)** 'Average electric generating capacity' has the meaning given that term in ORS 469.300.

"**(c) 'Constrained land' means land that has, at the time of the final application under this section, limited actual and legal access to sufficient available water to make farm use of the land economical, as described in subsection (7) of this section.**

"[*(b)*] **(d)** 'Energy generation area' has the meaning given that term in ORS 469.300.

"**(e) 'High-value farmland' means land, except for constrained land, that is high-value farmland as defined in ORS 195.300.**

"[*(c)*] **(f)** 'Renewable energy facility' means:

"(A) A solar photovoltaic power generation facility using:

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

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

"(iii) More than 320 acres but not more than 1,920 acres located on any other land[.]**; or**

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

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

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

"(a)(A) Consult with the State Department of Fish and Wildlife, prior to submitting a final application to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is necessary;

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

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

"(D) Follow administrative rules adopted by the State Fish and Wildlife

Commission and rules adopted by the Land Conservation and Development Commission to implement the Oregon Sage-Grouse Action Plan and Executive Order 15-18.

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

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

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

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

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

"(d) Meet the general and specific standards for a renewable energy facility adopted by the Energy Facility Siting Council under ORS 469.470 (2) and 469.501 that the county determines are applicable.

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

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

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

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

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

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

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

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

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

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

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

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

"(b) The State Department of Energy;

"(c) The State Historic Preservation Officer;

"(d) The Oregon Department of Aviation;

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

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

"**(7) Land qualifies as constrained lands due to lack of sufficient economically available water only if the land:**

"(a) Is east of the crest of the Cascade Mountains and is farmed only as dry wheat and:

"(A) Is not irrigated; or

"(B) For which water rights have never been available or have been permanently transferred for use elsewhere;

"(b) Is in a water basin where:

"(A) There is a moratorium on the issuance of new water permits;

"(B) No new water rights are available; or

"(C) Water permits have not been issued in the previous _____ years;

"(c) Is in an area of the state designated as:

"(A) A critical ground water area under ORS 537.730; or

"(B) A restrictively classified ground water limited area or a serious water management problem area by the Water Resources Commission;

"(d) Is land to which water rights that are appurtenant are sufficiently junior in priority that current, recent and projected available water flows are insufficient for reliable farm use;

"(e) Is land for which the historic source of water has been sufficiently altered due to natural or policy factors outside of the landowner's control, including infrastructure removal, climate change, chronically low reservoirs or a reduction in water table levels, such that accessing the water source requires:

"(A) Full replacement of the pumping or other infrastructure necessary to access the water source; or

"(B) New investments in pumping or other infrastructure to access the water source that are equal to or exceed 60 percent of the overall value of the infrastructure;

"(f) Is land for which the water right certificate that is held has been, or is subject to an agreement to be, voluntarily retired or sold to the state for the benefit of the remaining water right holders or ecosystems in the applicable basin;

"(g) Can be demonstrated to unlikely ever have water beneficially or reliably available;

"(h) Was previously irrigated and irrigation efforts have been abandoned or relocated; or

"(i) Is located in an irrigation district but that either:

"(A) Cannot receive a water distribution from the irrigation dis-

trict; or

"(B) Has not been and will not be cultivated under irrigation.

"(8) Except as provided in subsection (9) of this section, a county is not required to adopt an exception under ORS 197.732 to a statewide land use planning goal relating to agricultural land in order to authorize the establishment of a solar photovoltaic power generation facility allowed under this section if, at the time of the final application under this section:

"(a) The facility will not cause the total acreage of any classification type covered by facilities to exceed three percent of the total acreage of the classification type within the county, based on the total acreage of facilities that are constructed or that have obtained land use approval and building permits; and

"(b)(A) The facility will be sited on land that is of low economic value for farm use and that:

"(i) Within the most recent five years, would not qualify under a farm income standard rule of the Land Conservation and Development Commission to allow a dwelling that is customarily provided in conjunction with farm use on a tract;

"(ii) Is in the lowest quartile of economic value in the county or counties where the land is located;

"(iii) Has earned no profits from farm use on the land in two of the previous five years; or

"(iv) Has been subject to a claim for crop revenue insurance in _____ out of the last _____ years; or

"(B) The facility will be sited on land that is, as measured from the center of the facility to the center of the right of way of a transmission line:

"(i) Within one mile of one or more transmission lines with a capacity of less than 34,500 volts;

"(ii) Within five miles of one or more transmission lines with a capacity of at least 34,500 volts and not more than 138,000 volts; or

"(iii) Within 15 miles of one or more transmission lines with a capacity of greater than 138,000 volts.

"(9) A county must apply rules requiring the adoption of an exception to a statewide land use planning goal relating to agricultural land under ORS 197.732 to authorize the establishment of a solar photovoltaic power generation facility under this section if:

"(a) The land qualifies as constrained land under subsection (7)(b) or (c) of this section and is currently irrigated; and

"(b) The facility will not result in the availability of water for other beneficial uses.

"SECTION 2. 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 ca-

pacity of the facility divided by one of the following factors:

"(a) For wind facilities, 3.00;

"(b) For geothermal energy facilities, 1.11; or

"(c) 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;

"(ii) Combustion turbine power plant; or

"(iii) Solar thermal 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;

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

"(iii) Associated transmission lines.

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

"(i) 160 acres located on high-value farmland as defined in ORS [*195.300*] **215.446**;

"(ii) 1,280 acres located on [*land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture*] **arable land, as defined in ORS 215.446**; or

"(iii) 1,920 acres located on any other 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 cur-

rent 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 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 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 50 megawatts or more if the power is produced from geothermal or wind energy at a single energy facility or within a single energy generation area.

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

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

"(A) Materials identified by the council by rule as presenting no signif-

icant danger to the public health and safety.

"(B) 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 3. Section 4 of this 2023 Act is added to and made a part of ORS 469.300 to 469.563.

"SECTION 4. Notwithstanding ORS 469.504 (2), the Energy Facility Siting Council is not required to adopt an exception to a statewide land use planning goal relating to agricultural land under ORS 197.732 for a solar photovoltaic power generation facility that is:

"(1) Described in ORS 469.300 (11)(a)(D);

"(2) Sited on land zoned for exclusive farm use; and

"(3) At the time of submission of the notice of intent under ORS 469.330, sited on land that:

"(a) Meets the definition of 'constrained lands' in ORS 215.446 and the criteria in ORS 215.446 (9)(b); or

"(b) Meets the criteria in ORS 215.446 (8).".
