

House Bill 3165

Sponsored by Representative HOLVEY

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**.

Requires Energy Facility Siting Council to update carbon dioxide emissions standard for base load gas plants no less than once every two years.

Revises base monetary offset rate to \$21.91 per ton of carbon dioxide emissions.

Requires 100 percent of offset funds to be used for implementation of offsets.

Expands definition of "gross carbon dioxide emissions" to include upstream emissions.

A BILL FOR AN ACT

1
2 Relating to the carbon dioxide standard for energy facilities; creating new provisions; and amending
3 ORS 469.503.

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

5 **SECTION 1.** ORS 469.503 is amended to read:

6 469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
7 that the preponderance of the evidence on the record supports the following conclusions:

8 (1) The facility complies with the applicable standards adopted by the council pursuant to ORS
9 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or
10 interest protected by the applicable standards the facility does not meet.

11 (2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any
12 applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base
13 load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other
14 fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule
15 pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the
16 means by which an applicant may comply with the applicable standard.

17 (a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed
18 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon
19 dioxide emissions and net electric power output measured on a new and clean basis.
20 Notwithstanding the foregoing, the council [*may*] **shall** by rule modify the carbon dioxide emissions
21 standard for base load gas plants [*if the council finds that the most efficient stand-alone combined cy-*
22 *cle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and oper-*
23 *ating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating*
24 *value adjusted to ISO conditions*] **no less than once every two years**. In modifying the carbon
25 dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per
26 kilowatt hour of net electric output of [*such energy facility*] **the most efficient stand-alone com-**
27 **combined cycle, combustion turbine, natural gas-fired energy facility that is commercially dem-**
28 **onstrated and operating in the United States**, adjusted to ISO conditions, and reset the carbon
29 dioxide emissions standard at 17 percent below this rate.

30 (b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled

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 power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting
 2 or amending such carbon dioxide emissions standards, the council shall consider and balance at
 3 least the following principles, the findings on which shall be contained in the rulemaking record:

4 (A) Promote facility fuel efficiency;

5 (B) Promote efficiency in the resource mix;

6 (C) Reduce net carbon dioxide emissions;

7 (D) Promote cogeneration that reduces net carbon dioxide emissions;

8 (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding
 9 carbon dioxide emissions;

10 (F) Minimize transaction costs;

11 (G) Include an alternative process that separates decisions on the form and implementation of
 12 offsets from the final decision on granting a site certificate;

13 (H) Allow either the applicant or third parties to implement offsets;

14 (I) Be attainable and economically achievable for various types of power plants;

15 (J) Promote public participation in the selection and review of offsets;

16 (K) Promote prompt implementation of offset projects;

17 (L) Provide for monitoring and evaluation of the performance of offsets; and

18 (M) Promote reliability of the regional electric system.

19 (c) The council shall determine whether the applicable carbon dioxide emissions standard is met
 20 by first determining the gross carbon dioxide emissions that are reasonably likely to result from the
 21 operation of the proposed energy facility. Such determination shall be based on the proposed design
 22 of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted
 23 carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions
 24 reduction necessary to meet the applicable standard, the applicant may elect to use any of subpar-
 25 agraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the
 26 amount of carbon dioxide or other greenhouse gas emissions reduction that is reasonably likely to
 27 result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the
 28 applicable carbon dioxide emissions standard. For purposes of determining the net carbon dioxide
 29 emissions, the council shall by rule establish the global warming potential of each greenhouse gas
 30 based on a generally accepted scientific method, and convert any greenhouse gas emissions to a
 31 carbon dioxide equivalent. Unless otherwise provided by the council by rule, the global warming
 32 potential of methane is 23 times that of carbon dioxide, and the global warming potential of nitrous
 33 oxide is 296 times that of carbon dioxide. If the council or a court on judicial review concludes that
 34 the applicant has not demonstrated compliance with the applicable carbon dioxide emissions stand-
 35 ard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the ap-
 36 plicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any
 37 deficiency, the council or a court shall find compliance based on such agreement.

38 (A) The facility will sequentially produce electrical and thermal energy from the same fuel
 39 source, and the thermal energy will be used to displace another source of carbon dioxide emissions
 40 that would have otherwise continued to occur, in which case the council shall adopt site certificate
 41 conditions ensuring that the carbon dioxide emissions reduction will be achieved.

42 (B) The applicant or a third party will implement particular offsets, in which case the council
 43 may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall
 44 not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas
 45 emissions be achieved. The council shall determine the quantity of greenhouse gas emissions re-

1 duction that is reasonably likely to result from each of the proposed offsets based on the criteria in
 2 sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall
 3 not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas
 4 emissions reduction in another regulatory setting. In addition, the fact that an applicant or other
 5 parties involved with an offset may derive benefits from the offset other than the reduction of
 6 greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset.

7 (i) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction
 8 will be achieved by the offset;

9 (ii) The ability of the council to determine the actual quantity of greenhouse gas emissions re-
 10 duction resulting from the offset, taking into consideration any proposed measurement, monitoring
 11 and evaluation of mitigation measure performance; and

12 (iii) The extent to which the reduction of greenhouse gas emissions would occur in the absence
 13 of the offsets.

14 (C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to
 15 produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide
 16 emissions standard, in which case the funds shall be used as specified in paragraph (d) of this sub-
 17 section. Unless modified by the council as provided below, the payment of [57 cents] **\$21.91** shall be
 18 deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine
 19 the offset funds using the monetary offset rate and the level of emissions reduction required to meet
 20 the applicable standard. If a site certificate is approved based on this subparagraph, the council may
 21 not adjust the amount of such offset funds based on the actual performance of offsets. After three
 22 years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of
 23 [57 cents] **\$21.91** per ton of carbon dioxide emissions. Any change to the monetary offset rate shall
 24 be based on **either:**

25 (i) Empirical evidence of the cost of offsets and the council's finding that the standard will be
 26 economically achievable with the modified rate for natural gas-fired power plants[. *Following the*
 27 *initial three-year period, the council may increase or decrease the monetary offset rate no more than*
 28 *50 percent in any two-year period.*]; **or**

29 (ii) **The social cost of carbon as estimated by the Environmental Protection Agency using**
 30 **a three percent discount rate.**

31 (D) Any other means that the council adopts by rule for demonstrating compliance with any
 32 applicable carbon dioxide emissions standard.

33 (d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or
 34 in part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified organ-
 35 ization. The applicant may identify an organization that has applied for, but has not received, an
 36 exemption from federal income taxation, but the council may not find that the organization is a
 37 qualified organization unless the organization is exempt from federal taxation under section 501(c)(3)
 38 of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate
 39 holder shall provide a bond or comparable security in a form reasonably acceptable to the council
 40 to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this
 41 paragraph. Such security shall be provided by the date specified in the site certificate, which shall
 42 be no later than the commencement of construction of the facility. The site certificate shall require
 43 that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the
 44 council finds that no qualified organization exists, in which case the site certificate shall require
 45 that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

1 (A) The site certificate holder shall disburse the offset funds and any other funds required by
2 sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

3 (i) When the site certificate holder receives written notice from the qualified organization cer-
4 tifying that the qualified organization is contractually obligated to pay any funds to implement off-
5 sets using the offset funds, the site certificate holder shall make the requested amount available to
6 the qualified organization unless the total of the amount requested and any amounts previously re-
7 quested exceeds the offset funds, in which case only the remaining amount of the offset funds shall
8 be made available. The qualified organization shall use *[at least 80]* **100** percent of the offset funds
9 for contracts to implement offsets. The qualified organization shall assess offsets for their potential
10 to qualify in, generate credits in or reduce obligations in other regulatory settings. *[The qualified*
11 *organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and*
12 *enforcement of contracts to implement offsets.]*

13 (ii) At the request of the qualified organization and in addition to the offset funds, the site cer-
14 tificate holder shall pay the qualified organization an amount equal to 10 percent of the first
15 \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount
16 shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount
17 compensates the qualified organization for its costs of selecting offsets and contracting for the im-
18 plementation of offsets.

19 (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this sub-
20 paragraph shall have no obligation with regard to offsets, the offset funds or the funds required by
21 sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization
22 the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this
23 subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified
24 organization be a basis for revocation of the site certificate or any other enforcement action by the
25 council with respect to the site certificate holder.

26 (B) If the council finds there is no qualified organization, the site certificate holder shall select
27 one or more offsets to be implemented pursuant to criteria established by the council. The site cer-
28 tificate holder shall give written notice of its selections to the council and to any person requesting
29 notice. On petition by the State Department of Energy, or by any person adversely affected or
30 aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the
31 council may review such selection. The petition must be received by the council within 30 days of
32 the date the notice of selection is placed in the United States mail, with first-class postage prepaid.
33 The council shall approve the site certificate holder's selection unless it finds that the selection is
34 not consistent with criteria established by the council. The site certificate holder shall contract to
35 implement the selected offsets within 18 months after commencing construction of the facility unless
36 good cause is shown requiring additional time. The contracts shall obligate the expenditure of *[at*
37 *least 85]* **100** percent of the offset funds for the implementation of offsets. *[No more than 15 percent*
38 *of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement*
39 *the selected offsets.]* The council's criteria for selection of offsets shall be based on the criteria set
40 forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular
41 types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not
42 require the site certificate holder to select particular offsets, and shall allow the site certificate
43 holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other
44 provision of this section, the site certificate holder's financial liability for implementation, monitor-
45 ing, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount

1 of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct
2 by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a
3 basis for revocation of the site certificate or any other enforcement action by the council with re-
4 spect to the site certificate holder.

5 (C) Every qualified organization that has received funds under this paragraph shall, at five-year
6 intervals beginning on the date of receipt of such funds, provide the council with the information
7 the council requests about the qualified organization's performance. The council shall evaluate the
8 information requested and, based on such information, shall make any recommendations to the
9 Legislative Assembly that the council deems appropriate.

10 (e) As used in this subsection:

11 (A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output
12 as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60
13 percent humidity.

14 (B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for
15 periods during which an alternative fuel may be used and when such alternative fuel use shall not
16 exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and
17 where the applicant requests and the council adopts no condition in the site certificate for the
18 generating facility that would limit hours of operation other than restrictions on the use of alter-
19 native fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year
20 life for the plants for purposes of determining gross carbon dioxide emissions.

21 (C) "Carbon dioxide equivalent" means the global warming potential of a greenhouse gas re-
22 flected in units of carbon dioxide.

23 (D) "Fossil-fueled power plant" means a generating facility that produces electric power from
24 natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

25 (E) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A),
26 (B) and (D).

27 (F) "Global warming potential" means the determination of the atmospheric warming resulting
28 from the release of a unit mass of a particular greenhouse gas in relation to the warming resulting
29 from the release of the equivalent mass of carbon dioxide.

30 (G) "Greenhouse gas" means carbon dioxide, methane and nitrous oxide.

31 (H) "Gross carbon dioxide emissions" means **the combined total of:**

32 (i) The predicted carbon dioxide emissions of the proposed energy facility measured on a new
33 and clean basis[.]; **and**

34 (ii) **The predicted combustion and fugitive carbon dioxide emissions from all industrial**
35 **activities from the point of resource extraction to the point that the natural gas, petroleum,**
36 **coal or any form of solid, liquid or gaseous fuel derived from such material is delivered to**
37 **the proposed energy facility for use.**

38 (I) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy
39 facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by
40 any combination of cogeneration or offsets.

41 (J) "New and clean basis" means the average carbon dioxide emissions rate per hour and net
42 electric power output of the energy facility, without degradation, as determined by a 100-hour test
43 at full power completed during the first 12 months of commercial operation of the energy facility,
44 with the results adjusted for the average annual site condition for temperature, barometric pressure
45 and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide

1 per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of
2 distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate
3 of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by
4 rule set carbon dioxide emissions rates for other fuels.

5 (K) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300
6 (11)(a)(C) and (E) to (I).

7 (L) "Offset" means an action that will be implemented by the applicant, a third party or through
8 the qualified organization to avoid, sequester or displace emissions.

9 (M) "Offset funds" means the amount of funds determined by the council to satisfy the applicable
10 carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

11 (N) "Qualified organization" means an entity that:

12 (i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as
13 amended and in effect on December 31, 1996;

14 (ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do
15 business in the State of Oregon;

16 (iii) Has in effect articles of incorporation that require that offset funds received pursuant to
17 this section are used for offsets that require that decisions on the use of the offset funds are made
18 by a decision-making body composed of seven voting members of which three are appointed by the
19 council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environ-
20 mental nonprofit organization named by the body, and one is appointed by the applicants for site
21 certificates that are subject to paragraph (d) of this subsection and the holders of such site certif-
22 icates, and that require nonvoting membership on the body for holders of site certificates that have
23 provided funds not yet disbursed under paragraph (d)(A) of this subsection;

24 (iv) Has made available on an annual basis, beginning after the first year of operation, a signed
25 opinion of an independent certified public accountant stating that the qualified organization's use
26 of funds pursuant to this statute conforms with generally accepted accounting procedures except
27 that the qualified organization shall have one year to conform with generally accepted accounting
28 principles in the event of a nonconforming audit;

29 (v) Has to the extent applicable, except for good cause, entered into contracts obligating at least
30 60 percent of the offset funds to implement offsets within two years after the commencement of
31 construction of the facility; and

32 (vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this
33 subsection.

34 (3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and
35 rules for which the decision on compliance has been delegated by the federal government to a state
36 agency other than the council, the facility complies with all other Oregon statutes and administra-
37 tive rules identified in the project order, as amended, as applicable to the issuance of a site certif-
38 icate for the proposed facility. If compliance with applicable Oregon statutes and administrative
39 rules, other than those involving federally delegated programs, would result in conflicting conditions
40 in the site certificate, the council may resolve the conflict consistent with the public interest. A
41 resolution may not result in the waiver of any applicable state statute.

42 (4) The facility complies with the statewide planning goals adopted by the Land Conservation
43 and Development Commission.

44 **SECTION 2. The amendments to ORS 469.503 by section 1 of this 2017 Act apply to site**
45 **certificates and amended site certificates issued before, on and after the effective date of this**

1 **2017 Act.**

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