

D R A F T

SUMMARY

Modifies cost recovery formula for site certificate holders. Applies to annual fees due on and after July 1, 2020.

Establishes Energy Facility Siting Task Force.

Sunsets task force on December 31, 2020.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to energy facility siting; creating new provisions; amending ORS
3 469.421; and declaring an emergency.

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

5 **SECTION 1.** ORS 469.421 is amended to read:

6 469.421. (1) Subject to the provisions of ORS 469.441, any person submit-
7 ting a notice of intent, a request for exemption under ORS 469.320, a request
8 for an expedited review under ORS 469.370, a request for an expedited review
9 under ORS 469.373, a request for the State Department of Energy to approve
10 a pipeline under ORS 469.405 (3), an application for a site certificate or a
11 request to amend a site certificate shall pay all expenses incurred by the
12 Energy Facility Siting Council and the department related to the review and
13 decision of the council. Expenses under this subsection may include:

14 (a) Legal expenses;

15 (b) Expenses incurred in processing and evaluating the application;

16 (c) Expenses incurred in issuing a final order or site certificate;

17 (d) Expenses incurred in commissioning an independent study under ORS
18 469.360;

19 (e) Compensation paid to a state agency, a tribe or a local government

1 pursuant to a written contract or agreement relating to compensation as
2 provided for in ORS 469.360; or

3 (f) Expenses incurred by the council in making rule changes that are
4 specifically required and related to the particular site certificate.

5 (2) Every person submitting a notice of intent to file for a site certificate,
6 a request for exemption or a request for expedited review shall pay the fee
7 required under the fee schedule established under ORS 469.441 to the de-
8 partment prior to submitting the notice or request to the council. To the
9 extent possible, the full cost of the evaluation shall be paid from the fee paid
10 under this subsection. However, if costs of the evaluation exceed the fee, the
11 person submitting the notice or request shall pay any excess costs shown in
12 an itemized statement prepared by the council. In no event shall the council
13 incur evaluation expenses in excess of 110 percent of the fee initially paid
14 unless the council provides prior notification to the applicant and a detailed
15 projected budget the council believes necessary to complete the project. If
16 costs are less than the fee paid, the excess shall be refunded to the person
17 submitting the notice or request.

18 (3) Before submitting a site certificate application, the applicant shall
19 request from the department an estimate of the costs expected to be incurred
20 in processing the application. The department shall inform the applicant of
21 that amount and require the applicant to make periodic payments of the
22 costs pursuant to a cost reimbursement agreement. The cost reimbursement
23 agreement shall provide for payment of 25 percent of the estimated costs
24 when the applicant submits the application. If costs of the evaluation exceed
25 the estimate, the applicant shall pay any excess costs shown in an itemized
26 statement prepared by the council. In no event shall the council incur eval-
27 uation expenses in excess of 110 percent of the fee initially estimated unless
28 the council provided prior notification to the applicant and a detailed
29 projected budget the council believes is necessary to complete the project.
30 If costs are less than the fee paid, the council shall refund the excess to the
31 applicant.

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

4 (5)(a) Subject to the provisions of ORS 469.441, each holder of a certifi-
5 cate shall pay an annual fee, due every July 1 following issuance of a site
6 certificate.

7 (b) For each fiscal year, upon approval of the department's budget au-
8 thorization by an odd-numbered year regular session of the Legislative As-
9 sembly or as revised by the Emergency Board meeting in an interim period
10 or by the Legislative Assembly meeting in special session or in an even-
11 numbered year regular session, the Director of the State Department of En-
12 ergy promptly shall enter an order establishing an annual fee based on the
13 amount of revenues that the director estimates is needed to fund:

14 (A) The cost of ensuring that the facility is being operated consistently
15 with the terms and conditions of the site certificate, any order issued by the
16 department under ORS 469.405 (3) and any applicable health or safety stan-
17 dards; **and**

18 (B) **The general costs of the council and the department incurred**
19 **in the support of council activities that cannot be allocated to an in-**
20 **dividual, licensed facility or to a person for purposes of a notice of**
21 **intent, request or application as described in subsection (1) of this**
22 **section.**

23 (c) In determining [*this cost*] **costs under paragraph (b) of this sub-**
24 **section**, the director shall include both:

25 (A) The actual direct cost to be incurred by the council and the depart-
26 ment to ensure that the facility is being operated consistently with the terms
27 and conditions of the site certificate, any order issued by the department
28 under ORS 469.405 (3) and any applicable health or safety standards[,] and

29 (B) The general costs to be incurred by the council and the department
30 to ensure that all certificated facilities are being operated consistently with
31 the terms and conditions of the site certificates, any orders issued by the

1 department under ORS 469.405 (3) and any applicable health or safety stan-
2 dards that cannot be allocated to an individual, licensed facility. [*Not more*
3 *than 35 percent of the annual fee charged each facility shall be for the recovery*
4 *of these general costs.*]

5 **(d) The director shall:**

6 **(A) Adopt by rule a formula for apportioning among holders of site**
7 **certificates the general costs of the council and the department de-**
8 **scribed in paragraph (c)(B) of this subsection; and**

9 **(B) Calculate** the fees for direct costs [*shall reflect*] **in a manner that**
10 **reflects** the size and complexity of the facility, the anticipated costs of en-
11 suring compliance with site certificate conditions, the anticipated costs of
12 conducting site inspections and compliance reviews as described in ORS
13 469.430, and the anticipated costs of compensating state agencies and local
14 governments for participating in site inspection and compliance enforcement
15 activities at the request of the council.

16 (6) Each holder of a site certificate executed after July 1 of any fiscal
17 year shall pay a fee for the remaining portion of the **fiscal** year. The amount
18 of the fee shall be set at [*the cost of regulating the facility during the re-*
19 *maining portion of the year determined in the same manner as the annual*
20 *fee.*] **an amount necessary to fund the cost of ensuring that the facility**
21 **is being operated consistently with the terms and conditions of the site**
22 **certificate, any order issued by the department under ORS 469.405 (3)**
23 **and any applicable health or safety standards.**

24 (7) When the actual costs of regulation incurred by the council and the
25 department for the year, including that portion of the general regulation
26 costs that have been allocated to a particular facility, are less than the an-
27 nual fees for that facility, the unexpended balance shall be refunded to the
28 site certificate holder. When the actual regulation costs incurred by the
29 council and the department for the year, including that portion of the gen-
30 eral regulation costs that have been allocated to a particular facility, are
31 projected to exceed the annual fee for that facility, the director may issue

1 an order revising the annual fee.

2 (8)(a) In addition to any other fees required by law, each energy resource
3 supplier shall pay to the department annually its share of an assessment to
4 fund the programs and activities of the council and the department.

5 (b) Prior to filing an agency request budget under ORS 291.208 for pur-
6 poses related to the compilation and preparation of the Governor's budget
7 under ORS 291.216, the director shall determine the projected aggregate
8 amount of revenue to be collected from energy resource suppliers under this
9 subsection that will be necessary to fund the programs and activities of the
10 council and the department for each fiscal year of the upcoming biennium.
11 After making that determination, the director shall convene a public meeting
12 with representatives of energy resource suppliers and other interested parties
13 for the purpose of providing energy resource suppliers with a full accounting
14 of:

15 (A) The projected revenue needed to fund each department program or
16 activity; and

17 (B) The projected allocation of moneys derived from the assessment im-
18 posed under this subsection to each department program or activity.

19 (c) Upon approval of the budget authorization of the council and the de-
20 partment by an odd-numbered year regular session of the Legislative As-
21 sembly, the director shall promptly enter an order establishing the amount
22 of revenues required to be derived from an assessment pursuant to this sub-
23 section in order to fund programs and activities that the council and the
24 department are charged with administering and authorized to conduct under
25 the laws of this state, including those enumerated in ORS 469.030, for the
26 first fiscal year of the forthcoming biennium. On or before June 1 of each
27 even-numbered year, the director shall enter an order establishing the
28 amount of revenues required to be derived from an assessment pursuant to
29 this subsection in order to fund the programs and activities that the council
30 and the department are charged with administering and authorized to con-
31 duct under the laws of this state, including those enumerated in ORS 469.030,

1 for the second fiscal year of the biennium. The order shall take into account
2 any revisions to the biennial budget of the council and the department made
3 by the Emergency Board meeting in an interim period or by the Legislative
4 Assembly meeting in special session or in an even-numbered year regular
5 session.

6 (d) Each order issued by the director pursuant to paragraph (c) of this
7 subsection shall allocate the aggregate assessment set forth in the order to
8 energy resource suppliers in accordance with paragraph (e) of this sub-
9 section.

10 (e) The amount assessed to an energy resource supplier shall be based on
11 the ratio which that supplier's annual gross operating revenue derived
12 within this state in the preceding calendar year bears to the total gross op-
13 erating revenue derived within this state during that year by all energy re-
14 source suppliers. The assessment against an energy resource supplier shall
15 not exceed 0.375 percent of the supplier's gross operating revenue derived
16 within this state in the preceding calendar year. The director shall exempt
17 from payment of an assessment any individual energy resource supplier
18 whose calculated share of the annual assessment is less than \$250.

19 (f) The director shall send each energy resource supplier subject to as-
20 sessment pursuant to this subsection a copy of each order issued by regis-
21 tered or certified mail or through use of an electronic medium with
22 electronic receipt verification. The amount assessed to the energy resource
23 supplier pursuant to the order shall be considered to the extent otherwise
24 permitted by law a government-imposed cost and recoverable by the energy
25 resource supplier as a cost included within the price of the service or prod-
26 uct supplied.

27 (g) The amounts assessed to individual energy resource suppliers pursuant
28 to paragraph (e) of this subsection shall be paid to the department as follows:

29 (A) Amounts assessed for the first fiscal year of a biennium shall be paid
30 not later than 90 days following adjournment sine die of the odd-numbered
31 year regular session of the Legislative Assembly; and

1 (B) Amounts assessed for the second fiscal year of a biennium shall be
2 paid not later than July 1 of each even-numbered year or 90 days following
3 adjournment sine die of the even-numbered year regular session of the Leg-
4 islative Assembly, whichever is later.

5 (h) An energy resource supplier shall provide the director, on or before
6 May 1 of each year, a verified statement showing its gross operating reve-
7 nues derived within the state for the calendar or fiscal year that was used
8 by the energy resource supplier for the purpose of reporting federal income
9 taxes for the preceding calendar or fiscal year. The statement must be in the
10 form prescribed by the director and is subject to audit by the director. The
11 statement must include an entry showing the total operating revenue derived
12 by petroleum suppliers from fuels sold that are subject to the requirements
13 of Article IX, section 3a, of the Oregon Constitution, and ORS 319.020 with
14 reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The di-
15 rector may grant an extension of not more than 15 days for the requirements
16 of this subsection if:

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

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

21 (C) The extension of time does not prevent the council or the department
22 from fulfilling its statutory responsibilities.

23 (i) As used in this section:

24 (A) "Energy resource supplier" means an electric utility, natural gas
25 utility or petroleum supplier supplying, generating, transmitting or distrib-
26 uting electricity, natural gas or petroleum products in Oregon.

27 (B) "Gross operating revenue" means gross receipts from sales or service
28 made or provided within this state during the regular course of the energy
29 supplier's business, but does not include either revenue derived from interu-
30 tility sales within the state or revenue received by a petroleum supplier from
31 the sale of fuels that are subject to the requirements of Article IX, section

1 3a, of the Oregon Constitution, or ORS 319.020 or 319.530.

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

3 (j) In determining the amount of revenues that must be derived from any
4 class of energy resource suppliers by assessment pursuant to this subsection,
5 the director shall take into account all other known or readily ascertainable
6 sources of revenue to the council and department, including, but not limited
7 to, fees imposed under this section and federal funds, and may take into ac-
8 count any funds previously assessed pursuant to ORS 469.420 (1979 Replace-
9 ment Part) or section 7, chapter 792, Oregon Laws 1981.

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

14 (9)(a) In addition to any other fees required by law, each operator of a
15 nuclear fueled thermal power plant or nuclear installation within this state
16 shall pay to the department annually on July 1 an assessment in an amount
17 determined by the director to be necessary to fund the activities of the state
18 and the counties associated with emergency preparedness for a nuclear fueled
19 thermal power plant or nuclear installation. The assessment shall not exceed
20 \$461,250 per year. Moneys collected as assessments under this subsection are
21 continuously appropriated to the department for this purpose.

22 (b) The department shall maintain and cause other state agencies and
23 counties to maintain time and billing records for the expenditure of any fees
24 collected from an operator of a nuclear fueled thermal power plant under
25 paragraph (a) of this subsection.

26 (10) Reactors operated by a college, university or graduate center for re-
27 search purposes and electric utilities not connected to the Northwest Power
28 Grid are exempt from the fee requirements of subsections (5), (8) and (9) of
29 this section.

30 (11)(a) All fees assessed by the director against holders of site certificates
31 for facilities that have an installed capacity of 500 megawatts or greater may

1 be paid in several installments, the schedule for which shall be negotiated
2 between the director and the site certificate holder.

3 (b) Energy resource suppliers or applicants or holders of a site certificate
4 who fail to pay a fee provided under subsections (1) to (9) of this section
5 after it is due and payable shall pay, in addition to that fee, a penalty of two
6 percent of the fee a month for the period that the fee is past due. Any pay-
7 ment made according to the terms of a schedule negotiated under paragraph
8 (a) of this subsection shall not be considered past due. The director may
9 bring an action to collect an unpaid fee or penalty in the name of the State
10 of Oregon in a court of competent jurisdiction. The court may award rea-
11 sonable attorney fees to the director if the director prevails in an action
12 under this subsection. The court may award reasonable attorney fees to a
13 defendant who prevails in an action under this subsection if the court de-
14 termines that the director had no objectively reasonable basis for asserting
15 the claim or no reasonable basis for appealing an adverse decision of the
16 trial court.

17 **SECTION 2. The amendments to ORS 469.421 by section 1 of this**
18 **2019 Act apply to annual fees due on and after July 1, 2020.**

19 **SECTION 3. (1) The Energy Facility Siting Task Force is estab-**
20 **lished.**

21 **(2) The task force consists of nine members appointed as follows:**

22 **(a) The President of the Senate shall appoint two members from**
23 **among members of the Senate.**

24 **(b) The Speaker of the House of Representatives shall appoint two**
25 **members from among members of the House of Representatives.**

26 **(c) The Governor shall appoint five members who represent the in-**
27 **terests of persons affected by the energy facility siting process.**

28 **(3) The task force shall:**

29 **(a) Review the statutes and regulations that govern the jurisdiction**
30 **of the Energy Facility Siting Council and, upon such review, develop**
31 **recommendations regarding:**

1 (A) Proposed changes to what constitutes an “energy facility,” as
2 that term is defined in ORS 469.300, that may serve to better align the
3 jurisdiction of the council with the needs and interests of this state
4 and local governments;

5 (B) Ways to improve public participation in the energy facility sit-
6 ing process; and

7 (C) Ways to expedite the process for receiving a site certificate for
8 constructing or expanding an energy facility subject to the jurisdiction
9 of the council; and

10 (b) Develop recommendations for defining or otherwise clarifying
11 in statute the term “single energy facility” as used in ORS 469.300
12 (11)(a)(J), in order to better clarify when an electric power generating
13 plant that produces power from geothermal or wind energy qualifies
14 as an “electric utility” for purposes of ORS 469.300 to 469.563, 469.590
15 to 469.619, 469.930 and 469.992.

16 (4) Members of the Legislative Assembly appointed to the task force
17 are nonvoting members of the task force and may act in an advisory
18 capacity only.

19 (5) A majority of the voting members of the task force constitutes
20 a quorum for the transaction of business.

21 (6) Official action by the task force requires the approval of a ma-
22 jority of the voting members of the task force.

23 (7) The task force shall elect one of its members to serve as chair-
24 person.

25 (8) If there is a vacancy for any cause, the appointing authority
26 shall make an appointment to become immediately effective.

27 (9) The task force shall meet at times and places specified by the
28 call of the chairperson or of a majority of the voting members of the
29 task force.

30 (10) The task force may adopt rules necessary for the operation of
31 the task force.

1 **(11) The task force shall submit a report in the manner provided**
2 **by ORS 192.245, and shall include recommendations for legislation, to**
3 **an interim committee of the Legislative Assembly related to energy**
4 **no later than September 15, 2020.**

5 **(12) The Legislative Policy and Research Director shall provide staff**
6 **support to the task force.**

7 **(13) Notwithstanding ORS 171.072, members of the task force who**
8 **are members of the Legislative Assembly are not entitled to mileage**
9 **expenses or a per diem and serve as volunteers on the task force.**
10 **Other members of the task force are not entitled to compensation or**
11 **reimbursement for expenses and serve as volunteers on the task force.**

12 **(14) All agencies of state government, as defined in ORS 174.111, are**
13 **directed to assist the task force in the performance of the task force's**
14 **duties and, to the extent permitted by laws relating to confidentiality,**
15 **to furnish information and advice the members of the task force con-**
16 **sider necessary to perform their duties.**

17 **SECTION 4.** **Section 3 of this 2019 Act is repealed on December 31,**
18 **2020.**

19 **SECTION 5.** **This 2019 Act being necessary for the immediate pres-**
20 **ervation of the public peace, health and safety, an emergency is de-**
21 **clared to exist, and this 2019 Act takes effect on its passage.**

22