

HOUSE AMENDMENTS TO B-ENGROSSED HOUSE BILL 2626

By JOINT COMMITTEE ON WAYS AND MEANS

June 24

- 1 On page 1 of the printed B-engrossed bill, line 2, after “ORS” insert “469.421,”.
- 2 In line 4, after the second semicolon insert “limiting expenditures;”.
- 3 On page 2, after line 7, insert:
- 4 **“SECTION 2a. Notwithstanding any other provision of this chapter, if the Director of the**
- 5 **State Department of Energy determines that the State Department of Energy is unable to**
- 6 **issue a sufficient number of energy efficiency and sustainable technology loans to offset the**
- 7 **reasonable cost to the department of operating the loan program, the director may delay or**
- 8 **suspend the energy efficiency and sustainable technology loan program in one or more**
- 9 **sustainable energy territories or may delay or suspend any feature of the energy efficiency**
- 10 **and sustainable technology loan program.”.**
- 11 On page 6, line 22, after “regarding” insert “electric charging or”.
- 12 In line 25, delete “, electric charging”.
- 13 On page 12, line 31, after “that” delete the rest of the line and line 32 and insert “lack sufficient
- 14 relationship to the structure to be subject to a fixture filing or real property lien.”.
- 15 On page 13, line 35, delete “department” and insert “State Department of Energy”.
- 16 On page 14, line 1, after the second “fee” insert a period and delete the rest of the line and line
- 17 2.
- 18 In line 8, after the period insert “Upon request of the loan applicant, the department may add
- 19 all or part of a project initiation fee to the principal of an issued loan.”.
- 20 On page 15, line 11, after “(3)” delete the rest of the line and lines 12 and 13.
- 21 In line 14, delete “fees and refunds.”.
- 22 On page 19, line 15, after the second “regarding” insert “electric charging or”.
- 23 In line 18, delete “, electric charging”.
- 24 In line 20, delete “with the”.
- 25 In line 21, delete “Bonneville Power Administration,” and insert “with”.
- 26 On page 20, line 9, after “director” insert a period and delete the rest of the line and line 10.
- 27 After line 44, insert:
- 28 **“SECTION 46a. Notwithstanding any other provision of sections 42 to 48, 51 and 52 of this**
- 29 **2009 Act, if the Director of the State Department of Energy determines that the State De-**
- 30 **partment of Energy is unable to issue a sufficient number of energy efficiency and**
- 31 **sustainable technology loans to offset the reasonable cost to the department of operating the**
- 32 **loan program, the director may delay or suspend the energy efficiency and sustainable**
- 33 **technology loan program in one or more pilot program areas or may delay or suspend any**
- 34 **feature of the energy efficiency and sustainable technology loan program.”.**
- 35 On page 21, after line 16, insert:

1 cost-effective energy improvements to the qualifying real property financed with the net
2 proceeds and interest earnings of revenue bonds authorized by this section.

3 “(3) Before establishing a program under this section, the local government shall provide
4 notice to utilities that distribute electric energy or natural gas within the areas in which the
5 local government will operate the program.

6 “(4) A local government that establishes a program under this section may:

7 “(a) Require performance of an energy audit on the qualifying real property before the
8 local government approves a loan for energy improvements to the property;

9 “(b) Impose requirements intended to ensure that the loan is consistent with the purpose
10 of the program; and

11 “(c) Impose requirements and conditions on loans that are designed to ensure timely
12 repayment of the loans.

13 “(5) If the owner of record of qualifying real property requests a loan under this section,
14 the local government implementing the program may:

15 “(a) Enter into a loan agreement with the owner, and any other person benefited by the
16 loan, in a principal amount sufficient to pay:

17 “(A) The costs of energy improvements the local government determines will benefit the
18 qualifying real property and the borrowers;

19 “(B) The costs of the energy audit; and

20 “(C) The costs and reserves of the program.

21 “(b) Charge the borrower an interest rate on the principal amount that is sufficient to
22 pay the financing costs of the program, including loan delinquencies.

23 “(c) Charge periodic fees to pay for program costs.

24 “(6) The local government implementing the program that lends money for qualifying real
25 property may:

26 “(a) Secure the loan with a lien on the benefited qualifying real property in the manner
27 and with the same priority as a lien for assessments for local improvements authorized by
28 ORS 223.393.

29 “(b) Assess the benefited qualifying real property for the amounts due under a loan
30 agreement.

31 “(c) Enforce a lien and collect an assessment authorized by this section as provided in
32 ORS 223.505 to 223.650.

33 “(d) Secure a loan in any other manner that the local government determines is reason-
34 able.

35 “(7) In lieu of enforcing liens and collecting assessments as provided in subsection (6) of
36 this section, a local government may certify the assessment, in the manner provided in ORS
37 310.060, to the county assessor of each county in which benefited qualifying real property is
38 located. If the assessments are certified as provided in this subsection, the county assessor
39 shall:

40 “(a) Enter the assessment upon the county assessment roll against the property de-
41 scribed in the certificate, in the manner that other local government assessments are en-
42 tered;

43 “(b) Collect, account for and enforce the assessments in the manner that local govern-
44 ment taxes are collected, accounted for and enforced; and

45 “(c) Transfer, as provided by law, the assessments collected to the local government that

1 **imposed the assessment.**

2 **“(8) A local government may issue revenue bonds pursuant to ORS 287A.150 to finance**
3 **program costs, including the costs of making loans for energy improvements.**

4 **“(9) The State Department of Energy may lend money under the provisions of ORS**
5 **470.060 to 470.080 and 470.090 to a local government that establishes a program under this**
6 **section in cooperation with a local government implementing a program under this section.**

7
8 **“ENERGY RESOURCE SUPPLIERS**

9
10 **“SECTION 76.** ORS 469.421 is amended to read:

11 “469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent,
12 a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370,
13 a request for an expedited review under ORS 469.373, a request for the State Department of Energy
14 to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to
15 amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the
16 State Department of Energy and the Oregon Department of Administrative Services related to the
17 review and decision of the council. These expenses may include legal expenses, expenses incurred
18 in processing and evaluating the application, issuing a final order or site certificate, commissioning
19 an independent study by a contractor, state agency or local government under ORS 469.360, and
20 changes to the rules of the council that are specifically required and related to the particular site
21 certificate.

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

32 “(3) Before submitting a site certificate application, the applicant shall request from the State
33 Department of Energy an estimate of the costs expected to be incurred in processing the application.
34 The department shall inform the applicant of that amount and require the applicant to make periodic
35 payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement
36 agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits
37 the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess
38 costs shown in an itemized statement prepared by the council. In no event shall the council incur
39 evaluation expenses in excess of 110 percent of the fee initially estimated unless the council pro-
40 vided prior notification to the applicant and a detailed projected budget the council believes is
41 necessary to complete the project. If costs are less than the fee paid, the council shall refund the
42 excess to the applicant.

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

45 “(5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual

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

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

22 “(7) When the actual costs of regulation incurred by the council, the State Department of En-
23 ergy and the Oregon Department of Administrative Services for the year, including that portion of
24 the general regulation costs that have been allocated to a particular facility, are less than the an-
25 nual fees for that facility, the unexpended balance shall be refunded to the site certificate holder.
26 When the actual regulation costs incurred by the council, the State Department of Energy and the
27 Oregon Department of Administrative Services for the year, including that portion of the general
28 regulation costs that have been allocated to a particular facility, are projected to exceed the annual
29 fee for that facility, the Director of the State Department of Energy may issue an order revising the
30 annual fee.

31 “(8) In addition to any other fees required by law, each energy resource supplier shall pay to
32 the State Department of Energy annually its share of an assessment to fund the activities of the
33 Energy Facility Siting Council, the Oregon Department of Administrative Services and the State
34 Department of Energy, determined by the Director of the State Department of Energy in the fol-
35 lowing manner:

36 “(a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon
37 Department of Administrative Services and the State Department of Energy by a regular session of
38 the Legislative Assembly, the Director of the State Department of Energy shall promptly enter an
39 order establishing the amount of revenues required to be derived from an assessment pursuant to
40 this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon
41 Department of Administrative Services and the State Department of Energy, including those enu-
42 merated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming
43 biennium. On or before June 1 of each even-numbered year, the Director of the State Department
44 of Energy shall enter an order establishing the amount of revenues required to be derived from an
45 assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting

1 Council, the Oregon Department of Administrative Services and the State Department of Energy,
2 including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year
3 of the biennium [which]. **The order shall take into account any revisions to the biennial budget of**
4 **the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of**
5 **Administrative Services made by the Emergency Board or by a special session of the Legislative**
6 **Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.**
7 **However, an assessment under this section may not be used to derive revenue for funding**
8 **State Department of Energy activities related to the energy efficiency and sustainable tech-**
9 **nology loan program described in ORS chapter 470.**

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

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

20 “(d) The director shall send each energy resource supplier subject to assessment pursuant to
21 this subsection a copy of each order issued, by registered or certified mail. The amount assessed to
22 the energy resource supplier pursuant to the order shall be considered to the extent otherwise per-
23 mitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost
24 included within the price of the service or product supplied.

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

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

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

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

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

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

42 “(C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon
43 Department of Administrative Services or the State Department of Energy from fulfilling their stat-
44 utory responsibilities.

45 “(g) As used in this section:

1 “(A) ‘Energy resource supplier’ means an electric utility, natural gas utility or petroleum sup-
2 plier supplying, **generating, transmitting or distributing** electricity, natural gas or petroleum
3 products in Oregon.

4 “(B) ‘Gross operating revenue’ means gross receipts from sales or service made or provided
5 within this state during the regular course of the energy supplier’s business, but does not include
6 either revenue derived from interutility sales within the state or revenue received by a petroleum
7 supplier from the sale of fuels that are subject to the requirements of section 3, Article IX of the
8 Oregon Constitution, ORS 319.020 or 319.530.

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

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

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

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

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

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

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

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

- 1 pealing an adverse decision of the trial court.”.
- 2 On page 34, line 1, delete “74” and insert “77”.
- 3 In line 7, delete “75” and insert “78”.
- 4 _____