

Senate Bill 1021

Sponsored by Senator EDWARDS (Presession filed.)

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

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

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 this section:**

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.**

25 (L) **A geothermal power plant.**

26 (M) **A methane hydrate plant.**

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

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

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

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

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

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

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

38 (6)(a) A state agency shall, within 30 days after receipt of an application for a permit,
39 authorization or certification for an energy facility subject to this section, provide the ap-
40 plicant with a detailed estimate of the state agency's compensable costs for reviewing and
41 evaluating the application, together with a description of the process and estimated schedule
42 for completing the review and evaluation of the application. A state agency may not incur
43 costs in excess of 110 percent of the estimated costs for reviewing and evaluating an appli-
44 cation for a permit, authorization or certification without notifying the applicant in advance
45 and providing the applicant with a detailed estimate of the additional costs needed to com-

1 plete the agency's review and evaluation of the application. A state agency may require the
2 applicant to pay 10 percent of its estimated costs in advance of the date the agency incurs
3 the costs. The state agency shall refund to the applicant any payments in excess of the
4 compensable costs actually incurred by the agency.

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

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

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

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

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

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

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

32 (e) That is a pipeline that is less than 16 inches in diameter, is used for the transporta-
33 tion of natural gas and is owned and operated by a public utility that provides natural gas
34 to customers.

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

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

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

43 (12) Any costs associated with the review and evaluation of an application for a state-
44 issued permit, authorization or certification paid by an applicant to a state agency under the
45 provisions of this section are not eligible for an income tax credit under ORS 315.354 or

1 **316.116.**

2 **SECTION 2. The Director of the State Department of Energy may adopt rules as neces-**
3 **sary to implement section 1 of this 2010 Act.**

4 **SECTION 3. (1) Section 1 of this 2010 Act and rules adopted under section 2 of this 2010**
5 **Act apply to all permits, authorizations and certifications issued or given on or after the**
6 **effective date of this 2010 Act, whether applied for before, on or after the effective date of**
7 **this 2010 Act.**

8 **(2) If an application for a permit, authorization or certification for an energy facility**
9 **subject to section 1 of this 2010 Act is pending on the effective date of this 2010 Act, the state**
10 **agency that received the application for the permit, authorization or certification shall**
11 **within 30 days provide the applicant with a detailed estimate of the agency's compensable**
12 **costs for reviewing and evaluating all applications for that applicant pending on the effective**
13 **date of this 2010 Act, together with a description of the process and estimated schedule for**
14 **completing the review and evaluation of the applications.**

15 **(3) Any costs incurred before the effective date of this 2010 Act may not be included as**
16 **part of compensable costs under section 1 (3) of this 2010 Act.**

17 **SECTION 4. This 2010 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
19 **on its passage.**

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