

Senate Bill 1050

Sponsored by Senators WHITSETT, MORRISETTE; Senators FERRIOLI, JOHNSON, VERGER, Representative GARRARD

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires State Department of Energy to confer with governing body of local government within whose jurisdiction certain facilities may be located. Requires special advisory body to comment and make recommendations by specified deadline. Requires Energy Facility Siting Council to provide funding to special advisory groups required to contract with another entity to complete comments and recommendations. Requires council to include in draft proposed order all recommended findings and conditions of approval proposed by special advisory group. Sets conditions regarding department's recommendations to council. Sets conditions regarding council's consideration of special advisory group's recommendations. Requires payment of expenses incurred by special advisory groups in certain cases.

A BILL FOR AN ACT

1
2 Relating to energy facility siting; amending ORS 469.330, 469.350, 469.360, 469.370, 469.373, 469.421,
3 469.480, 469.504 and 469.505.

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

5 **SECTION 1.** ORS 469.330 is amended to read:

6 469.330. (1) Each applicant for a site certificate shall submit to the Energy Facility Siting
7 Council a notice of intent to file an application for a site certificate. The notice of intent must
8 provide information about the proposed site and the characteristics of the facility sufficient for the
9 preparation of the State Department of Energy's project order.

10 (2) The council shall cause public notice to be given upon receipt of a notice of intent by the
11 council. The public notice shall provide a description of the proposed site and facility in sufficient
12 detail to inform the public of the location and proposed use of the site.

13 (3) Following review of the notice of intent and any public comments received in response to the
14 notice of intent, the department may hold a preapplication conference with:

15 (a) State agencies [*and local governments*] that have regulatory or advisory responsibility with
16 respect to the facility; **and**

17 (b) **The governing body of each local government within whose jurisdiction a facility or**
18 **a portion of a facility is proposed to be located in order to identify local ordinances and other**
19 **local issues to be addressed in the application for a site certificate.**

20 (4) After the preapplication [*conference*] **conferences**, the department shall issue a project order
21 establishing the statutes, administrative rules, council standards, local ordinances, **local issues**,
22 application requirements and study requirements for the site certificate application. A project order
23 is not a final order.

24 [(4)] (5) A project order issued under subsection [(3)] (4) of this section may be amended at any
25 time by either the department or the council.

26 **SECTION 2.** ORS 469.350 is amended to read:

27 469.350. (1) Applications for site certificates shall be made to the Energy Facility Siting Council

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 in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

2 (2) Copies of the notice of intent and of the application shall be sent for comment and recom-
3 mendation within specified deadlines established by the council to the Department of Environmental
4 Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Re-
5 sources Director, the State Geologist, the State Forestry Department, the Public Utility Commission
6 of Oregon, the State Department of Agriculture, the Department of Land Conservation and Devel-
7 opment, any other state agency that has regulatory or advisory responsibility with respect to the
8 facility and any city or county affected by the application.

9 (3) Any state agency, city or county **or special advisory group** that is requested by the council
10 to comment and make recommendations under this section shall respond to the council by the
11 specified deadline. If a state agency, city or county **or special advisory group** determines that it
12 cannot respond to the council by the specified deadline because the state agency, city or county **or**
13 **special advisory group** lacks sufficient resources to review and comment on the application, the
14 state agency, city or county [*shall*] **or special advisory group may** contract with another entity to
15 assist in preparing a response. A state agency, city or county **or special advisory group** that enters
16 into a contract to assist in preparing a response may request funding to pay for that contract from
17 the council pursuant to ORS 469.360 (3).

18 (4) The State Department of Energy shall notify the applicant whether the application is com-
19 plete. When the department determines an application is complete, the department shall notify the
20 applicant and provide notice to the public.

21 **SECTION 3.** ORS 469.360 is amended to read:

22 469.360. (1) The Energy Facility Siting Council shall evaluate each site certificate application.
23 As part of its evaluation, the council may commission an independent study by an independent
24 contractor, state agency, local government or any other person, of any aspect of the proposed fa-
25 cility within its statutory authority to review. The council may compensate a state agency or local
26 government for expenses related to:

27 (a) Review of the notice of intent, the application or a request for an expedited review;

28 (b) The state agency's or local government's participation in a council proceeding; and

29 (c) The performance of specific studies necessary to complete the council's statutory evaluation
30 of the application.

31 (2) The council may enter into a contract under subsection (1) of this section only after the
32 council makes a determination that the council is unable to fully evaluate the application without
33 assistance and identifies specific issues to be addressed and only pursuant to a written contract or
34 agreement with the independent contractor, state agency, local government or other person. The
35 council shall compensate the independent contractor, state agency, local government or other person
36 only to the extent the costs are directly related to issues identified by the council.

37 (3) The council shall provide funding to state agencies, cities or counties **or special advisory**
38 **groups** required to contract with another entity to complete comments and recommendations pur-
39 suant to ORS 469.350.

40 (4) In addition to compensating state agencies and local governments pursuant to subsection (1)
41 of this section, the council may provide funding to the Department of Environmental Quality for the
42 department to conduct modeling and provide technical assistance to expedite preparation, sub-
43 mission and review of applications for permits under ORS 468A.040 required for energy facilities.

44 **SECTION 4.** ORS 469.370 is amended to read:

45 469.370. (1) Based on its review of the application and the comments and recommendations on

1 the application from state agencies and local governments, the State Department of Energy shall
2 prepare and issue a draft proposed order on the application. **The department shall include in the**
3 **draft proposed order all recommended findings and conditions of approval proposed by the**
4 **special advisory group designated by the Energy Facility Siting Council pursuant to ORS**
5 **469.480, as well as the department's recommendation to the council regarding adoption of the**
6 **findings and conditions of approval. If the department recommends that the council reject**
7 **or amend conditions proposed by the special advisory group, the department must include a**
8 **detailed analysis of the reasons for rejecting or amending the recommendation in the draft**
9 **proposed order.**

10 (2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold
11 one or more public hearings on the application for a site certificate in the affected area and else-
12 where, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days
13 before the hearing. The notice shall, at a minimum:

14 (a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;

15 (b) Include a description of the facility and the facility's general location;

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

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

20 (e) State that failure to raise an issue in person or in writing prior to the close of the record
21 of the public hearing with sufficient specificity to afford the decision maker an opportunity to re-
22 spond to the issue precludes consideration of the issue in a contested case.

23 (3) Any issue that may be the basis for a contested case shall be raised not later than the close
24 of the record at or following the final public hearing prior to issuance of the department's proposed
25 order. Such issues shall be raised with sufficient specificity to afford the council, the department
26 and the applicant an adequate opportunity to respond to each issue. A statement of this requirement
27 shall be made at the commencement of any public hearing on the application.

28 (4) After reviewing the application, the draft proposed order and any testimony given at the
29 public hearing and after consulting with other agencies **and the city or county affected by the**
30 **application**, the department shall issue a proposed order recommending approval or rejection of the
31 application. The department shall issue public notice of the proposed order, that shall include notice
32 of a contested case hearing specifying a deadline for requests to participate as a party or limited
33 party and a date for the prehearing conference.

34 (5) Following receipt of the proposed order from the department, the council shall conduct a
35 contested case hearing on the application for a site certificate in accordance with the applicable
36 provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be
37 a party to the contested case. The council may permit any other person to become a party to the
38 contested case in support of or in opposition to the application only if the person appeared in person
39 or in writing at the public hearing on the site certificate application. Issues that may be the basis
40 for a contested case shall be limited to those raised on the record of the public hearing under sub-
41 section (3) of this section, unless:

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

43 (b) The action recommended in the proposed order, including any recommended conditions of the
44 approval, differs materially from that described in the draft proposed order, in which case only new
45 issues related to such differences may be raised.

1 (6) If no person requests party status to challenge the department's proposed order, the proposed
2 order shall be forwarded to the council and the contested case hearing shall be concluded.

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

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

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

16 (a) Within 24 months after filing an application for a nuclear installation, or for a thermal power
17 plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more
18 than 200,000 kilowatts;

19 (b) Within nine months after filing of an application for a site certificate for a combustion tur-
20 bine power plant, a geothermal-fueled power plant or an underground storage facility for natural
21 gas;

22 (c) Within six months after filing an application for a site certificate for an energy facility, if
23 the application is:

24 (A) To expand an existing industrial facility to include an energy facility;

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

27 (C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

28 (d) Within 12 months after filing an application for a site certificate for any other energy facil-
29 ity.

30 (10) At the request of the applicant, the council shall allow expedited processing of an applica-
31 tion for a site certificate for an energy facility with an average electric generating capacity of less
32 than 100 megawatts. No notice of intent shall be required. Following approval of a request for ex-
33 pedited review, the department shall issue a project order, which may be amended at any time. The
34 council shall either approve or reject an application for a site certificate within six months after
35 filing the site certificate application if there are no intervenors in the contested case conducted
36 under subsection (5) of this section. If there are intervenors in the contested case, the council shall
37 either approve or reject an application within nine months after filing the site certificate applica-
38 tion. For purposes of this subsection, the generating capacity of a thermal power plant is the
39 nameplate rating of the electrical generator proposed to be installed in the plant.

40 (11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this
41 section shall not result in the automatic issuance or denial of a site certificate.

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

44 (13) For a facility that is subject to and has been or will be reviewed by a federal agency under
45 the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its

1 site certificate review, to the maximum extent feasible, in a manner that is consistent with and does
 2 not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

- 3 (a) Elimination of duplicative application, study and reporting requirements;
- 4 (b) Council use of information generated and documents prepared for the federal agency review;
- 5 (c) Development with the federal agency and reliance on a joint record to address applicable
 6 council standards;
- 7 (d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame
 8 consistent with the federal agency review; and
- 9 (e) To the extent consistent with applicable state standards, establishment of conditions in any
 10 site certificate that are consistent with the conditions established by the federal agency.

11 **SECTION 5.** ORS 469.373 is amended to read:

12 469.373. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370,
 13 an applicant may apply under the provisions of this section for expedited review of an application
 14 for a site certificate for an energy facility if the energy facility:

15 (a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine
 16 fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup
 17 power generation;

18 (b) Is a permitted or conditional use allowed under an applicable local acknowledged compre-
 19 hensive plan, land use regulation or federal land use plan, and is located:

- 20 (A) At or adjacent to an existing energy facility; or
- 21 (B)(i) At, adjacent to or in close proximity to an existing industrial use; and
- 22 (ii) In an area currently zoned or designated for industrial use;

23 (c)(A) Requires no more than three miles of associated transmission lines or three miles of new
 24 natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines;
 25 or

26 (B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in
 27 the locating of associated transmission lines or new natural gas pipelines outside of existing rights
 28 of way;

29 (d) Requires no new water right or water right transfer;

30 (e) Provides funds to a qualified organization in an amount determined by the council to be
 31 sufficient to produce any required reduction in carbon dioxide emissions as specified in ORS 469.503
 32 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by
 33 the energy facility for the life of the energy facility; and

34 (f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing
 35 National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment
 36 permit, if needed, within the expedited review process time frame and has written confirmation from
 37 the wastewater facility permit holder that the additional wastewater load will be accommodated by
 38 the facility without resulting in a significant thermal increase in the facility effluent or without re-
 39 quiring any changes to the wastewater facility National Pollutant Discharge Elimination System
 40 permit;

41 (B) Plans to discharge process wastewater to a wastewater treatment facility owned by a mu-
 42 nicipal corporation that will accommodate the wastewater from the energy facility and supplies ev-
 43 idence from the municipal corporation that:

44 (i) The municipal corporation has included, or intends to include, the process wastewater load
 45 from the energy facility in an application for a National Pollutant Discharge Elimination System

1 permit; and

2 (ii) All conditions required of the energy facility to allow the discharge of process wastewater
3 from the energy facility will be satisfied; or

4 (C) Obtains a National Pollutant Discharge Elimination System or water pollution control fa-
5 cility permit for process wastewater disposal, supplies evidence to support a finding that the dis-
6 charge can likely be permitted within the expedited review process time frame and that the
7 discharge will not require:

8 (i) A new National Pollutant Discharge Elimination System permit, except for a storm water
9 general permit for construction activities; or

10 (ii) A change in any effluent limit or discharge location under an existing National Pollutant
11 Discharge Elimination System or water pollution control facility permit.

12 (2) An applicant seeking expedited review under this section shall submit documentation to the
13 State Department of Energy, prior to the submission of an application for a site certificate, that
14 demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this
15 section. The department shall determine, within 14 days of receipt of the documentation, on a pre-
16 liminary, nonbinding basis, whether the energy facility qualifies for expedited review.

17 (3) If the department determines that the energy facility preliminarily qualifies for expedited
18 review, the applicant may submit an application for expedited review. Within 30 days after the date
19 that the application for expedited review is submitted, the department shall determine whether the
20 application is complete. If the department determines that the application is complete, the applica-
21 tion shall be deemed filed on the date that the department sends the applicant notice of its deter-
22 mination. If the department determines that the application is not complete, the department shall
23 notify the applicant of the deficiencies in the application and shall deem the application filed on the
24 date that the department determines that the application is complete. The department or the
25 council may request additional information from the applicant at any time.

26 (4) The State Department of Energy shall send a copy of a filed application to the Department
27 of Environmental Quality, the Water Resources Department, the State Department of Fish and
28 Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agri-
29 culture, the Department of Land Conservation and Development, the Public Utility Commission, **the**
30 **special advisory group designated by the Energy Facility Siting Council pursuant to ORS**
31 **469.480** and any other state agency, city, county or political subdivision of the state that has regu-
32 latory or advisory responsibility with respect to the proposed energy facility. The State Department
33 of Energy shall send with the copy of the filed application a notice specifying that:

34 (a) In the event the council issues a site certificate for the energy facility, the site certificate
35 will bind the state and all counties, cities and political subdivisions in the state as to the approval
36 of the site, the construction of the energy facility and the operation of the energy facility, and that
37 after the issuance of a site certificate, all permits, licenses and certificates addressed in the site
38 certificate must be issued as required by ORS 469.401 (3); and

39 (b) The comments and recommendations of state agencies, counties, cities and political subdi-
40 visions **and the special advisory group** concerning whether the proposed energy facility complies
41 with any statute, rule or local ordinance that the state agency, county, city or political subdivision
42 would normally administer in determining whether a permit, license or certificate required for the
43 construction or operation of the energy facility should be approved will be considered only if the
44 comments and recommendations are received by the department within a reasonable time after the
45 date the application and notice of the application are sent by the department.

1 (5) Within 90 days after the date that the application was filed, the department shall issue a
2 draft proposed order setting forth:

3 (a) A description of the proposed energy facility;

4 (b) A list of the permits, licenses and certificates that are addressed in the application and that
5 are required for the construction or operation of the proposed energy facility;

6 (c) A list of the statutes, rules and local ordinances that are the standards and criteria for ap-
7 proval of any permit, license or certificate addressed in the application and that are required for the
8 construction or operation of the proposed energy facility; and

9 (d) Proposed findings specifying how the proposed energy facility complies with the applicable
10 standards and criteria for approval of a site certificate.

11 (6) The council shall review the application for site certification in the manner set forth in
12 subsections [(7) to (10)] **(8) to (11)** of this section and shall issue a site certificate for the facility if
13 the council determines that the facility, with any required conditions to the site certificate, will
14 comply with:

15 (a) The requirements for expedited review as specified in this section;

16 (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and
17 (L) to (o);

18 (c) The requirements of ORS 469.503 (3); [and]

19 (d) The requirements of ORS 469.504 (1)(b)[.]; and

20 **(e) Local ordinances or conditions of approval to ensure the public health and safety**
21 **identified by the special advisory group. If the special advisory group recommends conditions**
22 **of approval to ensure public health and safety, the council may amend or reject the recom-**
23 **ended conditions of approval only if the council includes in its final order a detailed dis-**
24 **ussion of the recommended conditions and the council's rationale for amending or rejecting**
25 **the special advisory group's recommendations.**

26 **(7) If the special advisory group recommends denial of the site certificate, the council**
27 **may grant the site certificate only if the council includes in its final order a detailed dis-**
28 **ussion of the council's rationale for rejecting the special advisory group's recommendation**
29 **to deny the site certificate.**

30 [(7)] **(8)** Following submission of an application for a site certificate, the council shall hold a
31 public informational meeting on the application. Following the issuance of the proposed order, the
32 council shall hold at least one public hearing on the application. The public hearing shall be held
33 in the area affected by the energy facility. The council shall mail notice of the hearing at least 20
34 days prior to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2)
35 and shall include, but need not be limited to, the following:

36 (a) A description of the energy facility and the general location of the energy facility;

37 (b) The name of a department representative to contact and the telephone number at which
38 people may obtain additional information;

39 (c) A statement that copies of the application and proposed order are available for inspection
40 at no cost and will be provided at reasonable cost; and

41 (d) A statement that the record for public comment on the application will close at the conclu-
42 sion of the hearing and that failure to raise an issue in person or in writing prior to the close of
43 the record, with sufficient specificity to afford the decision maker an opportunity to respond to the
44 issue, will preclude consideration of the issue, by the council or by a court on judicial review of the
45 council's decision.

1 [(8)] (9) Prior to the conclusion of the hearing, the applicant may request an opportunity to
 2 present additional written evidence, arguments or testimony regarding the application. In the alter-
 3 native, prior to the conclusion of the hearing, the applicant may request a contested case hearing
 4 on the application. If the applicant requests an opportunity to present written evidence, arguments
 5 or testimony, the council shall leave the record open for that purpose only for a period not to exceed
 6 14 days after the date of the hearing. Following the close of the record, the department shall prepare
 7 a draft final order for the council. If the applicant requests a contested case hearing, the council
 8 may grant the request if the applicant has shown good cause for a contested case hearing. If a re-
 9 quest for a contested case hearing is granted, subsections [(9) to (11)] (10) to (12) of this section do
 10 not apply, and the application shall be considered under the same contested case procedures used
 11 for a nonexpedited application for a site certificate.

12 [(9)] (10) The council shall make its decision based on the record and the draft final order pre-
 13 pared by the department. The council shall, within six months of the date that the application is
 14 deemed filed:

- 15 (a) Grant the application;
- 16 (b) Grant the application with conditions;
- 17 (c) Deny the application; or
- 18 (d) Return the application to the site certification process required by ORS 469.320.

19 [(10)] (11) If the application is granted, the council shall issue a site certificate pursuant to ORS
 20 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose condi-
 21 tions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an
 22 application based on those standards.

23 [(11)] (12) Judicial review of the approval or rejection of a site certificate by the council under
 24 this section shall be as provided in ORS 469.403.

25 **SECTION 6.** ORS 469.480 is amended to read:

26 469.480. (1) The Energy Facility Siting Council shall designate as a special advisory group the
 27 governing body of [*any*] **each** local government within whose jurisdiction [*the*] **a facility or portion**
 28 **of a facility** is proposed to be located. **The special advisory group designated pursuant to this**
 29 **section shall identify applicable substantive criteria as described in ORS 469.504 (5), and may**
 30 **identify additional substantive criteria or conditions of approval to be applied to the facility**
 31 **to ensure public health and safety.**

32 (2) **Within the time stated in the request for recommendations from the State Depart-**
 33 **ment of Energy pursuant to ORS 496.504 (5), a special advisory group may submit to the**
 34 **council its proposed recommended findings regarding public health and safety and proposed**
 35 **conditions of approval to be incorporated into the draft proposed order required under ORS**
 36 **469.370 (1). If the special advisory group identifies additional substantive criteria concerning**
 37 **public health and safety or recommends conditions of approval to ensure the public health**
 38 **and safety, the council may amend or reject the recommended conditions of approval only**
 39 **if the council includes in its final order a detailed discussion of the recommended conditions**
 40 **and the council's rationale for amending or rejecting the special advisory group's recom-**
 41 **mendations.**

42 (3) **If the special advisory group recommends denial of the site certificate, the council**
 43 **may grant the site certificate only if the council includes in its final order a detailed dis-**
 44 **ussion of the council's rationale for rejecting the special advisory group's recommendation**
 45 **to deny the site certificate.**

1 **(4) If compliance with applicable substantive criteria and conditions of approval recom-**
 2 **ended by a special advisory group would result in conflicting conditions in the site certifi-**
 3 **cate or amended site certificate, the council shall resolve the conflict consistent with the**
 4 **public interest. Resolution of the conflict may not result in the waiver of any applicable state**
 5 **statute.**

6 [(2)] **(5)** In addition to advisory groups required by subsection (1) of this section the council may
 7 establish such special advisory groups as are considered necessary. Such advisory groups shall in-
 8 clude membership as determined by the council to represent interests and disciplines as needed to
 9 carry out the responsibility assigned to such advisory groups, which shall report findings, recom-
 10 mendations and decisions to the council.

11 [(3)] **(6)** Subject to applicable laws regulating travel and other expenses of state officers and
 12 employees, members of any advisory committee appointed under subsection (1) of this section shall
 13 receive no compensation but may receive their actual and necessary travel and other expenses in-
 14 curred in the performance of their official duties.

15 [(4)] **(7)** The council by rule shall form an Electric and Magnetic Field Committee which shall
 16 meet at the call of the council chair. The committee shall include representatives of the public,
 17 utilities, manufacturers and state agencies. The committee shall monitor information being developed
 18 on electric and magnetic fields and report the committee's findings to the council. The council shall
 19 report the findings of the Electric and Magnetic Field Committee to the Legislative Assembly.

20 **SECTION 7.** ORS 469.421 is amended to read:

21 469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent,
 22 a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370,
 23 a request for an expedited review under ORS 469.373, a request for the State Department of Energy
 24 to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to
 25 amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the
 26 State Department of Energy, **any special advisory group designated by the council pursuant to**
 27 **ORS 469.480** and the Oregon Department of Administrative Services related to the review and de-
 28 cision of the council. These expenses may include legal expenses, expenses incurred in processing
 29 and evaluating the application, issuing a final order or site certificate, commissioning an independ-
 30 ent study by a contractor, state agency or local government under ORS 469.360, and changes to the
 31 rules of the council that are specifically required and related to the particular site certificate.

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

42 (3) Before submitting a site certificate application, the applicant shall request from the State
 43 Department of Energy an estimate of the costs expected to be incurred in processing the application.
 44 The department shall inform the applicant of that amount and require the applicant to make periodic
 45 payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement

1 agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits
2 the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess
3 costs shown in an itemized statement prepared by the council. In no event shall the council incur
4 evaluation expenses in excess of 110 percent of the fee initially estimated unless the council pro-
5 vided prior notification to the applicant and a detailed projected budget the council believes is
6 necessary to complete the project. If costs are less than the fee paid, the council shall refund the
7 excess to the applicant.

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

10 (5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee,
11 due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the
12 State Department of Energy's budget authorization by a regular session of the Legislative Assembly
13 or as revised by the Emergency Board, the Director of the State Department of Energy promptly
14 shall enter an order establishing an annual fee based on the amount of revenues that the director
15 estimates is needed to fund the cost of ensuring that the facility is being operated consistently with
16 the terms and conditions of the site certificate, any order issued by the department under ORS
17 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall
18 include both the actual direct cost to be incurred by the council, the State Department of Energy
19 and the Oregon Department of Administrative Services to ensure that the facility is being operated
20 consistently with the terms and conditions of the site certificate, any order issued by the State De-
21 partment of Energy under ORS 469.405 (3) and any applicable health or safety standards, and the
22 general costs to be incurred by the council, the State Department of Energy and the Oregon De-
23 partment of Administrative Services to ensure that all certificated facilities are being operated
24 consistently with the terms and conditions of the site certificates, any orders issued by the State
25 Department of Energy under ORS 469.405 (3) and any applicable health or safety standards that
26 cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee
27 charged each facility shall be for the recovery of these general costs. The fees for direct costs shall
28 reflect the size and complexity of the facility and its certificate conditions.

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

32 (7) When the actual costs of regulation incurred by the council, the State Department of Energy
33 and the Oregon Department of Administrative Services for the year, including that portion of the
34 general regulation costs that have been allocated to a particular facility, are less than the annual
35 fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When
36 the actual regulation costs incurred by the council, the State Department of Energy and the Oregon
37 Department of Administrative Services for the year, including that portion of the general regulation
38 costs that have been allocated to a particular facility, are projected to exceed the annual fee for
39 that facility, the Director of the State Department of Energy may issue an order revising the annual
40 fee.

41 (8) In addition to any other fees required by law, each energy resource supplier shall pay to the
42 State Department of Energy annually its share of an assessment to fund the activities of the Energy
43 Facility Siting Council, the Oregon Department of Administrative Services and the State Department
44 of Energy, determined by the Director of the State Department of Energy in the following manner:

45 (a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon

1 Department of Administrative Services and the State Department of Energy by a regular session of
2 the Legislative Assembly, the Director of the State Department of Energy shall promptly enter an
3 order establishing the amount of revenues required to be derived from an assessment pursuant to
4 this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon
5 Department of Administrative Services and the State Department of Energy, including those enu-
6 merated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming
7 biennium. On or before June 1 of each even-numbered year, the Director of the State Department
8 of Energy shall enter an order establishing the amount of revenues required to be derived from an
9 assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting
10 Council, the Oregon Department of Administrative Services and the State Department of Energy,
11 including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year
12 of the biennium which order shall take into account any revisions to the biennial budget of the
13 Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Ad-
14 ministrative Services made by the Emergency Board or by a special session of the Legislative As-
15 sembly subsequent to the most recently concluded regular session of the Legislative Assembly.

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

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

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

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

33 (A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days
34 following the close of the regular session of the Legislative Assembly; and

35 (B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July
36 1 of each even-numbered year.

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

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

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

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

6 (g) As used in this section:

7 (A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum sup-
8 plier supplying electricity, natural gas or petroleum products in Oregon.

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

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

15 (h) In determining the amount of revenues that must be derived from any class of energy re-
16 source suppliers by assessment pursuant to this subsection, the director shall take into account all
17 other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the
18 Oregon Department of Administrative Services and the State Department of Energy, including, but
19 not limited to, fees imposed under this section and federal funds, and may take into account any
20 funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter
21 792, Oregon Laws 1981.

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

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

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

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

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

41 (b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee
42 provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it
43 is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for
44 the period that the fee is past due. Any payment made according to the terms of a schedule nego-
45 tiated under paragraph (a) of this subsection shall not be considered past due. The director may

1 bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court
 2 of competent jurisdiction. The court may award reasonable attorney fees to the director if the di-
 3 rector prevails in an action under this subsection. The court may award reasonable attorney fees
 4 to a defendant who prevails in an action under this subsection if the court determines that the di-
 5 rector had no objectively reasonable basis for asserting the claim or no reasonable basis for ap-
 6 pealing an adverse decision of the trial court.

7 **SECTION 8.** ORS 469.504 is amended to read:

8 469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals
 9 under ORS 469.503 (4) if:

10 (a) The facility has received local land use approval under the acknowledged comprehensive
 11 plan and land use regulations of the affected local government; or

12 (b) The Energy Facility Siting Council determines that:

13 (A) The facility complies with applicable substantive criteria from the affected local govern-
 14 ment's acknowledged comprehensive plan and land use regulations that are required by the state-
 15 wide planning goals and in effect on the date the application is submitted, and with any Land
 16 Conservation and Development Commission administrative rules and goals and any land use statutes
 17 that apply directly to the facility under ORS 197.646;

18 (B) For an energy facility or a related or supporting facility that must be evaluated against the
 19 applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility
 20 does not comply with one or more of the applicable substantive criteria but does otherwise comply
 21 with the applicable statewide planning goals, or that an exception to any applicable statewide
 22 planning goal is justified under subsection (2) of this section; or

23 (C) For a facility that the council elects to evaluate against the statewide planning goals pur-
 24 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-
 25 wide planning goals or that an exception to any applicable statewide planning goal is justified under
 26 subsection (2) of this section.

27 (2) The council may find goal compliance for a facility that does not otherwise comply with one
 28 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding
 29 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process
 30 or any rules of the Land Conservation and Development Commission pertaining to an exception
 31 process goal, the council may take an exception to a goal if the council finds:

32 (a) The land subject to the exception is physically developed to the extent that the land is no
 33 longer available for uses allowed by the applicable goal;

34 (b) The land subject to the exception is irrevocably committed as described by the rules of the
 35 Land Conservation and Development Commission to uses not allowed by the applicable goal because
 36 existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-
 37 ticable; or

38 (c) The following standards are met:

39 (A) Reasons justify why the state policy embodied in the applicable goal should not apply;

40 (B) The significant environmental, economic, social and energy consequences anticipated as a
 41 result of the proposed facility have been identified and adverse impacts will be mitigated in ac-
 42 cordance with rules of the council applicable to the siting of the proposed facility; and

43 (C) The proposed facility is compatible with other adjacent uses or will be made compatible
 44 through measures designed to reduce adverse impacts.

45 (3) If compliance with applicable substantive local criteria and applicable statutes and state

1 administrative rules would result in conflicting conditions in the site certificate or amended site
 2 certificate, the council shall resolve the conflict consistent with the public interest. A resolution
 3 may not result in a waiver of any applicable state statute.

4 (4) An applicant for a site certificate shall elect whether to demonstrate compliance with the
 5 statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the
 6 election on or before the date specified by the council by rule.

7 (5)(a) Upon request by the State Department of Energy, [*the*] a special advisory group estab-
 8 lished under ORS 469.480 shall recommend to the council, within the time stated in the request, the
 9 applicable substantive criteria under subsection (1)(b)(A) of this section.

10 (b) If [*the*] a special advisory group does not recommend applicable substantive criteria within
 11 the time established in the department's request, the council may either determine and apply the
 12 applicable substantive criteria under subsection (1)(b) of this section or determine compliance with
 13 the statewide planning goals under subsection (1)(b)(B) or (C) of this section. **The council may**
 14 **consider evidence of compliance with applicable substantive criteria required by the state-**
 15 **wide planning goals as prima facie evidence of compliance with the statewide planning goals.**

16 (c) If [*the*] a special advisory group recommends applicable substantive criteria for an energy
 17 facility described in ORS 469.300 or a related or supporting facility that does not pass through more
 18 than one local government jurisdiction or more than three zones in any one jurisdiction, the council
 19 shall apply the criteria recommended by the special advisory group. If the special advisory group
 20 recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (11)(a)(C)
 21 to (E) or a related or supporting facility that passes through more than one jurisdiction or more
 22 than three zones in any one jurisdiction, the council shall review the recommended criteria and
 23 determine whether to evaluate the proposed facility against the applicable substantive criteria re-
 24 commended by the special advisory group, against the statewide planning goals or against a combi-
 25 nation of the applicable substantive criteria and statewide planning goals. In making its
 26 determination, the council shall consult with the special advisory group and shall consider:

27 [(a)] (A) The number of jurisdictions and zones in question;

28 [(b)] (B) The degree to which the applicable substantive criteria reflect local government con-
 29 sideration of energy facilities in the planning process; and

30 [(c)] (C) The level of consistency of the applicable substantive criteria from the various zones
 31 and jurisdictions.

32 (d) **If a special advisory group recommends conditions of approval, the council may**
 33 **amend or reject the recommended conditions of approval only if the council includes in its**
 34 **final order a detailed discussion of the recommended conditions and the rationale of the**
 35 **council for amending or rejecting the special advisory group's recommended conditions.**

36 (e) **If a special advisory group recommends denial of the site certificate, the council may**
 37 **grant the site certificate only if the council includes in its final order a detailed discussion**
 38 **of the council's rationale for rejecting the special advisory group's recommendation to deny**
 39 **the site certificate.**

40 (6) The council is not subject to ORS 197.180 and a state agency may not require an applicant
 41 for a site certificate to comply with any rules or programs adopted under ORS 197.180.

42 (7) On or before its next periodic review, each affected local government shall amend its com-
 43 prehensive plan and land use regulations as necessary to reflect the decision of the council per-
 44 taining to a site certificate or amended site certificate.

45 (8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local

1 government's land use approval of a proposed facility under subsection (1)(a) of this section and the
2 special advisory group's recommendation of applicable substantive criteria under subsection (5) of
3 this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant
4 elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply
5 only to proposed projects for which the land use approval of the local government occurs after the
6 date a notice of intent or an application for expedited processing is submitted to the State Depart-
7 ment of Energy.

8 (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to
9 the extent possible, technical assistance and information about the siting process to local govern-
10 ments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

11 **SECTION 9.** ORS 469.505 is amended to read:

12 469.505. (1) In making a determination regarding compliance with statutes, rules and ordinances
13 administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and
14 469.590 to 469.619 where another agency has special expertise, consultation with the other agency
15 shall occur during the notice of intent and site certificate application process. Any permit applica-
16 tion for which the permitting decision has been delegated by the federal government to a state
17 agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simul-
18 taneously with the council's review of the site certificate application. Any hearings required on such
19 permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to
20 469.563 and 469.590 to 469.619.

21 (2) Before resolving any conflicting conditions in site certificates or amended site certificates
22 under ORS 469.503 (3) [*and*], 469.504 **or 469.480**, the council shall notify and consult with **the special**
23 **advisory group designated by the council pursuant to ORS 469.480, and also with** the agencies
24 and local governments responsible for administering the statutes, administrative rules or substantive
25 local criteria that result in the conflicting conditions regarding potential conflict resolution.

26
