

## SENATE AMENDMENTS TO SENATE BILL 977

By JOINT COMMITTEE ON WAYS AND MEANS

June 23

- 1 On page 1 of the printed bill, line 2, delete “appropriating”.
- 2 In line 3, delete “money;”.
- 3 Delete lines 5 through 27 and delete pages 2 and 3 and insert:
- 4 **“SECTION 1. (1) For purposes of sections 1 to 3 of this 2009 Act:**
- 5 **“(a) ‘Electric utility’ has the meaning given that term in ORS 757.600.**
- 6 **“(b) ‘Energy facility’ means:**
- 7 **“(A) An electric power generating plant, including but not limited to:**
- 8 **“(i) A thermal power plant; or**
- 9 **“(ii) A combustion turbine power plant.**
- 10 **“(B) A nuclear installation.**
- 11 **“(C) High voltage transmission lines.**
- 12 **“(D) A solar collecting facility.**
- 13 **“(E) A pipeline that is used for the transportation of crude petroleum or a derivative**
- 14 **thereof, natural gas, a geothermal energy form in a liquid state or another fossil energy re-**
- 15 **source.**
- 16 **“(F) A synthetic fuel plant that converts a natural resource including, but not limited to,**
- 17 **coal or oil to a gas, liquid or solid product intended to be used as a fuel.**
- 18 **“(G) A plant that converts biomass to a gas, liquid or solid product, or combination of**
- 19 **such products, intended to be used as a fuel.**
- 20 **“(H) A storage facility for liquefied natural gas.**
- 21 **“(I) A surface facility related to an underground gas storage reservoir.**
- 22 **“(J) A hydroelectric or hydrokinetic facility.**
- 23 **“(K) A wind turbine.**
- 24 **“(L) A geothermal power plant.**
- 25 **“(M) A methane hydrate plant.**
- 26 **“(N) Any other energy facility specified in a rule adopted by the Director of the State**
- 27 **Department of Energy.**
- 28 **“(c) ‘Public utility’ has the meaning given that term in ORS 757.005.**
- 29 **“(d) ‘State agency’ means an agency as defined in ORS 183.310 (1).**
- 30 **“(2) Except as provided in subsection (10) of this section, before an applicant seeking to**
- 31 **construct an energy facility may be granted a state-issued permit, authorization or certif-**
- 32 **ication necessary for the facility’s siting and construction, the applicant must enter into a**
- 33 **written agreement under this section with the state agency responsible for reviewing and**
- 34 **evaluating the permit, authorization or certification. The agreement must be entered into**
- 35 **not more than 60 days after receipt by the state agency of the application for the permit,**

1 authorization or certification. Under the agreement, the applicant must agree to compensate  
2 the state agency for costs associated with the review and evaluation of the state agency  
3 permit, authorization or certification needed to site or construct the facility, and also to  
4 compensate other state agencies for costs associated with their review or evaluation when  
5 the review or evaluation is requested by the applicant, is requested by a state agency re-  
6 sponsible for issuing a permit, authorization or certification or is otherwise required by law.

7 “(3) A state agency may seek compensation under this section for the state agency’s  
8 reasonable costs for reviewing and evaluating an application for a permit, authorization or  
9 certification to site or construct an energy facility. The compensable costs are limited to the  
10 state agency’s actual personnel costs and other expenses that are related to the agency’s  
11 review and evaluation of the application. State agency overhead and other indirect costs  
12 must be specifically described in the agreement required by subsection (2) of this section to  
13 be included as part of compensable costs. Any costs incurred by a state agency, including the  
14 costs of legal representation, related to defense against administrative appeals or other legal  
15 challenges over the approval or denial of an application for a permit, authorization or cer-  
16 tification, or other final agency action, are not compensable costs under this section.

17 “(4) If a state agency other than the agency that entered into the agreement is requested  
18 by the applicant or the state agency issuing a permit, authorization or certification to review  
19 and evaluate an application for the permit, authorization or certification, or if the review and  
20 evaluation is otherwise required by law, the other state agency may submit the costs in-  
21 curred by that state agency to the state agency that has entered into a written agreement  
22 with the applicant pursuant to subsection (2) of this section for inclusion of the costs by the  
23 state agency that has entered into the written agreement in any charge or fee assessed to  
24 the applicant.

25 “(5) Any amount the applicant agrees to pay pursuant to a written agreement entered  
26 into under this section must be reduced by any application fees, or other payment that by  
27 law is applied against the costs of reviewing and evaluating the application for a permit, au-  
28 thorization or certification.

29 “(6)(a) A state agency shall, within 30 days of receipt of an application for a permit, au-  
30 thorization or certification for an energy facility subject to this section, provide the applicant  
31 with a detailed estimate of the state agency’s compensable costs for reviewing and evaluating  
32 the application, together with a description of the process and estimated schedule for com-  
33 pleting the review and evaluation of the application. A state agency may not incur costs in  
34 excess of 110 percent of the estimated costs for reviewing and evaluating an application for  
35 a permit, authorization or certification without notifying the applicant in advance and pro-  
36 viding the applicant with a detailed estimate of the additional costs needed to complete the  
37 agency’s review and evaluation of the application. A state agency may require the applicant  
38 to pay 10 percent of its estimated costs in advance of the date the agency incurs the costs.  
39 The state shall refund to the applicant any payments in excess of the compensable costs  
40 actually incurred by the state.

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

1       “(7) Upon request, a state agency shall provide an applicant with a detailed accounting  
2 for all compensable costs charged by the agency under this section. If a dispute arises re-  
3 garding the compensability of costs charged to the applicant, and if the dispute is not re-  
4 solved by the directors of the affected state agencies within 60 days of the applicant’s notice  
5 to the state that the applicant disputes the costs charged, the applicant may seek judicial  
6 review of the amount of the costs charged as provided in ORS 183.484, except that ORS  
7 182.090 and 183.497 do not apply to a proceeding under this section. If the applicant estab-  
8 lishes that any of the charges are not compensable under subsection (3) of this section, the  
9 amount found to be uncompensable must be refunded to the applicant. The applicant does  
10 not waive the right to judicial review by paying the portion of the costs in dispute.

11       “(8) The provisions of this section do not apply to an applicant seeking to site or con-  
12 struct an energy facility:

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

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

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

21       “(d) That is a high voltage transmission line of less than 10 miles in length with a ca-  
22 pacity of 230,000 volts or less that is owned and operated by an electric utility.

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

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

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

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

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

37       “SECTION 2. The Director of the State Department of Energy may adopt rules as nec-  
38 essary to implement section 1 of this 2009 Act.

39       “SECTION 3. (1) Section 1 of this 2009 Act and rules adopted under section 2 of this 2009  
40 Act apply to all permits, authorizations and certifications issued or given on or after the  
41 effective date of this 2009 Act, whether applied for before, on or after the effective date of  
42 this 2009 Act.

43       “(2) If an application for a permit, authorization or certification for an energy facility  
44 subject to section 1 of this 2009 Act is pending on the effective date of this 2009 Act, the state  
45 shall within 30 days provide the applicant with a detailed estimate of the state’s compensable

1 costs for reviewing and evaluating all applications for that applicant pending on the effective  
2 date of this 2009 Act, together with a description of the process and estimated schedule for  
3 completing the review and evaluation of the applications.

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

6 “SECTION 4. This 2009 Act being necessary for the immediate preservation of the public  
7 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
8 on its passage.”

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