A-Engrossed
House Bill 4031

Ordered by the House February 11
Including House Amendments dated February 11

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Climate, Energy, and Environment for Representative John Lively)

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. The statement includes a measure digest written in compliance with applicable readability standards.

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 **is placed in service on or before December 31, 2030, or a date allowed by exception and a local land use application for the facility is submitted** [*construction begins*] on or before December 31, 2028.

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

A BILL FOR AN ACT

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

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

SECTION 1. ORS 469.320 is amended to read:

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

(2) A site certificate is not required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

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

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

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.

and

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

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

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

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

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

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

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

(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

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

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

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

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

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

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

(C) The standby generators are:

(i) Electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators under this sub-subparagraph, the requirement of this sub-subparagraph may be met by agreeing to require such a term in the lease contract for the facility; or

(ii) Electrically capable of being interconnected to the grid but are dispatched to the grid by a local transmission and distribution grid operator or balancing authority to support grid reliability, are operated consistent with 40 C.F.R. 63.6640(f), as in effect on March 27, 2024, and are exclusively

using renewable fuels, including renewable diesel, renewable natural gas or renewable hydrogen, if such fuels are available and if their use does not violate the warranty or certification of the generator.

(h) An energy facility if:

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

(i) Solar photovoltaic or thermal energy;

(ii) Wind energy;

(iii) Geothermal energy; or

(iv) Marine energy;

(B) The developer of the facility:

(i) Submits, on or before December 31, 2028, a land use application to construct or operate the facility to, and receives approval from, the local government within whose jurisdiction the facility is proposed to be located; and

(ii) Provides a written or electronic notification to the local government, and a copy of the notification to the Energy Facility Siting Council, that:

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

(II) Identifies the applicant and facility;

(III) Identifies the applicable federal tax credits; and

(IV) Includes a brief description of actions taken to begin construction, within the meaning of the applicable notices, regulations or rulings of the United States Department of the Treasury or Internal Revenue Service; and

(C) The facility is placed in service:

(i) On or before December 31, 2030; or

(ii) If the facility is placed in service after December 31, 2030, on or before a date allowed by exception by the United States Department of the Treasury or Internal Revenue Service by which date the facility still qualifies for a tax credit under section 45, 45Y, 48 or 48E of the Internal Revenue Code.

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

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

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

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

cord established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

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

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

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

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

(7) As used in this section:

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

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

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

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

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

(8)(a) If the developer of a facility elects, or the governing body of the local government after consulting with the developer elects, to defer regulatory authority to the Energy Facility Siting Council, the developer of a facility shall obtain a site certificate, in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, for a facility that, notwithstanding the definition of "energy facility" in ORS 469.300, is:

(A) An electric power generating plant with an average electric generating capacity of less than 100 megawatts produced from wind energy at a single energy facility or within a single energy generation area;

(B) An associated transmission line;

(C) A battery energy storage system; or

(D) A solar photovoltaic power generation facility that is not an energy facility as defined in ORS 469.300 (12)(a)(D).

(b) An election by a developer or a local government under this subsection is final.

(c) An election by a local government under this subsection is not a land use decision as defined in ORS 197.015.

(d) A local government may not make an election under this subsection after a permit application has been submitted under ORS 215.416 or 227.175.

SECTION 2. This 2026 Act takes effect on the 91st day after the date on which the 2026 regular session of the Eighty-third Legislative Assembly adjourns sine die.