

A-Engrossed
Senate Bill 977

Ordered by the Senate June 23
Including Senate Amendments dated June 23

Sponsored by Senator WALKER, Representative READ

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.

Requires applicants seeking to construct certain energy facilities to enter into written agreement with state in which applicant agrees to compensate state for costs associated with state agency review and evaluation of certain permits, authorizations and certifications before applicant may be granted permit, authorization or certification. **Creates exceptions.**

Specifies costs for which state may seek compensation. Requires state agency to provide applicant with detailed account of certain costs upon request of applicant.

[Creates Energy Facility Fund. Continuously appropriates moneys in fund to Oregon Department of Administrative Services.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to costs incurred by state agencies in connection with energy facilities; and declaring an
3 emergency.

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

5 **SECTION 1. (1) For purposes of sections 1 to 3 of this 2009 Act:**

6 (a) "Electric utility" has the meaning given that term in ORS 757.600.

7 (b) "Energy facility" means:

8 (A) An electric power generating plant, including but not limited to:

9 (i) A thermal power plant; or

10 (ii) A combustion turbine power plant.

11 (B) A nuclear installation.

12 (C) High voltage transmission lines.

13 (D) A solar collecting facility.

14 (E) A pipeline that is used for the transportation of crude petroleum or a derivative
15 thereof, natural gas, a geothermal energy form in a liquid state or another fossil energy re-
16 source.

17 (F) A synthetic fuel plant that converts a natural resource including, but not limited to,
18 coal or oil to a gas, liquid or solid product intended to be used as a fuel.

19 (G) A plant that converts biomass to a gas, liquid or solid product, or combination of
20 such products, intended to be used as a fuel.

21 (H) A storage facility for liquefied natural gas.

22 (I) A surface facility related to an underground gas storage reservoir.

23 (J) A hydroelectric or hydrokinetic facility.

24 (K) A wind turbine.

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 (L) A geothermal power plant.

2 (M) A methane hydrate plant.

3 (N) Any other energy facility specified in a rule adopted by the Director of the State
4 Department of Energy.

5 (c) "Public utility" has the meaning given that term in ORS 757.005.

6 (d) "State agency" means an agency as defined in ORS 183.310 (1).

7 (2) Except as provided in subsection (10) of this section, before an applicant seeking to
8 construct an energy facility may be granted a state-issued permit, authorization or certif-
9 ication necessary for the facility's siting and construction, the applicant must enter into a
10 written agreement under this section with the state agency responsible for reviewing and
11 evaluating the permit, authorization or certification. The agreement must be entered into
12 not more than 60 days after receipt by the state agency of the application for the permit,
13 authorization or certification. Under the agreement, the applicant must agree to compensate
14 the state agency for costs associated with the review and evaluation of the state agency
15 permit, authorization or certification needed to site or construct the facility, and also to
16 compensate other state agencies for costs associated with their review or evaluation when
17 the review or evaluation is requested by the applicant, is requested by a state agency re-
18 sponsible for issuing a permit, authorization or certification or is otherwise required by law.

19 (3) A state agency may seek compensation under this section for the state agency's
20 reasonable costs for reviewing and evaluating an application for a permit, authorization or
21 certification to site or construct an energy facility. The compensable costs are limited to the
22 state agency's actual personnel costs and other expenses that are related to the agency's
23 review and evaluation of the application. State agency overhead and other indirect costs
24 must be specifically described in the agreement required by subsection (2) of this section to
25 be included as part of compensable costs. Any costs incurred by a state agency, including the
26 costs of legal representation, related to defense against administrative appeals or other legal
27 challenges over the approval or denial of an application for a permit, authorization or cer-
28 tification, or other final agency action, are not compensable costs under this section.

29 (4) If a state agency other than the agency that entered into the agreement is requested
30 by the applicant or the state agency issuing a permit, authorization or certification to review
31 and evaluate an application for the permit, authorization or certification, or if the review and
32 evaluation is otherwise required by law, the other state agency may submit the costs in-
33 curred by that state agency to the state agency that has entered into a written agreement
34 with the applicant pursuant to subsection (2) of this section for inclusion of the costs by the
35 state agency that has entered into the written agreement in any charge or fee assessed to
36 the applicant.

37 (5) Any amount the applicant agrees to pay pursuant to a written agreement entered into
38 under this section must be reduced by any application fees, or other payment that by law is
39 applied against the costs of reviewing and evaluating the application for a permit, authori-
40 zation or certification.

41 (6)(a) A state agency shall, within 30 days of receipt of an application for a permit, au-
42 thorization or certification for an energy facility subject to this section, provide the applicant
43 with a detailed estimate of the state agency's compensable costs for reviewing and evaluating
44 the application, together with a description of the process and estimated schedule for com-
45 pleting the review and evaluation of the application. A state agency may not incur costs in

1 excess of 110 percent of the estimated costs for reviewing and evaluating an application for
2 a permit, authorization or certification without notifying the applicant in advance and pro-
3 viding the applicant with a detailed estimate of the additional costs needed to complete the
4 agency's review and evaluation of the application. A state agency may require the applicant
5 to pay 10 percent of its estimated costs in advance of the date the agency incurs the costs.
6 The state shall refund to the applicant any payments in excess of the compensable costs
7 actually incurred by the state.

8 (b) In addition to the estimate specified in paragraph (a) of this subsection, a state
9 agency shall, within 30 days of receipt of an application for a permit, authorization or cer-
10 tification for an energy facility subject to this section, to the extent feasible, provide the
11 applicant with an estimate of other state agency costs specified in subsection (4) of this
12 section.

13 (7) Upon request, a state agency shall provide an applicant with a detailed accounting for
14 all compensable costs charged by the agency under this section. If a dispute arises regarding
15 the compensability of costs charged to the applicant, and if the dispute is not resolved by the
16 directors of the affected state agencies within 60 days of the applicant's notice to the state
17 that the applicant disputes the costs charged, the applicant may seek judicial review of the
18 amount of the costs charged as provided in ORS 183.484, except that ORS 182.090 and 183.497
19 do not apply to a proceeding under this section. If the applicant establishes that any of the
20 charges are not compensable under subsection (3) of this section, the amount found to be
21 uncompensable must be refunded to the applicant. The applicant does not waive the right to
22 judicial review by paying the portion of the costs in dispute.

23 (8) The provisions of this section do not apply to an applicant seeking to site or construct
24 an energy facility:

25 (a) When the applicant is subject to the provisions of ORS 469.421 or 543A.405 or any
26 other provision of law that requires the applicant to pay the full costs of the review and
27 evaluation of any applications for permits, authorizations or certifications necessary for the
28 siting or construction of the energy facility.

29 (b) When a state agency is prohibited from charging the applicant for the review or
30 evaluation of the application for the permit, authorization or certification.

31 (c) When the permit, authorization or certification sought by the applicant is for the
32 continued operation, repair or maintenance of an existing energy facility.

33 (d) That is a high voltage transmission line of less than 10 miles in length with a capacity
34 of 230,000 volts or less that is owned and operated by an electric utility.

35 (e) That is a pipeline that is less than 16 inches in diameter, used for the transportation
36 of natural gas and is owned and operated by a public utility that provides natural gas to
37 customers.

38 (9) The Director of the State Department of Energy by rule may exempt an energy fa-
39 cility from the requirements of this section if the director determines that the costs incurred
40 in reviewing or evaluating any applications for state agency permits, authorizations or cer-
41 tifications needed to site or construct the energy facility are de minimis.

42 (10) A written agreement under this section is not required when a state agency is re-
43 questing construction of the energy facility for the benefit of the state agency.

44 (11) The provisions of this section do not apply to a permit issued or a fee charged under
45 the state building code, as that term is defined in ORS 455.010.

1 **(12) Any costs associated with the review and evaluation of a state-issued permit, au-**
2 **thorization or certification paid by an applicant to a state agency under the provisions of this**
3 **section are not eligible for an income tax credit under ORS 315.354 or 316.116.**

4 **SECTION 2. The Director of the State Department of Energy may adopt rules as neces-**
5 **sary to implement section 1 of this 2009 Act.**

6 **SECTION 3. (1) Section 1 of this 2009 Act and rules adopted under section 2 of this 2009**
7 **Act apply to all permits, authorizations and certifications issued or given on or after the**
8 **effective date of this 2009 Act, whether applied for before, on or after the effective date of**
9 **this 2009 Act.**

10 **(2) If an application for a permit, authorization or certification for an energy facility**
11 **subject to section 1 of this 2009 Act is pending on the effective date of this 2009 Act, the state**
12 **shall within 30 days provide the applicant with a detailed estimate of the state's compensable**
13 **costs for reviewing and evaluating all applications for that applicant pending on the effective**
14 **date of this 2009 Act, together with a description of the process and estimated schedule for**
15 **completing the review and evaluation of the applications.**

16 **(3) Any costs incurred before the effective date of this 2009 Act may not be included as**
17 **part of compensable costs under section 1 (3) of this 2009 Act.**

18 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
20 **on its passage.**

21