

Requested by Representative HELM

**PROPOSED AMENDMENTS TO
HOUSE BILL 3180**

1 In line 3 of the printed bill, after “facilities” insert “; creating new pro-
2 visions; and amending ORS 215.446 and 469.300”.

3 Delete lines 5 through 10 and insert:

4 **“SECTION 1.** ORS 215.446 is amended to read:

5 “215.446. (1) As used in this section:

6 “(a) ‘Average electric generating capacity’ has the meaning given that
7 term in ORS 469.300.

8 “(b) ‘Energy generation area’ has the meaning given that term in ORS
9 469.300.

10 “(c) ‘Renewable energy facility’ means:

11 “(A) A solar photovoltaic power generation facility using:

12 “(i) More than 100 acres but not more than [160] **240** acres located on
13 high-value farmland as defined in ORS 195.300;

14 “(ii) More than 100 acres but not more than [1,280] **2,560** acres located
15 on land that is predominantly cultivated or that, if not cultivated, is pre-
16 dominantly composed of soils that are in capability classes I to IV, as spec-
17 ified by the National Cooperative Soil Survey operated by the Natural
18 Resources Conservation Service of the United States Department of Agri-
19 culture; or

20 “(iii) More than 320 acres but not more than [1,920] **3,840** acres located
21 on any other land.

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

5 “(2) An application for a land use permit to establish a renewable energy
6 facility must be made under ORS 215.416. An applicant must demonstrate to
7 the satisfaction of the county that the renewable energy facility meets the
8 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
11 submitting a final application to the county, regarding fish and wildlife
12 habitat impacts and any mitigation plan that is necessary;

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

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

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

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

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

27 “(B) Inventoried in a local comprehensive plan; or

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

30 “(c) Demonstrate that the site for a renewable energy facility, taking into

1 account mitigation, can be restored adequately to a useful, nonhazardous
2 condition following permanent cessation of construction or operation of the
3 facility and that the applicant has a reasonable likelihood of obtaining fi-
4 nancial assurances in a form and amount satisfactory to the county to secure
5 restoration of the site to a useful, nonhazardous condition.

6 “(d) Meet the general and specific standards for a renewable energy fa-
7 cility adopted by the Energy Facility Siting Council under ORS 469.470 (2)
8 and 469.501 that the county determines are applicable.

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

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

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

16 “(b) The State Historic Preservation Officer or any affected federally re-
17 cognized Indian tribe to receive comments under subsection (3)(b) of this
18 section.

19 “(c) The State Department of Energy to receive comments under sub-
20 section (3)(c) and (d) of this section as well as comments regarding other
21 matters as the county may require.

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

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

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

27 “(c) The dates, times and locations where public comments or public tes-
28 timony on the permit application can be submitted; and

29 “(d) The contact information for the governing body of the county and the
30 applicant.

1 “(6) The notice required under subsection (5) of this section must be de-
2 livered to:

3 “(a) The State Department of Fish and Wildlife;

4 “(b) The State Department of Energy;

5 “(c) The State Historic Preservation Officer;

6 “(d) The Oregon Department of Aviation;

7 “(e) The United States Department of Defense; and

8 “(f) Federally recognized Indian tribes that may be affected by the appli-
9 cation.

10 **“(7) A county is not required to adopt an exception under ORS**
11 **197.732 to a statewide land use planning goal relating to agricultural**
12 **land in order to authorize the establishment of a solar photovoltaic**
13 **power generation facility allowed under this section, if:**

14 **“(a) The facility will be sited in eastern Oregon as defined in ORS**
15 **321.700;**

16 **“(b) The acreage of the proposed facility, when added to all solar**
17 **photovoltaic power generation facilities that have been constructed or**
18 **that have obtained land use approvals and building permits after Jan-**
19 **uary 1, 2024, does not exceed five percent of the county’s lands zoned**
20 **for exclusive farm use;**

21 **“(c) The facility will be sited on land that is, as measured from the**
22 **center of the facility to the center of the right of way of a trans-**
23 **mission line:**

24 **“(A) Within five miles of one or more transmission lines with a**
25 **capacity of at least 115,000 volts and less than 230,000 volts; or**

26 **“(B) Within 10 miles of one or more transmission lines with a ca-**
27 **capacity of at least 230,000 volts; and**

28 **“(d) If the facility is on high-value farmland as defined in ORS**
29 **195.300 or land described in subsection (1)(c)(A)(ii) of this section, the**
30 **facility will be sited:**

1 **“(A) In Wasco, Sherman, Gilliam, Morrow or Umatilla County on**
2 **land that includes a majority of soils classified as nonirrigated soil**
3 **class III through VIII and at least 80 percent of the proposed facility**
4 **site boundary is at an elevation above 1,000 feet; or**

5 **“(B) On land that is not currently irrigated and does not have water**
6 **rights and that is within:**

7 **“(i) A moratorium on the issuance of new water permits;**

8 **“(ii) A critical ground water area under ORS 537.730; or**

9 **“(iii) A restrictively classified ground water limited area or a seri-**
10 **ous water management problem area as designated by the Water Re-**
11 **sources Commission.**

12 **“SECTION 2.** ORS 469.300 is amended to read:

13 **“469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and**
14 **469.992, unless the context requires otherwise:**

15 **“(1) ‘Applicant’ means any person who makes application for a site cer-**
16 **tificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619,**
17 **469.930 and 469.992.**

18 **“(2) ‘Application’ means a request for approval of a particular site or sites**
19 **for the construction and operation of an energy facility or the construction**
20 **and operation of an additional energy facility upon a site for which a cer-**
21 **tificate has already been issued, filed in accordance with the procedures es-**
22 **tablished pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and**
23 **469.992.**

24 **“(3) ‘Associated transmission lines’ means new transmission lines con-**
25 **structed to connect an energy facility to the first point of junction of such**
26 **transmission line or lines with either a power distribution system or an**
27 **interconnected primary transmission system or both or to the Northwest**
28 **Power Grid.**

29 **“(4) ‘Average electric generating capacity’ means the peak generating ca-**
30 **capacity of the facility divided by one of the following factors:**

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) ‘Combustion turbine power plant’ means a thermal power plant con-
5 sisting of one or more fuel-fired combustion turbines and any associated
6 waste heat combined cycle generators.

7 “(6) ‘Construction’ means work performed on a site, excluding surveying,
8 exploration or other activities to define or characterize the site, the cost of
9 which exceeds \$250,000.

10 “(7) ‘Council’ means the Energy Facility Siting Council established under
11 ORS 469.450.

12 “(8) ‘Department’ means the State Department of Energy created under
13 ORS 469.030.

14 “(9) ‘Director’ means the Director of the State Department of Energy ap-
15 pointed under ORS 469.040.

16 “(10) ‘Electric utility’ means persons, regulated electrical companies,
17 people’s utility districts, joint operating agencies, electric cooperatives,
18 municipalities or any combination thereof, engaged in or authorized to en-
19 gage in the business of generating, supplying, transmitting or distributing
20 electric energy.

21 “(11)(a) ‘Energy facility’ means any of the following:

22 “(A) An electric power generating plant with a nominal electric generat-
23 ing capacity of 25 megawatts 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
29 with a capacity of 230,000 volts or more to be constructed in more than one
30 city or county in this state, but excluding:

1 “(i) Lines proposed for construction entirely within 500 feet of an existing
2 corridor occupied by high voltage transmission lines with a capacity of
3 230,000 volts or more;

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

6 “(iii) Associated transmission lines.

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

8 “(i) [~~160~~] **240** acres located on high-value farmland as defined in ORS
9 195.300;

10 “(ii) [~~1,280~~] **2,560** acres located on land that is predominantly cultivated
11 or that, if not cultivated, is predominantly composed of soils that are in ca-
12 pability classes I to IV, as specified by the National Cooperative Soil Survey
13 operated by the Natural Resources Conservation Service of the United States
14 Department of Agriculture; or

15 “(iii) [~~1,920~~] **3,840** acres located on any other land.

16 “(E) A pipeline that is:

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

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

23 “(I) A pipeline proposed for construction of which less than five miles of
24 the pipeline is more than 50 feet from a public road, as defined in ORS
25 368.001; or

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

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

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

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

13 “(H) A storage facility for liquefied natural gas constructed after Sep-
14 tember 29, 1991, that is designed to hold at least 70,000 gallons.

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

20 “(i) The underground storage reservoir;

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

23 “(iii) An underground gas storage reservoir into which gas is injected
24 solely for testing or reservoir maintenance purposes or to facilitate the sec-
25 ondary recovery of oil or other hydrocarbons.

26 “(J) An electric power generating plant with an average electric gener-
27 ating capacity of 50 megawatts or more if the power is produced from
28 geothermal or wind energy at a single energy facility or within a single en-
29 ergy generation area.

30 “(b) ‘Energy facility’ does not include a hydroelectric facility or an energy

1 facility under paragraph (a)(A)(iii) or (D) of this subsection that is estab-
2 lished on the site of a decommissioned United States Air Force facility that
3 has adequate transmission capacity to serve the energy facility.

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

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

23 “(14) ‘Facility’ means an energy facility together with any related or
24 supporting facilities.

25 “(15) ‘Geothermal reservoir’ means an aquifer or aquifers containing a
26 common geothermal fluid.

27 “(16) ‘Local government’ means a city or county.

28 “(17) ‘Nominal electric generating capacity’ means the maximum net
29 electric power output of an energy facility based on the average temperature,
30 barometric pressure and relative humidity at the site during the times of the

1 year when the facility is intended to operate.

2 “(18) ‘Nuclear incident’ means any occurrence, including an extraordinary
3 nuclear occurrence, that results in bodily injury, sickness, disease, death,
4 loss of or damage to property or loss of use of property due to the radioac-
5 tive, toxic, explosive or other hazardous properties of source material, special
6 nuclear material or by-product material as those terms are defined in ORS
7 453.605.

8 “(19) ‘Nuclear installation’ means any power reactor, nuclear fuel fabri-
9 cation plant, nuclear fuel reprocessing plant, waste disposal facility for ra-
10 dioactive waste, and any facility handling that quantity of fissionable
11 materials sufficient to form a critical mass. ‘Nuclear installation’ does not
12 include any such facilities that are part of a thermal power plant.

13 “(20) ‘Nuclear power plant’ means an electrical or any other facility using
14 nuclear energy with a nominal electric generating capacity of 25 megawatts
15 or more, for generation and distribution of electricity, and associated trans-
16 mission lines.

17 “(21) ‘Person’ means an individual, partnership, joint venture, private or
18 public corporation, association, firm, public service company, political sub-
19 division, municipal corporation, government agency, people’s utility district,
20 or any other entity, public or private, however organized.

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

23 “(23)(a) ‘Radioactive waste’ includes all material which is discarded, un-
24 wanted or has no present lawful economic use, and contains mined or refined
25 naturally occurring isotopes, accelerator produced isotopes and by-product
26 material, source material or special nuclear material as those terms are de-
27 fined in ORS 453.605.

28 “(b) ‘Radioactive waste’ does not include:

29 “(A) Materials identified by the council by rule as presenting no signif-
30 icant danger to the public health and safety.

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

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

12 “(25) ‘Site’ means any proposed location of an energy facility and related
13 or supporting facilities.

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

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

26 “(28) ‘Transportation’ means the transport within the borders of the State
27 of Oregon of radioactive material destined for or derived from any location.

28 “(29) ‘Underground gas storage reservoir’ means any subsurface sand,
29 strata, formation, aquifer, cavern or void, whether natural or artificially
30 created, suitable for the injection, storage and withdrawal of natural gas or

1 other gaseous substances. ‘Underground gas storage reservoir’ includes a
2 pool as defined in ORS 520.005.

3 “(30) ‘Utility’ includes:

4 “(a) A person, a regulated electrical company, a people’s utility district,
5 a joint operating agency, an electric cooperative, municipality or any com-
6 bination thereof, engaged in or authorized to engage in the business of gen-
7 erating, transmitting or distributing electric energy;

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

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

12 “(31) ‘Waste disposal facility’ means a geographical site in or upon which
13 radioactive waste is held or placed but does not include a site at which ra-
14 dioactive waste used or generated pursuant to a license granted under ORS
15 453.635 is stored temporarily, a site of a thermal power plant used for the
16 temporary storage of radioactive waste from that plant for which a site cer-
17 tificate has been issued pursuant to this chapter or a site used for temporary
18 storage of radioactive waste from a reactor operated by a college, university
19 or graduate center for research purposes and not connected to the Northwest
20 Power Grid. As used in this subsection, ‘temporary storage’ includes storage
21 of radioactive waste on the site of a nuclear-fueled thermal power plant for
22 which a site certificate has been issued until a permanent storage site is
23 available by the federal government.

24 **“SECTION 3. Section 4 of this 2023 Act is added to and made a part**
25 **of ORS 469.300 to 469.563.**

26 **“SECTION 4. Notwithstanding ORS 469.504 (2), the Energy Facility**
27 **Siting Council may not require an applicant for an energy facility to**
28 **adopt an exception to a statewide land use planning goal relating to**
29 **agricultural uses under ORS 197.732 for a facility that is:**

30 **“(1) Defined in ORS 469.300 (11)(a)(D);**

1 **“(2) Sited on land zoned for exclusive farm use; and**
2 **“(3) At the time of submission of the notice of intent under ORS**
3 **469.330, sited on land that meets the criteria in ORS 215.446 (7).**
4 **“SECTION 5. Section 4 of this 2023 Act and the amendments to ORS**
5 **215.446 and 469.300 by sections 1 and 2 of this section apply to applica-**
6 **tions to develop an energy facility that were submitted before, on or**
7 **after the effective date of this 2023 Act for which an Energy Facility**
8 **Siting Council final order has not been rendered before January 1,**
9 **2024.”.**

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