SENATE AMENDMENTS TO
B-ENGROSSED HOUSE BILL 3788
By COMMITTEE ON PUBLIC AFFAIRS
June 18

On page 1 of the printed B-engrossed bill, line 2, after “279.729,” insert “447.010, 447.020.”.

On page 10, delete lines 17 and 18 and insert “stayed and review by the Supreme Court is lim-
ited to the record made by the council.”.

On page 11, delete lines 16 through 45 and insert:

“SECTION 8. ORS 469.320, as amended by section 7 of this 2001 Act, 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) No site certificate shall be 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; and

“(B) Under normal operating conditions, has a useful thermal energy output of no less than 33
percent of the total energy output or the fuel chargeable to power heat rate value is not greater
than 6,000 Btu per kilowatt hour.

“(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 (9)(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 (9)(a)(G), if the facility:

“(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for con-
version 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; and

“(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.

“(g) A temporary energy generating facility, if the facility complies with all applicable carbon
dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and
the applicant agrees to provide funds to a qualified organization in an amount determined by the
council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS
469.501. To support the council’s finding that the facility complies with all applicable carbon dioxide
emissions standards, the applicant shall provide proof acceptable to the council that shows the con-
tracted nominal electric generating capacity of the facility and the contracted heat rate in higher heat-
ing value. The applicant shall pay the funds to the qualified organization before commencing
construction on the temporary facility. The amount of the carbon dioxide offset funds for a temporary
facility shall be subject to adjustment as provided in subsection (7)(c) of this section.

“(h) 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 com-
prehensive 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 electrically incapable of being interconnected to the trans-
mission grid. 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.

“(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) Any person who proposes to construct or enlarge an energy facility and who claims an ex-
emption under subsection (2)(a), (c), (f) or [(h)] (g) 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. 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 record established in the council proceeding on the exemption.

“(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be re-
quired for:

“(a) Transmission lines, 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)(a) Any person who proposes to construct or enlarge a temporary energy generating facility
and who claims an exemption under subsection (2)(g) of this section from the requirement to obtain a
site certificate shall request the Energy Facility Siting Council to determine whether the proposed fa-
cility qualifies for the claimed exemption. The council shall make its determination within 30 days of
receiving all of the information necessary to support the determination. Such exemption shall provide
that the applicant may not begin construction of the temporary energy generating facility until the fa-
cility has received the required local land use approval under the applicable acknowledged compre-
hensive 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 Commiss-
on. The exemption shall also require that the temporary energy generating facility cease to operate no
later than 24 months after the date of first commercial operation or January 2, 2006, whichever is
earlier. An appeal from the council’s determination on a request for exemption shall be made under
ORS 469.403, except that the order may not be stayed and review by the Supreme Court is limited to
the record made by the council.

“(b) The council may not grant an exemption for a temporary energy generating facility pursuant
to subsection (2)(g) of this section after July 1, 2003.

“(c) Within 30 days of ceasing operation of a temporary energy generating facility, the applicant
shall report the total actual fuel used during commercial operation of the temporary energy generating
facility. Based on the total actual fuel used during commercial operation, the council shall determine
whether additional offset funds, as defined in ORS 469.503, and contracting and selection funds are
owed to the qualified organization. If the council determines that additional offset funds are owed to
the qualified organization, the applicant shall pay such amounts within 60 days of the council’s order
determining the amount of additional funds.

“(d) Notwithstanding the provisions of paragraph (a) of this subsection that require a temporary
energy generating facility granted an exemption pursuant to subsection (2)(g) of this section to cease
operation within 24 months of first commercial operation, if the owner of a temporary energy generating
facility submits an application for a site certificate prior to the last day of the period constituting the
exemption or January 1, 2005, whichever date is earlier, the council shall extend the period constituting
the exemption and shall allow the temporary energy generating facility to continue operation until the
council concludes its review of the site certificate application. The council may specify a date by which
the application must be completed. If the application is not completed by the date specified by the
council, or is rejected by the council, the energy facility shall cease operation on the specified date. An
energy facility operating pursuant to this paragraph shall cease operation if the applicant for the site
certificate suspends the application.]

"[(8)] (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 in the event of a power outage and that is electrically incapable
of being interconnected with the transmission grid.

(b) 'Temporary energy generating facility' means an electric power generating facility, including
a thermal power plant and a combustion turbine power plant, but not including a hydropower plant,
with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more
than 24 months from the date of initial commercial operation.]

"[(c)] (b) 'Total energy output' means the sum of useful thermal energy output and useful elec-
trical energy output.

"[(d)] (c) 'Useful thermal energy' means the verifiable thermal energy used in any viable indus-
trial or commercial process, heating or cooling application.

"[(9)] (8) Notwithstanding the definition of 'energy facility' in ORS 469.300 (10)(a)(i), an electric
power generating plant with an average electric generating capacity of less than 35 megawatts
produced from wind energy at a single energy facility or within a single energy generation area may
elect to 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. An election to obtain a site certificate under this subsection shall be
final upon submission of an application for a site certificate.”.

Delete pages 12 and 13.

On page 14, delete lines 1 through 27.
On page 16, after line 33, insert:

“(7) The following periods of delay shall be excluded from the six-month period within which the
court must render a decision under subsection (6) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the
court’s own motion or at the request of one of the parties, if the court granted the continuance on
the basis of findings that the ends of justice served by granting the continuance outweigh the best
interests of the public and the other parties in having a decision within six months.

(8) No period of delay resulting from a continuance granted by the Supreme Court under sub-
section (7)(b) of this section shall be excluded from the six-month period unless the court sets forth,
in the record, either orally or in writing, its reasons for finding that the ends of justice served by
granting the continuance outweigh the best interests of the public and the other parties in having
a decision within six months. The factors the court shall consider in determining whether to grant
a continuance under subsection (7)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a
continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties involved or the
existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration
of the issues within the six-month period.

“(9) No continuance under subsection (7)(b) of this section shall be granted because of general
congestion of the court calendar or lack of diligent preparation or attention to the case by any
member of the court or any party.”.

On page 25, delete lines 8 through 32 and insert:

“SECTION 21. (1) Notwithstanding any other provision of this chapter, a customer of a
public utility that entered into a contract with the public utility before the effective date of
this 2001 Act, and that under the terms of the contract is not paying for electricity based
on a market index price on the effective date of this 2001 Act, but would be required, on or
after October 1, 2001, to pay for electricity based on a market index price for wholesale power
or a market-based rate for a specific time period, may elect to pay for electricity from the
public utility pursuant to the terms of any tariff rate that the public utility offers to other
customers who have similar load characteristics.

“(2) An election under this section may be made only for the period beginning on January

“(3) The provisions of this section do not apply to customers of a municipal electric
utility, a people’s utility district or an electric cooperative.

“SECTION 22. (1) Notwithstanding ORS 447.020, a person may not engage in the trade of
installing solar heating and cooling systems unless the person possesses either a certificate
of competency as a journeyman plumber issued under ORS chapter 693 or a specialty regis-
tration issued by the State Plumbing Board under section 23 of this 2001 Act.

“(2) A specialty registration issued under section 23 of this 2001 Act does not authorize
a person to connect a solar heating and cooling system to a potable water source. The con-
nection of a solar heating and cooling system to a potable water source must be made only
by a journeyman plumber possessing a certificate of competency issued under ORS chapter
693.

“SECTION 23. The State Plumbing Board shall:

“(1) Establish education, training and other standards for persons seeking a specialty
registration as a solar heating and cooling system installer. The board may administer or
approve examinations designed to demonstrate the qualifications and competency of a person
to work as a solar heating and cooling system installer.

“(2) Impose appropriate fees for applications, examinations and issuance or renewal of
registrations.

“(3) Impose continuing education requirements for persons registered as solar heating
and cooling system installers.

“(4) Suspend, revoke or refuse to issue or renew a registration for a person found by the
board to have violated a provision of this section or section 22 of this 2001 Act or rules
adopted thereunder.

“(5) Make all rules necessary and proper for carrying out the duties of the board relating
to solar heating and cooling system installers.

“SECTION 24. The State Plumbing Board may impose a civil penalty on a person who
violates section 22 or 23 of this 2001 Act or a board rule adopted thereunder. A civil penalty
may not exceed $5,000. The imposition of civil penalties under this section is subject to ORS
183.310 to 183.550.
“SECTION 25. ORS 447.010 is amended to read:

“447.010. As used in ORS 447.010 to 447.160, unless the context requires otherwise:

“(1) ‘Board’ means the State Plumbing Board established under ORS 693.115.
“(2) ‘Department’ means the Department of Consumer and Business Services.
“(3) ‘Director’ means the Director of the Department of Consumer and Business Services.
“(4) ‘Journeyman plumber’ has the meaning given that term in ORS 693.010.
“(5) ‘Ordinary minor repairs’ means the repair, replacement or maintenance of existing plumbing fixtures, appliances, appurtenances and related water supply and drain attachments for the purpose of restoring a plumbing installation to a safe and sanitary operating condition.
“(6) ‘Plumbing’ is the art of installing, altering or repairing in or adjacent to or serving buildings:
   “(a) Pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried waste, including the water supply distributing pipes.
   “(b) Fixtures and fixture traps.
   “(c) Soil, waste and vent pipes.
   “(d) House drain and house sewer to the sewer service lateral at the curb, or in the street, or alley, or other disposal terminal holding human or domestic sewage.
   “(e) Storm water drainage, with their devices, appurtenances and connections.
   “(f) Pipes, fixtures and other apparatus for medical gas, anesthetic waste gas and vacuum systems.
   “(g) Solar heating and cooling systems.

“SECTION 26. ORS 447.020 is amended to read:

“447.020. (1) All installations of plumbing and drainage in buildings and structures in this state and all potable water supply, drainage, and waste installations, within or serving buildings or structures, except in temporary construction camps, and except as otherwise provided in ORS 447.010 to 447.160, shall be made in accordance with the requirements of ORS 447.010 to 447.160 and ORS chapter 455.

“(2) The Director of the Department of Consumer and Business Services with the approval of the State Plumbing Board shall make rules pursuant to ORS 183.310 to 183.550 for the purpose of setting standards for plumbing and defining compliance with the provisions of ORS 447.010 to 447.160 particularly pertaining to installation of piping, protection and adequacy of the water supply, workmanship and materials, traps and cleanouts, domestic hot water storage tanks and devices, drinking fountains, solar heating and cooling systems, approval of devices, equipment and fixtures, hangers and supports, drainage and venting, house drains and house sewers, storm water drains, special wastes, light and ventilation of water closets and bathrooms, and excavation and grading.

“(3) The director shall appoint an adequate staff experienced and trained to serve as plumbing inspectors to enforce rules adopted under this section.

“SECTION 27. Section 22 of this 2001 Act becomes operative July 1, 2002.

“SECTION 28. The amendments to ORS 447.010 and 447.020 by sections 25 and 26 of this 2001 Act apply to solar heating and cooling system installations made on or after the operative date of section 22 of this 2001 Act. A building inspector may not disapprove a solar heating and cooling system installed prior to the operative date of section 22 of this 2001 Act based solely upon the installation being performed by a person other than a certified journeyman plumber or a person registered under section 23 of this 2001 Act.”.
In line 33, delete “22” and insert “29”.

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