

Requested by Representative HELM

**PROPOSED AMENDMENTS TO
HOUSE BILL 3179**

1 In line 2 of the printed bill, after “facilities” insert “; amending ORS
2 215.446, 374.305, 469.300, 469.370 and 469.421”.

3 Delete lines 4 through 18 and insert:

4 **“SECTION 1.** ORS 215.446 is amended to read:

5 “215.446. (1) As used in this section:

6 “(a) ‘Average electric generating capacity’ has the meaning given that
7 term in ORS 469.300.

8 “(b) ‘Energy generation area’ has the meaning given that term in ORS
9 469.300.

10 “(c) ‘Renewable energy facility’ means:

11 “(A) A solar photovoltaic power generation facility using:

12 “(i) More than 100 acres but not more than [160] **320** acres located on
13 high-value farmland as defined in ORS 195.300;

14 “(ii) More than 100 acres but not more than [1,280] **2,560** acres located
15 on land that is predominantly cultivated or that, if not cultivated, is pre-
16 dominantly composed of soils that are in capability classes I to IV, as spec-
17 ified by the National Cooperative Soil Survey operated by the Natural
18 Resources Conservation Service of the United States Department of Agri-
19 culture; or

20 “(iii) More than 320 acres but not more than [1,920] **3,840** acres located
21 on any other land.

1 “(B) An electric power generating plant with an average electric gener-
2 ating capacity of at least 35 megawatts but less than 50 megawatts if the
3 power is produced from geothermal or wind energy at a single plant or
4 within a single energy generation area.

5 “[(2)] **(2)(a)** An application for a land use permit to establish a renewable
6 energy facility must be made under ORS 215.416.

7 “**(b)** An applicant must demonstrate to the satisfaction of the county that
8 the **proposed** renewable energy facility meets the standards under subsection
9 (3) of this section.

10 “**(c)** **In determining whether a proposed renewable energy facility**
11 **meets the standards under subsection (3) of this section, the county**
12 **shall:**

13 “**(A) Consider all public testimony and any recommendation re-**
14 **ceived from any state agency through public testimony; and**

15 “**(B) Adopt findings based on substantial evidence.**

16 “**(d)** **In determining whether mitigation meets the standards under**
17 **subsection (3) of this section, a county may:**

18 “**(A) Approve a mitigation plan that contains multiple mitigation**
19 **options, if the county finds that each option separately, or any com-**
20 **bination of options, meets the standards under subsection (3) of this**
21 **section;**

22 “**(B) Approve mitigation that includes future performance obli-**
23 **gations by the applicant, as components of the mitigation plan or as**
24 **imposed by the county through conditions of approval, if the miti-**
25 **gation, as a whole, meets the standards under subsection (3) of this**
26 **section;**

27 “**(C) Accept from the applicant a fee in lieu of mitigation, to be held**
28 **in trust and administered by the county, to fund a beneficial wildlife**
29 **or habitat conservation or enhancement project determined by the**
30 **county at the time the land use is approved or at a future date;**

1 **“(D) Approve or implement mitigation banking; or**

2 **“(E) Approve any other mitigation that the county finds, based on**
3 **substantial evidence, meets the standards in subsection (3) of this**
4 **section.**

5 “(3) In order to issue a permit, the county shall require that the applicant:

6 “(a)(A) Consult with the State Department of Fish and Wildlife, prior to
7 submitting a final application to the county, regarding **direct, significant**
8 **and adverse impacts to fish and wildlife populations or** fish and wildlife
9 habitat [*impacts*] and any mitigation plan [*that is necessary*] **to be developed**
10 **under subparagraph (C) of this paragraph;**

11 “(B) Conduct a habitat assessment of the proposed development site;

12 “(C) Develop a [*mitigation*] plan to [*address*] **mitigate direct,** significant
13 **and adverse impacts to fish and wildlife populations or** fish and wildlife
14 habitat [*impacts*] consistent with the administrative rules adopted by the
15 State Fish and Wildlife Commission for the purposes of implementing ORS
16 496.012; and

17 “(D) Follow administrative rules adopted by the State Fish and Wildlife
18 Commission and rules adopted by the Land Conservation and Development
19 Commission to implement the Oregon Sage-Grouse Action Plan and Execu-
20 tive Order 15-18.

21 “(b) Demonstrate that the construction and operation of the renewable
22 energy facility, taking into account mitigation, will not result in significant
23 adverse impacts to historic, cultural and archaeological resources that are:

24 “(A) Listed on the National Register of Historic Places under the Na-
25 tional Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

26 “(B) Inventoried in a local comprehensive plan; or

27 “(C) Evaluated as a significant or important archaeological object or
28 archaeological site, as those terms are defined in ORS 358.905.

29 “(c) Demonstrate that the site for a renewable energy facility, taking into
30 account mitigation, can be restored adequately to a useful, nonhazardous

1 condition following permanent cessation of construction or operation of the
2 facility and that the applicant has a reasonable likelihood of obtaining fi-
3 nancial assurances in a form and amount satisfactory to the county to secure
4 restoration of the site to a useful, nonhazardous condition.

5 “(d) Meet the general and specific standards for a renewable energy fa-
6 cility adopted by the Energy Facility Siting Council under ORS 469.470 (2)
7 and 469.501 that the county determines are applicable.

8 “(e) Provide the financial assurances described in paragraph (c) of this
9 subsection in the form and at the time specified by the county.

10 “(4) Upon receipt of a reasonable cost estimate from the state agency or
11 tribe, the applicant and county may jointly enter into a cost reimbursement
12 agreement administered by the county with:

13 “(a) The State Department of Fish and Wildlife to receive comments under
14 subsection (3)(a) of this section.

15 “(b) The State Historic Preservation Officer or any affected federally re-
16 cognized Indian tribe to receive comments under subsection (3)(b) of this
17 section.

18 “(c) The State Department of Energy to receive comments under sub-
19 section (3)(c) and (d) of this section as well as comments regarding other
20 matters as the county may require.

21 “(5) A county that receives an application for a permit under this section
22 shall, upon receipt of the application, provide notice to persons listed in
23 subsection (6) of this section. The notice must include, at a minimum:

24 “(a) A description of the proposed renewable energy facility;

25 “(b) A description of the lots or parcels subject to the permit application;

26 “(c) The dates, times and locations where public comments or public tes-
27 timony on the permit application can be submitted; and

28 “(d) The contact information for the governing body of the county and the
29 applicant.

30 “(6) The notice required under subsection (5) of this section must be de-

1 livered to:

2 “(a) The State Department of Fish and Wildlife;

3 “(b) The State Department of Energy;

4 “(c) The State Historic Preservation Officer;

5 “(d) The Oregon Department of Aviation;

6 “(e) The United States Department of Defense; and

7 “(f) Federally recognized Indian tribes that may be affected by the appli-
8 cation.

9 **“SECTION 2.** ORS 374.305 is amended to read:

10 “374.305. (1) A person may not place, build or construct on the right of
11 way of any state highway or county road, any approach road, structure,
12 pipeline, ditch, cable or wire, or any other facility, thing or appurtenance,
13 or substantially alter any such facility, thing or appurtenance or change the
14 manner of using any such approach road without first obtaining written
15 permission from the Department of Transportation with respect to state
16 highways or the county court or board of county commissioners with respect
17 to county roads. **In reviewing or granting an application for written**
18 **permission, the department or a county court or board of county**
19 **commissioners may not discriminate against or favor a renewable en-**
20 **ergy facility.**

21 “(2) After written notice of not less than 10 days to the permittee and an
22 opportunity for a hearing, the department with respect to crossings over a
23 state highway and the county court or board of county commissioners with
24 respect to crossings over a county road may abolish any crossing at grade
25 by a private road or may alter or change any private road crossing when the
26 public safety, public convenience and the general welfare require the alter-
27 ation or change.

28 **“SECTION 3.** ORS 469.300 is amended to read:

29 “469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and
30 469.992, unless the context requires otherwise:

1 “(1) ‘Applicant’ means any person who makes application for a site cer-
2 tificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619,
3 469.930 and 469.992.

4 “(2) ‘Application’ means a request for approval of a particular site or sites
5 for the construction and operation of an energy facility or the construction
6 and operation of an additional energy facility upon a site for which a cer-
7 tificate has already been issued, filed in accordance with the procedures es-
8 tablished pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and
9 469.992.

10 “(3) ‘Associated transmission lines’ means new transmission lines con-
11 structed to connect an energy facility to the first point of junction of such
12 transmission line or lines with either a power distribution system or an
13 interconnected primary transmission system or both or to the Northwest
14 Power Grid.

15 “(4) ‘Average electric generating capacity’ means the peak generating ca-
16 pacity of the facility divided by one of the following factors:

17 “(a) For wind facilities, 3.00;

18 “(b) For geothermal energy facilities, 1.11; or

19 “(c) For all other energy facilities, 1.00.

20 “(5) ‘Combustion turbine power plant’ means a thermal power plant con-
21 sisting of one or more fuel-fired combustion turbines and any associated
22 waste heat combined cycle generators.

23 “(6) ‘Construction’ means work performed on a site, excluding surveying,
24 exploration or other activities to define or characterize the site, the cost of
25 which exceeds \$250,000.

26 “(7) ‘Council’ means the Energy Facility Siting Council established under
27 ORS 469.450.

28 “(8) ‘Department’ means the State Department of Energy created under
29 ORS 469.030.

30 “(9) ‘Director’ means the Director of the State Department of Energy ap-

1 pointed under ORS 469.040.

2 “(10) ‘Electric utility’ means persons, regulated electrical companies,
3 people’s utility districts, joint operating agencies, electric cooperatives,
4 municipalities or any combination thereof, engaged in or authorized to en-
5 gage in the business of generating, supplying, transmitting or distributing
6 electric energy.

7 “(11)(a) ‘Energy facility’ means any of the following:

8 “(A) An electric power generating plant with a nominal electric generat-
9 ing capacity of 25 megawatts or more, including but not limited to:

10 “(i) Thermal power;

11 “(ii) Combustion turbine power plant; or

12 “(iii) Solar thermal power plant.

13 “(B) A nuclear installation as defined in this section.

14 “(C) A high voltage transmission line of more than 10 miles in length
15 with a capacity of 230,000 volts or more to be constructed in more than one
16 city or county in this state, but excluding:

17 “(i) Lines proposed for construction entirely within 500 feet of an existing
18 corridor occupied by high voltage transmission lines with a capacity of
19 230,000 volts or more;

20 “(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000
21 volts along the same right of way; and

22 “(iii) Associated transmission lines.

23 “(D) A solar photovoltaic power generation facility using more than:

24 “(i) [160] **320** acres located on high-value farmland as defined in ORS
25 195.300;

26 “(ii) [1,280] **2,560** acres located on land that is predominantly cultivated
27 or that, if not cultivated, is predominantly composed of soils that are in ca-
28 pability classes I to IV, as specified by the National Cooperative Soil Survey
29 operated by the Natural Resources Conservation Service of the United States
30 Department of Agriculture; or

1 “(iii) [1,920] **3,840** acres located on any other land.

2 “(E) A pipeline that is:

3 “(i) At least six inches in diameter, and five or more miles in length, used
4 for the transportation of crude petroleum or a derivative thereof, liquefied
5 natural gas, a geothermal energy form in a liquid state or other fossil energy
6 resource, excluding a pipeline conveying natural or synthetic gas;

7 “(ii) At least 16 inches in diameter, and five or more miles in length, used
8 for the transportation of natural or synthetic gas, but excluding:

9 “(I) A pipeline proposed for construction of which less than five miles of
10 the pipeline is more than 50 feet from a public road, as defined in ORS
11 368.001; or

12 “(II) A parallel or upgraded pipeline up to 24 inches in diameter that is
13 constructed within the same right of way as an existing 16-inch or larger
14 pipeline that has a site certificate, if all studies and necessary mitigation
15 conducted for the existing site certificate meet or are updated to meet cur-
16 rent site certificate standards; or

17 “(iii) At least 16 inches in diameter and five or more miles in length used
18 to carry a geothermal energy form in a gaseous state but excluding a pipeline
19 used to distribute heat within a geothermal heating district established un-
20 der ORS chapter 523.

21 “(F) A synthetic fuel plant which converts a natural resource including,
22 but not limited to, coal or oil to a gas, liquid or solid product intended to
23 be used as a fuel and capable of being burned to produce the equivalent of
24 two billion Btu of heat a day.

25 “(G) A plant which converts biomass to a gas, liquid or solid product, or
26 combination of such products, intended to be used as a fuel and if any one
27 of such products is capable of being burned to produce the equivalent of six
28 billion Btu of heat a day.

29 “(H) A storage facility for liquefied natural gas constructed after Sep-
30 tember 29, 1991, that is designed to hold at least 70,000 gallons.

1 “(I) A surface facility related to an underground gas storage reservoir
2 that, at design injection or withdrawal rates, will receive or deliver more
3 than 50 million cubic feet of natural or synthetic gas per day, or require
4 more than 4,000 horsepower of natural gas compression to operate, but ex-
5 cluding:

6 “(i) The underground storage reservoir;

7 “(ii) The injection, withdrawal or monitoring wells and individual
8 wellhead equipment; and

9 “(iii) An underground gas storage reservoir into which gas is injected
10 solely for testing or reservoir maintenance purposes or to facilitate the sec-
11 ondary recovery of oil or other hydrocarbons.

12 “(J) An electric power generating plant with an average electric gener-
13 ating capacity of 50 megawatts or more if the power is produced from
14 geothermal or wind energy at a single energy facility or within a single en-
15 ergy generation area.

16 “(b) ‘Energy facility’ does not include a hydroelectric facility or an energy
17 facility under paragraph (a)(A)(iii) or (D) of this subsection that is estab-
18 lished on the site of a decommissioned United States Air Force facility that
19 has adequate transmission capacity to serve the energy facility.

20 “(12) ‘Energy generation area’ means an area within which the effects of
21 two or more small generating plants may accumulate so the small generating
22 plants have effects of a magnitude similar to a single generating plant of 35
23 megawatts average electric generating capacity or more. An ‘energy gener-
24 ation area’ for facilities using a geothermal resource and covered by a unit
25 agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be
26 defined in that unit agreement. If no such unit agreement exists, an energy
27 generation area for facilities using a geothermal resource shall be the area
28 that is within two miles, measured from the electrical generating equipment
29 of the facility, of an existing or proposed geothermal electric power gener-
30 ating plant, not including the site of any other such plant not owned or

1 controlled by the same person.

2 “(13) ‘Extraordinary nuclear occurrence’ means any event causing a dis-
3 charge or dispersal of source material, special nuclear material or by-product
4 material as those terms are defined in ORS 453.605, from its intended place
5 of confinement off-site, or causing radiation levels off-site, that the United
6 States Nuclear Regulatory Commission or its successor determines to be
7 substantial and to have resulted in or to be likely to result in substantial
8 damages to persons or property off-site.

9 “(14) ‘Facility’ means an energy facility together with any related or
10 supporting facilities.

11 “(15) ‘Geothermal reservoir’ means an aquifer or aquifers containing a
12 common geothermal fluid.

13 “(16) ‘Local government’ means a city or county.

14 “(17) ‘Nominal electric generating capacity’ means the maximum net
15 electric power output of an energy facility based on the average temperature,
16 barometric pressure and relative humidity at the site during the times of the
17 year when the facility is intended to operate.

18 “(18) ‘Nuclear incident’ means any occurrence, including an extraordinary
19 nuclear occurrence, that results in bodily injury, sickness, disease, death,
20 loss of or damage to property or loss of use of property due to the radioac-
21 tive, toxic, explosive or other hazardous properties of source material, special
22 nuclear material or by-product material as those terms are defined in ORS
23 453.605.

24 “(19) ‘Nuclear installation’ means any power reactor, nuclear fuel fabri-
25 cation plant, nuclear fuel reprocessing plant, waste disposal facility for ra-
26 dioactive waste, and any facility handling that quantity of fissionable
27 materials sufficient to form a critical mass. ‘Nuclear installation’ does not
28 include any such facilities that are part of a thermal power plant.

29 “(20) ‘Nuclear power plant’ means an electrical or any other facility using
30 nuclear energy with a nominal electric generating capacity of 25 megawatts

1 or more, for generation and distribution of electricity, and associated trans-
2 mission lines.

3 “(21) ‘Person’ means an individual, partnership, joint venture, private or
4 public corporation, association, firm, public service company, political sub-
5 division, municipal corporation, government agency, people’s utility district,
6 or any other entity, public or private, however organized.

7 “(22) ‘Project order’ means the order, including any amendments, issued
8 by the State Department of Energy under ORS 469.330.

9 “(23)(a) ‘Radioactive waste’ includes all material which is discarded, un-
10 wanted or has no present lawful economic use, and contains mined or refined
11 naturally occurring isotopes, accelerator produced isotopes and by-product
12 material, source material or special nuclear material as those terms are de-
13 fined in ORS 453.605.

14 “(b) ‘Radioactive waste’ does not include:

15 “(A) Materials identified by the council by rule as presenting no signif-
16 icant danger to the public health and safety.

17 “(B) Uranium mine overburden or uranium mill tailings, mill wastes or
18 mill by-product materials as those terms are defined in Title 42, United
19 States Code, section 2014, on June 25, 1979.

20 “(24) ‘Related or supporting facilities’ means any structure, proposed by
21 the applicant, to be constructed or substantially modified in connection with
22 the construction of an energy facility, including associated transmission
23 lines, reservoirs, storage facilities, intake structures, road and rail access,
24 pipelines, barge basins, office or public buildings, and commercial and in-
25 dustrial structures. ‘Related or supporting facilities’ does not include
26 geothermal or underground gas storage reservoirs, production, injection or
27 monitoring wells or wellhead equipment or pumps.

28 “(25) ‘Site’ means any proposed location of an energy facility and related
29 or supporting facilities.

30 “(26) ‘Site certificate’ means the binding agreement between the State of

1 Oregon and the applicant, authorizing the applicant to construct and operate
2 a facility on an approved site, incorporating all conditions imposed by the
3 council on the applicant.

4 “(27) ‘Thermal power plant’ means an electrical facility using any source
5 of thermal energy with a nominal electric generating capacity of 25 mega-
6 watts or more, for generation and distribution of electricity, and associated
7 transmission lines, including but not limited to a nuclear-fueled,
8 geothermal-fueled or fossil-fueled power plant, but not including a portable
9 power plant the principal use of which is to supply power in emergencies.
10 ‘Thermal power plant’ includes a nuclear-fueled thermal power plant that has
11 ceased to operate.

12 “(28) ‘Transportation’ means the transport within the borders of the State
13 of Oregon of radioactive material destined for or derived from any location.

14 “(29) ‘Underground gas storage reservoir’ means any subsurface sand,
15 strata, formation, aquifer, cavern or void, whether natural or artificially
16 created, suitable for the injection, storage and withdrawal of natural gas or
17 other gaseous substances. ‘Underground gas storage reservoir’ includes a
18 pool as defined in ORS 520.005.

19 “(30) ‘Utility’ includes:

20 “(a) A person, a regulated electrical company, a people’s utility district,
21 a joint operating agency, an electric cooperative, municipality or any com-
22 bination thereof, engaged in or authorized to engage in the business of gen-
23 erating, transmitting or distributing electric energy;

24 “(b) A person or public agency generating electric energy from an energy
25 facility for its own consumption; and

26 “(c) A person engaged in this state in the transmission or distribution of
27 natural or synthetic gas.

28 “(31) ‘Waste disposal facility’ means a geographical site in or upon which
29 radioactive waste is held or placed but does not include a site at which ra-
30 dioactive waste used or generated pursuant to a license granted under ORS

1 453.635 is stored temporarily, a site of a thermal power plant used for the
2 temporary storage of radioactive waste from that plant for which a site cer-
3 tificate has been issued pursuant to this chapter or a site used for temporary
4 storage of radioactive waste from a reactor operated by a college, university
5 or graduate center for research purposes and not connected to the Northwest
6 Power Grid. As used in this subsection, ‘temporary storage’ includes storage
7 of radioactive waste on the site of a nuclear-fueled thermal power plant for
8 which a site certificate has been issued until a permanent storage site is
9 available by the federal government.

10 **“SECTION 4.** ORS 469.370 is amended to read:

11 “469.370. (1) Based on its review of the application and the comments and
12 recommendations on the application from state agencies and local govern-
13 ments, the State Department of Energy shall prepare and issue a draft pro-
14 posed order on the application.

15 “(2) Following issuance of the draft proposed order, the Energy Facility
16 Siting Council shall hold one or more public hearings on the application for
17 a site certificate in the affected area and elsewhere, as the council considers
18 necessary. Notice of the hearing shall be mailed at least 20 days before the
19 hearing. The notice shall, at a minimum:

20 “(a) Comply with the requirements of ORS 197.797 (2), with respect to the
21 persons notified;

22 “(b) Include a description of the facility and the facility’s general lo-
23 cation;

24 “(c) Include the name of an agency representative to contact and the
25 telephone number where additional information may be obtained;

26 “(d) State that copies of the application and draft proposed order are
27 available for inspection at no cost and will be provided at a reasonable cost;
28 and

29 “(e) State that failure to raise an issue in person or in writing prior to
30 the close of the record of the public hearing with sufficient specificity to

1 afford the decision maker an opportunity to respond to the issue precludes
2 consideration of the issue in a contested case.

3 “(3) Any issue that may be the basis for a contested case shall be raised
4 not later than the close of the record at or following the final public hearing
5 prior to issuance of the department’s proposed order. Such issues shall be
6 raised with sufficient specificity to afford the council, the department and
7 the applicant an adequate opportunity to respond to each issue. A statement
8 of this requirement shall be made at the commencement of any public hear-
9 ing on the application.

10 “(4) After reviewing the application, the draft proposed order and any
11 testimony given at the public hearing and after consulting with other agen-
12 cies, the department shall issue a proposed order recommending approval or
13 rejection of the application. The department shall issue public notice of the
14 proposed order, that shall include notice of a contested case hearing speci-
15 fying a deadline for requests to participate as a party or limited party and
16 a date for the prehearing conference.

17 “(5) Following receipt of the proposed order from the department, the
18 council shall conduct a contested case hearing on the application for a site
19 certificate in accordance with the applicable provisions of ORS chapter 183
20 and any procedures adopted by the council. The applicant shall be a party
21 to the contested case. The council may permit any other person to become
22 a party to the contested case in support of or in opposition to the application
23 only if the person appeared in person or in writing at the public hearing on
24 the site certificate application. Issues that may be the basis for a contested
25 case shall be limited to those raised on the record of the public hearing un-
26 der subsection (3) of this section, unless:

27 “(a) The department failed to follow the requirements of subsection (2)
28 or (3) of this section; or

29 “(b) The action recommended in the proposed order, including any re-
30 commended conditions of the approval, differs materially from that described

1 in the draft proposed order, in which case only new issues related to such
2 differences may be raised.

3 “(6) If no person requests party status to challenge the department’s pro-
4 posed order, the proposed order shall be forwarded to the council and the
5 contested case hearing shall be concluded.

6 “(7) At the conclusion of the contested case, the council shall issue a final
7 order, either approving or rejecting the application based upon the standards
8 adopted under ORS 469.501 and any additional statutes, rules or local ordi-
9 nances determined to be applicable to the facility by the project order, as
10 amended. The council shall make its decision by the affirmative vote of at
11 least four members approving or rejecting any application for a site certifi-
12 cate. The council may amend or reject the proposed order, so long as the
13 council provides public notice of its hearing to adopt a final order, and
14 provides an opportunity for the applicant and any party to the contested case
15 to comment on material changes to the proposed order, including material
16 changes to conditions of approval resulting from the council’s review. The
17 council’s order shall be considered a final order for purposes of appeal.

18 “(8) Rejection or approval of an application, together with any conditions
19 that may be attached to the certificate, shall be subject to judicial review
20 as provided in ORS 469.403.

21 “(9) The council shall either approve or reject an application for a site
22 certificate:

23 “(a) Within 24 months after filing an application for a nuclear installa-
24 tion, or for a thermal power plant, other than that described in paragraph
25 (b) of this subsection, with a nameplate rating of more than 200,000 kilo-
26 watts;

27 “(b) Within nine months after filing of an application for a site certificate
28 for a combustion turbine power plant, a geothermal-fueled power plant or an
29 underground storage facility for natural gas;

30 “(c) Within six months after filing an application for a site certificate for

1 an energy facility, if the application is:

2 “(A) To expand an existing industrial facility to include an energy facil-
3 ity;

4 “(B) To expand an existing energy facility to achieve a nominal electric
5 generating capacity of between 25 and 50 megawatts; or

6 “(C) To add injection or withdrawal capacity to an existing underground
7 gas storage facility; [*or*]

8 “**(d) Within 120 days after filing an application for a site certificate**
9 **for a solar photovoltaic power generation facility; or**

10 “[*d*] **(e)** Within 12 months after filing an application for a site certificate
11 for any other energy facility.

12 “(10) At the request of the applicant, the council shall allow expedited
13 processing of an application for a site certificate for an energy facility with
14 an average electric generating capacity of less than 100 megawatts. No no-
15 tice of intent shall be required. Following approval of a request for expedited
16 review, the department shall issue a project order, which may be amended
17 at any time. The council shall either approve or reject an application for a
18 site certificate within six months after filing the site certificate application
19 if there are no intervenors in the contested case conducted under subsection
20 (5) of this section. If there are intervenors in the contested case, the council
21 shall either approve or reject an application within nine months after filing
22 the site certificate application. For purposes of this subsection, the generat-
23 ing capacity of a thermal power plant is the nameplate rating of the elec-
24 trical generator proposed to be installed in the plant.

25 “(11) Failure of the council to comply with the deadlines set forth in
26 subsection (9) or (10) of this section shall not result in the automatic issu-
27 ance or denial of a site certificate.

28 “(12) The council shall specify in the site certificate a date by which
29 construction of the facility must begin.

30 “[*13*] **(13)(a)** For a facility that is **sited partially within federal lands**

1 **and partially within nonfederal lands and is** subject to and has been or
2 will be reviewed by a federal agency under the National Environmental
3 Policy Act, 42 U.S.C. [Section] 4321[,] et seq., the council shall conduct its
4 site certificate review, to the maximum extent feasible, in a manner that is
5 consistent with and does not duplicate the federal agency review. Such co-
6 ordination shall include, but need not be limited to:

7 “[a)] **(A)** Elimination of duplicative application, study and reporting re-
8 quirements;

9 “[b)] **(B)** Council use of information generated and documents prepared
10 for the federal agency review;

11 “[c)] **(C)** Development with the federal agency and reliance on a joint
12 record to address applicable council standards;

13 “[d)] **(D)** Whenever feasible, joint hearings and issuance of a site certif-
14 icate decision in a time frame consistent with the federal agency review; and

15 “[e)] **(E)** To the extent consistent with applicable state standards, estab-
16 lishment of conditions in any site certificate that are consistent with the
17 conditions established by the federal agency.

18 **“(b) The council may not exercise jurisdiction over a facility that**
19 **is sited wholly on federal land and is subject to or has been or will be**
20 **reviewed by a federal agency under the National Environmental Policy**
21 **Act, 42 U.S.C. 4321 et seq.**

22 **“SECTION 5.** ORS 469.421 is amended to read:

23 **“469.421. (1)(a)** Subject to the provisions of ORS 469.441 **and paragraph**
24 **(b) of this subsection**, any person submitting a notice of intent, a request
25 for exemption under ORS 469.320, a request for an expedited review under
26 ORS 469.370, a request for an expedited review under ORS 469.373, a request
27 for the State Department of Energy to approve a pipeline under ORS 469.405
28 (3), an application for a site certificate or a request to amend a site certif-
29 icate shall pay all expenses incurred by the Energy Facility Siting Council
30 and the department related to the review and decision of the council. Ex-

1 penses under this subsection may include:

2 “[(a)] (A) Legal expenses;

3 “[(b)] (B) Expenses incurred in processing and evaluating the application;

4 “[(c)] (C) Expenses incurred in issuing a final order or site certificate;

5 “[(d)] (D) Expenses incurred in commissioning an independent study un-
6 der ORS 469.360;

7 “[(e)] (E) Compensation paid to a state agency, a tribe or a local gov-
8 ernment pursuant to a written contract or agreement relating to compen-
9 sation as provided for in ORS 469.360; or

10 “[(f)] (F) Expenses incurred by the council in making rule changes that
11 are specifically required and related to the particular site certificate.

12 **“(b) For a notice, request or application related to a solar
13 photovoltaic power generation facility, the total amount of the fees
14 required to be paid under this subsection shall not exceed \$250,000.**

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

28 “(3) Before submitting a site certificate application, the applicant shall
29 request from the department an estimate of the costs expected to be incurred
30 in processing the application. The department shall inform the applicant of

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

12 “(4) Any person who is delinquent in the payment of fees under sub-
13 sections (1) to (3) of this section shall be subject to the provisions of sub-
14 section (11) of this section.

15 “(5) Subject to the provisions of ORS 469.441, each holder of a certificate
16 shall pay an annual fee, due every July 1 following issuance of a site cer-
17 tificate. For each fiscal year, upon approval of the department’s budget au-
18 thorization by an odd-numbered year regular session of the Legislative
19 Assembly or as revised by the Emergency Board meeting in an interim period
20 or by the Legislative Assembly meeting in special session or in an even-
21 numbered year regular session, the Director of the State Department of En-
22 ergy promptly shall enter an order establishing an annual fee based on the
23 amount of revenues that the director estimates is needed to fund the cost of
24 ensuring that the facility is being operated consistently with the terms and
25 conditions of the site certificate, any order issued by the department under
26 ORS 469.405 (3) and any applicable health or safety standards. In determining
27 this cost, the director shall include both the actual direct cost to be incurred
28 by the council and the department to ensure that the facility is being oper-
29 ated consistently with the terms and conditions of the site certificate, any
30 order issued by the department under ORS 469.405 (3) and any applicable

1 health or safety standards, and the general costs to be incurred by the
2 council and the department to ensure that all certificated facilities are being
3 operated consistently with the terms and conditions of the site certificates,
4 any orders issued by the department under ORS 469.405 (3) and any applica-
5 ble health or safety standards that cannot be allocated to an individual, li-
6 censed facility. Not more than 35 percent of the annual fee charged each
7 facility shall be for the recovery of these general costs. The fees for direct
8 costs shall reflect the size and complexity of the facility, the anticipated
9 costs of ensuring compliance with site certificate conditions, the anticipated
10 costs of conducting site inspections and compliance reviews as described in
11 ORS 469.430, and the anticipated costs of compensating state agencies and
12 local governments for participating in site inspection and compliance
13 enforcement activities at the request of the council.

14 “(6) Each holder of a site certificate executed after July 1 of any fiscal
15 year shall pay a fee for the remaining portion of the year. The amount of the
16 fee shall be set at the cost of regulating the facility during the remaining
17 portion of the year determined in the same manner as the annual fee.

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

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

30 “(b) Prior to filing an agency request budget under ORS 291.208 for pur-

1 poses related to the compilation and preparation of the Governor’s budget
2 under ORS 291.216, the director shall determine the projected aggregate
3 amount of revenue to be collected from energy resource suppliers under this
4 subsection that will be necessary to fund the programs and activities of the
5 council and the department for each fiscal year of the upcoming biennium.
6 After making that determination, the director shall convene a public meeting
7 with representatives of energy resource suppliers and other interested parties
8 for the purpose of providing energy resource suppliers with a full accounting
9 of:

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

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

14 “(c) Upon approval of the budget authorization of the council and the
15 department by an odd-numbered year regular session of the Legislative As-
16 sembly, the director shall promptly enter an order establishing the amount
17 of revenues required to be derived from an assessment pursuant to this sub-
18 section in order to fund programs and activities that the council and the
19 department are charged with administering and authorized to conduct under
20 the laws of this state, including those enumerated in ORS 469.030, for the
21 first fiscal year of the forthcoming biennium. On or before June 1 of each
22 even-numbered year, the director shall enter an order establishing the
23 amount of revenues required to be derived from an assessment pursuant to
24 this subsection in order to fund the programs and activities that the council
25 and the department are charged with administering and authorized to con-
26 duct under the laws of this state, including those enumerated in ORS 469.030,
27 for the second fiscal year of the biennium. The order shall take into account
28 any revisions to the biennial budget of the council and the department made
29 by the Emergency Board meeting in an interim period or by the Legislative
30 Assembly meeting in special session or in an even-numbered year regular

1 session.

2 “(d) Each order issued by the director pursuant to paragraph (c) of this
3 subsection shall allocate the aggregate assessment set forth in the order to
4 energy resource suppliers in accordance with paragraph (e) of this sub-
5 section.

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

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

23 “(g) The amounts assessed to individual energy resource suppliers pursu-
24 ant to paragraph (e) of this subsection shall be paid to the department as
25 follows:

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

29 “(B) Amounts assessed for the second fiscal year of a biennium shall be
30 paid not later than July 1 of each even-numbered year or 90 days following

1 adjournment sine die of the even-numbered year regular session of the Leg-
2 islative Assembly, whichever is later.

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

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

17 “(B) The energy supplier provides reasonable assurance that the energy
18 supplier can comply with the revised deadline; and

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

21 “(i) As used in this section:

22 “(A) ‘Energy resource supplier’ means an electric utility, natural gas
23 utility or petroleum supplier supplying, generating, transmitting or distrib-
24 uting electricity, natural gas or petroleum products in Oregon.

25 “(B) ‘Gross operating revenue’ means gross receipts from sales or service
26 made or provided within this state during the regular course of the energy
27 supplier’s business, but does not include either revenue derived from interu-
28 tility sales within the state or revenue received by a petroleum supplier from
29 the sale of fuels that are subject to the requirements of Article IX, section
30 3a, of the Oregon Constitution, or ORS 319.020 or 319.530.

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

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

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

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

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

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

29 “(11)(a) All fees assessed by the director against holders of site certifi-
30 cates for facilities that have an installed capacity of 500 megawatts or

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

3 “(b) Energy resource suppliers or applicants or holders of a site certif-
4 icate who fail to pay a fee provided under subsections (1) to (9) of this sec-
5 tion after it is due and payable shall pay, in addition to that fee, a penalty
6 of two percent of the fee a month for the period that the fee is past due. Any
7 payment made according to the terms of a schedule negotiated under para-
8 graph (a) of this subsection shall not be considered past due. The director
9 may bring an action to collect an unpaid fee or penalty in the name of the
10 State of Oregon in a court of competent jurisdiction. The court may award
11 reasonable 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
