

House Bill 2791

Sponsored by COMMITTEE ON AGRICULTURE AND LAND USE (at the request of Representative Brian Clem)

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**.

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

13 (a) Legal expenses;

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

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

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

17 (e) Compensation paid to a state agency, a tribe or a local government pursuant to a written
18 contract or agreement relating to compensation as provided for in ORS 469.360; or

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

21 (2) Every person submitting a notice of intent to file for a site certificate, a request for ex-
22emption or a request for expedited review shall pay the fee required under the fee schedule estab-
23lished under ORS 469.441 to the department prior to submitting the notice or request to the council.
24 To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this
25 subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or
26 request shall pay any excess costs shown in an itemized statement prepared by the council. In no
27 event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid
28 unless the council provides prior notification to the applicant and a detailed projected budget the
29 council believes necessary to complete the project. If costs are less than the fee paid, the excess
30 shall be refunded to the person submitting the notice or request.

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 (3) Before submitting a site certificate application, the applicant shall request from the depart-
 2 ment an estimate of the costs expected to be incurred in processing the application. The department
 3 shall inform the applicant of that amount and require the applicant to make periodic payments of
 4 the costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall
 5 provide for payment of 25 percent of the estimated costs when the applicant submits the application.
 6 If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an
 7 itemized statement prepared by the council. In no event shall the council incur evaluation expenses
 8 in excess of 110 percent of the fee initially estimated unless the council provided prior notification
 9 to the applicant and a detailed projected budget the council believes is necessary to complete the
 10 project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

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

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

15 (b) For each fiscal year, upon approval of the department's budget authorization by an odd-
 16 numbered year regular session of the Legislative Assembly or as revised by the Emergency Board
 17 meeting in an interim period or by the Legislative Assembly meeting in special session or in an
 18 even-numbered year regular session, the Director of the State Department of Energy promptly shall
 19 enter an order establishing an annual fee based on the amount of revenues that the director esti-
 20 mates is needed to fund:

21 (A) The cost of ensuring that the facility is being operated consistently with the terms and
 22 conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any
 23 applicable health or safety standards; **and**

24 **(B) The general costs of the council and the department incurred in the support of**
 25 **council activities that cannot be allocated to an individual, licensed facility or to a person for**
 26 **purposes of a notice of intent, request or application as described in subsection (1) of this**
 27 **section.**

28 (c) In determining *[this cost]* **costs under paragraph (b) of this subsection**, the director shall
 29 include both:

30 (A) The actual direct cost to be incurred by the council and the department to ensure that the
 31 facility is being operated consistently with the terms and conditions of the site certificate, any order
 32 issued by the department under ORS 469.405 (3) and any applicable health or safety standards[,]; and

33 (B) The general costs to be incurred by the council and the department to ensure that all cer-
 34 tificated facilities are being operated consistently with the terms and conditions of the site certif-
 35 icates, any orders issued by the department under ORS 469.405 (3) and any applicable health or
 36 safety standards that cannot be allocated to an individual, licensed facility. *[Not more than 35 per-*
 37 *cent of the annual fee charged each facility shall be for the recovery of these general costs.]*

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

39 **(A) Adopt by rule a formula for apportioning among holders of site certificates the gen-**
 40 **eral costs of the council and the department described in paragraph (c)(B) of this subsection;**
 41 **and**

42 **(B) Calculate** the fees for direct costs *[shall reflect]* **in a manner that reflects** the size and
 43 complexity of the facility, the anticipated costs of ensuring compliance with site certificate condi-
 44 tions, the anticipated costs of conducting site inspections and compliance reviews as described in
 45 ORS 469.430, and the anticipated costs of compensating state agencies and local governments for

1 participating in site inspection and compliance enforcement activities at the request of the council.

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

8 (7) When the actual costs of regulation incurred by the council and the department for the year,
9 including that portion of the general regulation costs that have been allocated to a particular fa-
10 cility, are less than the annual fees for that facility, the unexpended balance shall be refunded to
11 the site certificate holder. When the actual regulation costs incurred by the council and the de-
12 partment for the year, including that portion of the general regulation costs that have been allo-
13 cated to a particular facility, are projected to exceed the annual fee for that facility, the director
14 may issue an order revising the annual fee.

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

18 (b) Prior to filing an agency request budget under ORS 291.208 for purposes related to the
19 compilation and preparation of the Governor's budget under ORS 291.216, the director shall deter-
20 mine the projected aggregate amount of revenue to be collected from energy resource suppliers un-
21 der this subsection that will be necessary to fund the programs and activities of the council and the
22 department for each fiscal year of the upcoming biennium. After making that determination, the di-
23 rector shall convene a public meeting with representatives of energy resource suppliers and other
24 interested parties for the purpose of providing energy resource suppliers with a full accounting of:

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

26 (B) The projected allocation of moneys derived from the assessment imposed under this sub-
27 section to each department program or activity.

28 (c) Upon approval of the budget authorization of the council and the department by an odd-
29 numbered year regular session of the Legislative Assembly, the director shall promptly enter an
30 order establishing the amount of revenues required to be derived from an assessment pursuant to
31 this subsection in order to fund programs and activities that the council and the department are
32 charged with administering and authorized to conduct under the laws of this state, including those
33 enumerated in ORS 469.030, for the first fiscal year of the forthcoming biennium. On or before June
34 1 of each even-numbered year, the director shall enter an order establishing the amount of revenues
35 required to be derived from an assessment pursuant to this subsection in order to fund the programs
36 and activities that the council and the department are charged with administering and authorized
37 to conduct under the laws of this state, including those enumerated in ORS 469.030, for the second
38 fiscal year of the biennium. The order shall take into account any revisions to the biennial budget
39 of the council and the department made by the Emergency Board meeting in an interim period or
40 by the Legislative Assembly meeting in special session or in an even-numbered year regular session.

41 (d) Each order issued by the director pursuant to paragraph (c) of this subsection shall allocate
42 the aggregate assessment set forth in the order to energy resource suppliers in accordance with
43 paragraph (e) of this subsection.

44 (e) The amount assessed to an energy resource supplier shall be based on the ratio which that
45 supplier's annual gross operating revenue derived within this state in the preceding calendar year

1 bears to the total gross operating revenue derived within this state during that year by all energy
2 resource suppliers. The assessment against an energy resource supplier shall not exceed 0.375 per-
3 cent of the supplier's gross operating revenue derived within this state in the preceding calendar
4 year. The director shall exempt from payment of an assessment any individual energy resource
5 supplier whose calculated share of the annual assessment is less than \$250.

6 (f) The director shall send each energy resource supplier subject to assessment pursuant to this
7 subsection a copy of each order issued by registered or certified mail or through use of an electronic
8 medium with electronic receipt verification. The amount assessed to the energy resource supplier
9 pursuant to the order shall be considered to the extent otherwise permitted by law a government-
10 imposed cost and recoverable by the energy resource supplier as a cost included within the price
11 of the service or product supplied.

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

14 (A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days
15 following adjournment sine die of the odd-numbered year regular session of the Legislative Assem-
16 bly; and

17 (B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July
18 1 of each even-numbered year or 90 days following adjournment sine die of the even-numbered year
19 regular session of the Legislative Assembly, whichever is later.

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

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

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

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

34 (i) As used in this section:

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

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

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

44 (j) In determining the amount of revenues that must be derived from any class of energy re-
45 source suppliers by assessment pursuant to this subsection, the director shall take into account all

1 other known or readily ascertainable sources of revenue to the council and department, including,
2 but not limited to, fees imposed under this section and federal funds, and may take into account any
3 funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter
4 792, Oregon Laws 1981.

5 (k) Orders issued by the director pursuant to this section shall be subject to judicial review
6 under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an en-
7 ergy resource supplier to pay amounts assessed to it on or before the statutory deadline.

8 (9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal
9 power plant or nuclear installation within this state shall pay to the department annually on July
10 1 an assessment in an amount determined by the director to be necessary to fund the activities of
11 the state and the counties associated with emergency preparedness for a nuclear fueled thermal
12 power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys
13 collected as assessments under this subsection are continuously appropriated to the department for
14 this purpose.

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

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

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

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

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

36 **SECTION 3. (1) The Energy Facility Siting Task Force is established.**

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

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

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

42 **(c) The Governor shall appoint five members who represent the interests of persons af-**
43 **ected by the energy facility siting process.**

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

45 **(a) Review the statutes and regulations that govern the jurisdiction of the Energy Fa-**

1 cility Siting Council and, upon such review, develop recommendations regarding:

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

5 (B) Ways to improve public participation in the energy facility siting process; and

6 (C) Ways to expedite the process for receiving a site certificate for constructing or ex-
7 panding an energy facility subject to the jurisdiction of the council; and

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

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

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

17 (6) Official action by the task force requires the approval of a majority of the voting
18 members of the task force.

19 (7) The task force shall elect one of its members to serve as chairperson.

20 (8) If there is a vacancy for any cause, the appointing authority shall make an appoint-
21 ment to become immediately effective.

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

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

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

28 (12) The Legislative Policy and Research Director shall provide staff support to the task
29 force.

30 (13) Notwithstanding ORS 171.072, members of the task force who are members of the
31 Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volun-
32 teers on the task force. Other members of the task force are not entitled to compensation
33 or reimbursement for expenses and serve as volunteers on the task force.

34 (14) All agencies of state government, as defined in ORS 174.111, are directed to assist
35 the task force in the performance of the task force’s duties and, to the extent permitted by
36 laws relating to confidentiality, to furnish information and advice the members of the task
37 force consider necessary to perform their duties.

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

39 **SECTION 5.** This 2019 Act being necessary for the immediate preservation of the public
40 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
41 on its passage.