

Senate Bill 167

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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 Director of State Department of Energy to make records of moneys deposited in State Department of Energy Account available to certain parties.

Requires that revenues derived from energy resource supplier assessment be used for certain activities.

A BILL FOR AN ACT

1
2 Relating to energy resource supplier assessments; creating new provisions; and amending ORS
3 469.120 and 469.421.

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

5 **SECTION 1.** ORS 469.120 is amended to read:

6 469.120. (1) The State Department of Energy Account is established.

7 (2) All funds received by the State Department of Energy pursuant to law shall be paid into the
8 State Treasury and credited to the State Department of Energy Account. All moneys in the account
9 are continuously appropriated to the State Department of Energy for payment of expenses of the
10 State Department of Energy, the Oregon Department of Administrative Services and the Energy
11 Facility Siting Council.

12 (3) The Director of the State Department of Energy shall keep a record of all moneys deposited
13 in the State Department of Energy Account. The record shall indicate by special cumulative ac-
14 counts the source from which moneys are derived and the individual activity against which each
15 withdrawal is charged.

16 (4) **The director shall make the record described in this section available to all interested
17 parties prior to entering an order establishing the amount of revenues required to be derived
18 from the assessment described in ORS 469.421 (8).**

19 **SECTION 2.** ORS 469.421 is amended to read:

20 469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent,
21 a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370,
22 a request for an expedited review under ORS 469.373, a request for the State Department of Energy
23 to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to
24 amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the
25 State Department of Energy and the Oregon Department of Administrative Services related to the
26 review and decision of the council. These expenses may include legal expenses, expenses incurred
27 in processing and evaluating the application, issuing a final order or site certificate, commissioning
28 an independent study by a contractor, state agency or local government under ORS 469.360, and
29 changes to the rules of the council that are specifically required and related to the particular site

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 certificate.

2 (2) Every person submitting a notice of intent to file for a site certificate, a request for ex-
3 emption or a request for expedited review shall submit the fee required under the fee schedule es-
4 tablished under ORS 469.441 to the State Department of Energy when the notice or request is
5 submitted to the council. To the extent possible, the full cost of the evaluation shall be paid from
6 the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person
7 submitting the notice or request shall pay any excess costs shown in an itemized statement prepared
8 by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of
9 the fee initially paid unless the council provides prior notification to the applicant and a detailed
10 projected budget the council believes necessary to complete the project. If costs are less than the
11 fee paid, the excess shall be refunded to the person submitting the notice or request.

12 (3) Before submitting a site certificate application, the applicant shall request from the State
13 Department of Energy an estimate of the costs expected to be incurred in processing the application.
14 The department shall inform the applicant of that amount and require the applicant to make periodic
15 payments of the costs pursuant to a cost reimbursement agreement. The cost reimbursement agree-
16 ment shall provide for payment of 25 percent of the estimated costs when the applicant submits the
17 application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs
18 shown in an itemized statement prepared by the council. In no event shall the council incur evalu-
19 ation expenses in excess of 110 percent of the fee initially estimated unless the council provided
20 prior notification to the applicant and a detailed projected budget the council believes is necessary
21 to complete the project. If costs are less than the fee paid, the council shall refund the excess to the
22 applicant.

23 (4) Any person who is delinquent in the payment of fees under subsections (1) to (3) of this
24 section shall be subject to the provisions of subsection (11) of this section.

25 (5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee,
26 due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the
27 State Department of Energy's budget authorization by a regular session of the Legislative Assembly
28 or as revised by the Emergency Board, the Director of the State Department of Energy promptly
29 shall enter an order establishing an annual fee based on the amount of revenues that the director
30 estimates is needed to fund the cost of ensuring that the facility is being operated consistently with
31 the terms and conditions of the site certificate, any order issued by the department under ORS
32 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall
33 include both the actual direct cost to be incurred by the council, the State Department of Energy
34 and the Oregon Department of Administrative Services to ensure that the facility is being operated
35 consistently with the terms and conditions of the site certificate, any order issued by the State De-
36 partment of Energy under ORS 469.405 (3) and any applicable health or safety standards, and the
37 general costs to be incurred by the council, the State Department of Energy and the Oregon De-
38 partment of Administrative Services to ensure that all certificated facilities are being operated
39 consistently with the terms and conditions of the site certificates, any orders issued by the State
40 Department of Energy under ORS 469.405 (3) and any applicable health or safety standards that
41 cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee
42 charged each facility shall be for the recovery of these general costs. The fees for direct costs shall
43 reflect the size and complexity of the facility and its certificate conditions.

44 (6) Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for
45 the remaining portion of the year. The amount of the fee shall be set at the cost of regulating the

1 facility during the remaining portion of the year determined in the same manner as the annual fee.

2 (7) When the actual costs of regulation incurred by the council, the State Department of Energy
3 and the Oregon Department of Administrative Services for the year, including that portion of the
4 general regulation costs that have been allocated to a particular facility, are less than the annual
5 fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When
6 the actual regulation costs incurred by the council, the State Department of Energy and the Oregon
7 Department of Administrative Services for the year, including that portion of the general regulation
8 costs that have been allocated to a particular facility, are projected to exceed the annual fee for
9 that facility, the Director of the State Department of Energy may issue an order revising the annual
10 fee.

11 (8) In addition to any other fees required by law, each energy resource supplier shall pay to the
12 State Department of Energy annually its share of an assessment to fund the activities of the Energy
13 Facility Siting Council, the Oregon Department of Administrative Services **as related to the En-**
14 **ergy Facility Siting Council** and the State Department of Energy, determined by the Director of
15 the State Department of Energy in the following manner:

16 (a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon
17 Department of Administrative Services and the State Department of Energy by a regular session of
18 the Legislative Assembly, the Director of the State Department of Energy shall promptly enter an
19 order establishing the amount of revenues required to be derived from an assessment pursuant to
20 this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon
21 Department of Administrative Services **as related to the Energy Facility Siting Council** and the
22 State Department of Energy[, *including those enumerated in ORS 469.030 and others authorized by*
23 *law,*] **described in ORS 469A.005 to 469A.210 and this chapter and ORS chapter 470 and others**
24 **authorized by law** for the first fiscal year of the forthcoming biennium. On or before June 1 of each
25 even-numbered year, the Director of the State Department of Energy shall enter an order estab-
26 lishing the amount of revenues required to be derived from an assessment pursuant to this sub-
27 section in order to fund the activities of the Energy Facility Siting Council, the Oregon Department
28 of Administrative Services **as related to the Energy Facility Siting Council** and the State De-
29 partment of Energy[, *including those enumerated in ORS 469.030 and others authorized by law,*] **de-**
30 **scribed in ORS 469A.005 to 469A.210 and this chapter and ORS chapter 470 and others**
31 **authorized by law** for the second fiscal year of the biennium. The order shall take into account any
32 revisions to the biennial budget of the Energy Facility Siting Council, the State Department of En-
33 ergy and the Oregon Department of Administrative Services made by the Emergency Board or by
34 a special session of the Legislative Assembly subsequent to the most recently concluded regular
35 session of the Legislative Assembly. **Assessments under this subsection are subject to the**
36 **following:**

37 (A) **Except as provided in subparagraph (B) of this paragraph, revenues derived from**
38 **assessments under this subsection may be used only to fund the activities and expenses of**
39 **the Energy Facility Siting Council, the Oregon Department of Administrative Services as**
40 **related to the Energy Facility Siting Council and the State Department of Energy described**
41 **in ORS 469A.005 to 469A.210 and this chapter and ORS chapter 470 and others authorized by**
42 **law.**

43 (B) [*However,*] An assessment under this [*section*] **subsection** may not be used to derive revenue
44 for funding State Department of Energy activities related to the energy efficiency and sustainable
45 technology loan program described in ORS chapter 470.

1 (b) Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate
2 the aggregate assessment set forth therein to energy resource suppliers in accordance with para-
3 graph (c) of this subsection.

4 (c) The amount assessed to an energy resource supplier shall be based on the ratio which that
5 supplier's annual gross operating revenue derived within this state in the preceding calendar year
6 bears to the total gross operating revenue derived within this state during that year by all energy
7 resource suppliers. The assessment against an energy resource supplier shall not exceed five-tenths
8 of one percent of the supplier's gross operating revenue derived within this state in the preceding
9 calendar year. The director shall exempt from payment of an assessment any individual energy re-
10 source supplier whose calculated share of the annual assessment is less than \$250.

11 (d) The director shall send each energy resource supplier subject to assessment pursuant to this
12 subsection a copy of each order issued, by registered or certified mail. The amount assessed to the
13 energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted
14 by law a government-imposed cost and recoverable by the energy resource supplier as a cost in-
15 cluded within the price of the service or product supplied.

16 (e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of
17 this subsection shall be paid to the State Department of Energy as follows:

18 (A) [*Amounts assessed for the first fiscal year of a biennium shall be paid*] Not later than 90 days
19 following the close of the regular session of the Legislative Assembly **in an odd-numbered year**;
20 and

21 (B) [*Amounts assessed for the second fiscal year of a biennium shall be paid*] Not later than July
22 1 of each even-numbered year.

23 (f) An energy resource supplier shall provide the director, on or before May 1 of each year, a
24 verified statement showing its gross operating revenues derived within the state for the preceding
25 calendar year. The statement shall be in the form prescribed by the director and is subject to audit
26 by the director. The statement shall include an entry showing the total operating revenue derived
27 by petroleum suppliers from fuels sold that are subject to the requirements of section 3a, Article IX
28 of the Oregon Constitution, and ORS 319.020 with reference to aircraft fuel and motor vehicle fuel,
29 and ORS 319.530. The director may grant an extension of not more than 15 days for the require-
30 ments of this subsection if:

31 (A) The energy supplier makes a showing of hardship caused by the deadline;

32 (B) The energy supplier provides reasonable assurance that the energy supplier can comply with
33 the revised deadline; and

34 (C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon De-
35 partment of Administrative Services or the State Department of Energy from fulfilling their statu-
36 tory responsibilities.

37 (g) As used in this section:

38 (A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum sup-
39 plier supplying, generating, transmitting or distributing electricity, natural gas or petroleum pro-
40 ducts in Oregon.

41 (B) "Gross operating revenue" means gross receipts from sales or service made or provided
42 within this state during the regular course of the energy supplier's business, but does not include
43 either revenue derived from interutility sales within the state or revenue received by a petroleum
44 supplier from the sale of fuels that are subject to the requirements of section 3a, Article IX of the
45 Oregon Constitution, or ORS 319.020 or 319.530.

1 (C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

2 (h) In determining the amount of revenues that must be derived from any class of energy re-
3 source suppliers by assessment pursuant to this subsection, the director shall take into account all
4 other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the
5 Oregon Department of Administrative Services and the State Department of Energy, including, but
6 not limited to, fees imposed under this section and federal funds, and may take into account any
7 funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter
8 792, Oregon Laws 1981.

9 (i) Orders issued by the director pursuant to this section shall be subject to judicial review un-
10 der ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy
11 resource supplier to pay amounts assessed to it on or before the statutory deadline.

12 (9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal
13 power plant or nuclear installation within this state shall pay to the State Department of Energy
14 annually on July 1, an assessment in an amount determined by the director to be necessary to fund
15 the activities of the state and the counties associated with emergency preparedness for a nuclear
16 fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250 per
17 year. Moneys collected as assessments under this subsection are continuously appropriated to the
18 State Department of Energy for this purpose.

19 (b) The State Department of Energy shall maintain and shall cause other state agencies and
20 counties to maintain time and billing records for the expenditure of any fees collected from an op-
21 erator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

22 (10) Reactors operated by a college, university or graduate center for research purposes and
23 electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements
24 of subsections (5), (8) and (9) of this section.

25 (11)(a) All fees assessed by the director against holders of site certificates for facilities that have
26 an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule
27 for which shall be negotiated between the director and the site certificate holder.

28 (b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee
29 provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it
30 is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for
31 the period that the fee is past due. Any payment made according to the terms of a schedule nego-
32 tiated under paragraph (a) of this subsection shall not be considered past due. The director may
33 bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court
34 of competent jurisdiction. The court may award reasonable attorney fees to the director if the di-
35 rector prevails in an action under this subsection. The court may award reasonable attorney fees
36 to a defendant who prevails in an action under this subsection if the court determines that the di-
37 rector had no objectively reasonable basis for asserting the claim or no reasonable basis for ap-
38 pealing an adverse decision of the trial court.

39 **SECTION 3. (1) The amendments to ORS 469.120 by section 1 of this 2011 Act apply to**
40 **records kept by the Director of the State Department of Energy on or after the effective date**
41 **of this 2011 Act.**

42 **(2) The amendments to ORS 469.421 (8)(a) by section 2 of this 2011 Act apply to revenues**
43 **derived from assessments paid to the State Department of Energy on or after the effective**
44 **date of this 2011 Act.**