

# House Bill 2735

Sponsored by Representative BOONE (at the request of Oregon Peoples Utility District ORECA) (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**.

Clarifies provisions related to State Department of Energy Account and uses of moneys in account.

Modifies provisions related to energy resource supplier assessment. Makes conforming amendments.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to energy; creating new provisions; amending ORS 291.055, 469.120, 469.410, 469.421, 469.681  
3 and 469.992 and section 47a, chapter 753, Oregon Laws 2009; and declaring an emergency.

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

5 **SECTION 1.** ORS 469.120 is amended to read:

6 469.120. (1) The State Department of Energy Account is established **separate and distinct from**  
7 **the General Fund in the State Treasury.**

8 (2) **The account shall consist of** all funds received by the State Department of Energy pursuant  
9 to law [*shall be paid into the State Treasury and credited to the State Department of Energy*  
10 *Account*]. All moneys in the account are continuously appropriated to the State Department of En-  
11 ergy for payment of [*expenses*] **costs:**

12 (a) Of the State Department of Energy, the Oregon Department of Administrative Services and  
13 the Energy Facility Siting Council **in administering ORS 469.300 to 469.563, 469.590 to 469.619,**  
14 **469.930 and 469.992;**

15 (b) **Of the State Department of Energy in implementing the duties specified in ORS**  
16 **469.030; and**

17 (c) **Of activities otherwise authorized in ORS chapters 469 and 470.**

18 (3) The Director of the State Department of Energy shall keep a record of all moneys deposited  
19 in the State Department of Energy Account. The record shall indicate by special cumulative ac-  
20 counts the source from which moneys are derived and the individual activity against which each  
21 withdrawal is charged. **The director shall make this record available to interested parties**  
22 **during the establishment of the energy resource supplier assessment under section 2 of this**  
23 **2011 Act.**

24 **SECTION 2. (1) As used in this section:**

25 (a) **"Electric utility" has the meaning given that term in ORS 469.300.**

26 (b) **"Energy resource supplier" means an electric utility, natural gas utility or petroleum**  
27 **supplier supplying, generating, distributing or transmitting electricity, natural gas or petro-**  
28 **leum products in this state.**

29 (c) **"Gross operating revenue" means gross receipts from sales or service made or pro-**  
30 **vided within this state during the regular course of the energy resource supplier's business,**

**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 but does not include either revenue derived from interutility sales within this state or re-  
2 venue received by a petroleum supplier from the sale of fuels that are subject to the re-  
3 quirements of section 3a, Article IX of the Oregon Constitution, or ORS 319.020 or 319.530.

4 (d) "Petroleum supplier" has the meaning given that term in ORS 469.020.

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

10 (a) As soon as possible after adjournment sine die of an odd-numbered year regular ses-  
11 sion of the Legislative Assembly, the director shall promptly enter an order establishing the  
12 amount of revenue required to be derived from an assessment pursuant to this section for  
13 the first fiscal year of the forthcoming biennium or, if adjournment sine die takes place after  
14 June 30, then for the first fiscal year of that biennium.

15 (b) On or before June 1 of each even-numbered year, the director shall enter an order  
16 establishing the amount of revenue required to be derived from an assessment pursuant to  
17 this section for the second fiscal year of the biennium. The order shall take into account any  
18 revisions to the biennial budget of the Energy Facility Siting Council, the Oregon Depart-  
19 ment of Administrative Services and the State Department of Energy made by the Emer-  
20 gency Board or by a special session of the Legislative Assembly subsequent to the most  
21 recently concluded regular session of the Legislative Assembly.

22 (c) An assessment under this section may not be used to derive revenue for funding State  
23 Department of Energy activities related to the energy efficiency and sustainable technology  
24 loan program described in ORS chapter 470.

25 (d) The order shall allocate the assessed amount for each energy resource supplier based  
26 on the ratio that the supplier's annual gross operating revenue in the preceding calendar  
27 year bears to the total gross operating revenue during that year by all energy resource  
28 suppliers. The amount required to be paid may not exceed five-tenths of one percent of the  
29 supplier's gross operating revenue in the preceding calendar year. The director shall exempt  
30 from payment any individual energy resource supplier whose calculated share of the annual  
31 assessment is less than \$250.

32 (3) An energy resource supplier shall pay the amounts assessed under this section not  
33 later than 90 days following adjournment sine die of the regular session of the Legislative  
34 Assembly in an odd-numbered year and not later than July 1 in an even-numbered year.

35 (4) The director shall send each energy resource supplier subject to assessment pursuant  
36 to this section a copy of each order issued, by registered or certified mail. The amount re-  
37 quired to be paid under this section shall be considered, to the extent otherwise permitted  
38 by law, a government-imposed cost and recoverable by the energy resource supplier as a cost  
39 included within the price of the service or product supplied.

40 (5) An energy resource supplier shall provide the director, on or before April 1 of each  
41 year, a verified statement showing its gross operating revenue for the preceding calendar  
42 year. The statement shall be in the form prescribed by the director and is subject to audit  
43 by the director. The statement shall include an entry showing the total operating revenue  
44 derived by petroleum suppliers from fuels sold that are subject to the requirements of sec-  
45 tion 3a, Article IX of the Oregon Constitution, ORS 319.020 with reference to aircraft fuel

1 and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not more  
 2 than 45 days for the requirements of this subsection if:

3 (a) The energy resource supplier makes a showing of hardship caused by the deadline;

4 (b) The energy resource supplier provides reasonable assurance that the energy resource  
 5 supplier can comply with the revised deadline; and

6 (c) The extension of time does not prevent the Energy Facility Siting Council, the Oregon  
 7 Department of Administrative Services or the State Department of Energy from fulfilling the  
 8 council's or departments' statutory responsibilities.

9 (6) In determining the amount of revenue that must be derived from any class of energy  
 10 resource suppliers by assessment pursuant to this section, the director shall take into ac-  
 11 count all other known or readily ascertainable sources of revenue to the Energy Facility  
 12 Siting Council, the Oregon Department of Administrative Services and the State Department  
 13 of Energy, including, but not limited to, fees imposed under this section and federal funds.

14 (7) The director may adopt rules necessary to carry out the provisions of this section.

15 (8) Before issuing an order setting an assessment under this section, the State Depart-  
 16 ment of Energy shall appoint an advisory committee of energy resource suppliers. The advi-  
 17 sory committee shall make recommendations to the director by May 1 of each  
 18 even-numbered year related to the use of the annual assessment paid by energy resource  
 19 suppliers to the department pursuant to the provisions of this section.

20 (9) The moneys collected under this section shall be paid into the State Department of  
 21 Energy Account established by ORS 469.120 and used for the purposes specified in ORS  
 22 469.120.

23 **SECTION 3.** ORS 469.421 is amended to read:

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

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

45 (3) Before submitting a site certificate application, the applicant shall request from the State

1 Department of Energy an estimate of the costs expected to be incurred in processing the application.  
2 The department shall inform the applicant of that amount and require the applicant to make periodic  
3 payments of the costs pursuant to a cost reimbursement agreement. The cost reimbursement agree-  
4 ment shall provide for payment of 25 percent of the estimated costs when the applicant submits the  
5 application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs  
6 shown in an itemized statement prepared by the council. In no event shall the council incur evalu-  
7 ation expenses in excess of 110 percent of the fee initially estimated unless the council provided  
8 prior notification to the applicant and a detailed projected budget the council believes is necessary  
9 to complete the project. If costs are less than the fee paid, the council shall refund the excess to the  
10 applicant.

11 (4) Any person who is delinquent in the payment of fees under subsections (1) to (3) of this  
12 section shall be subject to the provisions of subsection [(11)] (10) of this section.

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

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

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

44 [(8) In addition to any other fees required by law, each energy resource supplier shall pay to the  
45 State Department of Energy annually its share of an assessment to fund the activities of the Energy

1 *Facility Siting Council, the Oregon Department of Administrative Services and the State Department*  
2 *of Energy, determined by the Director of the State Department of Energy in the following manner:]*

3 *[(a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon*  
4 *Department of Administrative Services and the State Department of Energy by a regular session of the*  
5 *Legislative Assembly, the Director of the State Department of Energy shall promptly enter an order*  
6 *establishing the amount of revenues required to be derived from an assessment pursuant to this sub-*  
7 *section in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of*  
8 *Administrative Services and the State Department of Energy, including those enumerated in ORS*  
9 *469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before*  
10 *June 1 of each even-numbered year, the Director of the State Department of Energy shall enter an order*  
11 *establishing the amount of revenues required to be derived from an assessment pursuant to this sub-*  
12 *section in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of*  
13 *Administrative Services and the State Department of Energy, including those enumerated in ORS*  
14 *469.030 and others authorized by law, for the second fiscal year of the biennium. The order shall take*  
15 *into account any revisions to the biennial budget of the Energy Facility Siting Council, the State De-*  
16 *partment of Energy and the Oregon Department of Administrative Services made by the Emergency*  
17 *Board or by a special session of the Legislative Assembly subsequent to the most recently concluded*  
18 *regular session of the Legislative Assembly. However, an assessment under this section may not be*  
19 *used to derive revenue for funding State Department of Energy activities related to the energy efficiency*  
20 *and sustainable technology loan program described in ORS chapter 470.]*

21 *[(b) Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate*  
22 *the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph*  
23 *(c) of this subsection.]*

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

31 *[(d) The director shall send each energy resource supplier subject to assessment pursuant to this*  
32 *subsection a copy of each order issued, by registered or certified mail. The amount assessed to the en-*  
33 *ergy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by*  
34 *law a government-imposed cost and recoverable by the energy resource supplier as a cost included*  
35 *within the price of the service or product supplied.]*

36 *[(e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this*  
37 *subsection shall be paid to the State Department of Energy as follows:]*

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

40 *[(B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July*  
41 *1 of each even-numbered year.]*

42 *[(f) An energy resource supplier shall provide the director, on or before May 1 of each year, a*  
43 *verified statement showing its gross operating revenues derived within the state for the preceding cal-*  
44 *endar year. The statement shall be in the form prescribed by the director and is subject to audit by the*  
45 *director. The statement shall include an entry showing the total operating revenue derived by petroleum*

1 *suppliers from fuels sold that are subject to the requirements of section 3a, Article IX of the Oregon*  
 2 *Constitution, and ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530.*  
 3 *The director may grant an extension of not more than 15 days for the requirements of this subsection*  
 4 *if:]*

5 [(A) *The energy supplier makes a showing of hardship caused by the deadline;]*

6 [(B) *The energy supplier provides reasonable assurance that the energy supplier can comply with*  
 7 *the revised deadline; and]*

8 [(C) *The extension of time does not prevent the Energy Facility Siting Council, the Oregon De-*  
 9 *partment of Administrative Services or the State Department of Energy from fulfilling their statutory*  
 10 *responsibilities.]*

11 [(g) *As used in this section:]*

12 [(A) *“Energy resource supplier” means an electric utility, natural gas utility or petroleum supplier*  
 13 *supplying, generating, transmitting or distributing electricity, natural gas or petroleum products in*  
 14 *Oregon.]*

15 [(B) *“Gross operating revenue” means gross receipts from sales or service made or provided within*  
 16 *this state during the regular course of the energy supplier’s business, but does not include either re-*  
 17 *venue derived from interutility sales within the state or revenue received by a petroleum supplier from*  
 18 *the sale of fuels that are subject to the requirements of section 3a, Article IX of the Oregon Constitu-*  
 19 *tion, or ORS 319.020 or 319.530.]*

20 [(C) *“Petroleum supplier” has the meaning given that term in ORS 469.020.]*

21 [(h) *In determining the amount of revenues that must be derived from any class of energy resource*  
 22 *suppliers by assessment pursuant to this subsection, the director shall take into account all other known*  
 23 *or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Depart-*  
 24 *ment of Administrative Services and the State Department of Energy, including, but not limited to, fees*  
 25 *imposed under this section and federal funds, and may take into account any funds previously assessed*  
 26 *pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.]*

27 [(i) *Orders issued by the director pursuant to this section shall be subject to judicial review under*  
 28 *ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy re-*  
 29 *source supplier to pay amounts assessed to it on or before the statutory deadline.]*

30 [(9)(a)] **(8)(a)** In addition to any other fees required by law, each operator of a nuclear fueled  
 31 thermal power plant or nuclear installation within this state shall pay to the State Department of  
 32 Energy annually on July 1, an assessment in an amount determined by the director to be necessary  
 33 to fund the activities of the state and the counties associated with emergency preparedness for a  
 34 nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250  
 35 per year. Moneys collected as assessments under this subsection are continuously appropriated to  
 36 the State Department of Energy for this purpose.

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

40 [(10)] **(9)** Reactors operated by a college, university or graduate center for research purposes  
 41 and electric utilities not connected to the Northwest Power Grid are exempt from the fee require-  
 42 ments of subsections (5)[, (8) and (9)] of this section **and section 2 of this 2011 Act.**

43 [(11)(a)] **(10)(a)** All fees assessed by the director against holders of site certificates for facilities  
 44 that have an installed capacity of 500 megawatts or greater may be paid in several installments, the  
 45 schedule for which shall be negotiated between the director and the site certificate holder.

1 (b) Energy resource suppliers **as defined in section 2 of this 2011 Act** or applicants or holders  
2 of a site certificate who fail to pay a fee provided under subsections (1) to [(9)] **(8)** of this section  
3 or the fees required under ORS 469.360 **or section 2 of this 2011 Act** after it is due and payable  
4 shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the  
5 fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph  
6 (a) of this subsection shall not be considered past due. The director may bring an action to collect  
7 an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction.  
8 The court may award reasonable attorney fees to the director if the director prevails in an action  
9 under this subsection. The court may award reasonable attorney fees to a defendant who prevails  
10 in an action under this subsection if the court determines that the director had no objectively rea-  
11 sonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the  
12 trial court.

13 **SECTION 4.** ORS 291.055 is amended to read:

14 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-  
15 tablish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered  
16 year:

17 (a) Are not effective for agencies in the executive department of government unless approved  
18 in writing by the Director of the Oregon Department of Administrative Services;

19 (b) Are not effective for agencies in the judicial department of government unless approved in  
20 writing by the Chief Justice of the Supreme Court;

21 (c) Are not effective for agencies in the legislative department of government unless approved  
22 in writing by the President of the Senate and the Speaker of the House of Representatives;

23 (d) Shall be reported by the state agency to the Oregon Department of Administrative Services  
24 within 10 days of their adoption; and

25 (e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine  
26 die of the regular session of the Legislative Assembly meeting in that year, whichever is later, un-  
27 less otherwise authorized by enabling legislation setting forth the approved fees.

28 (2) This section does not apply to:

29 (a) Any tuition or fees charged by the State Board of Higher Education and state institutions  
30 of higher education.

31 (b) Taxes or other payments made or collected from employers for unemployment insurance re-  
32 quired by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contri-  
33 butions and assessments calculated by cents per hour for workers' compensation coverage required  
34 by ORS 656.506.

35 (c) Fees or payments required for:

36 (A) Health care services provided by the Oregon Health and Science University, by the Oregon  
37 Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

38 (B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS  
39 735.614 and 735.625.

40 (C) Copayments and premiums paid to the Oregon medical assistance program.

41 (D) Assessments paid to the Department of Consumer and Business Services under ORS 743.951  
42 and 743.961.

43 (d) Fees created or authorized by statute that have no established rate or amount but are cal-  
44 culated for each separate instance for each fee payer and are based on actual cost of services pro-  
45 vided.

1 (e) State agency charges on employees for benefits and services.

2 (f) Any intergovernmental charges.

3 (g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the  
4 Oregon Forest Land Protection Fund fees established by ORS 477.760.

5 (h) State Department of Energy assessments required by ORS [469.421 (8) and] 469.681 **and**  
6 **section 2 of this 2011 Act.**

7 (i) Any charges established by the State Parks and Recreation Director in accordance with ORS  
8 565.080 (3).

9 (j) Assessments on premiums charged by the Insurance Division of the Department of Consumer  
10 and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and  
11 Corporate Securities of the Department of Consumer and Business Services to banks, trusts and  
12 credit unions pursuant to ORS 706.530 and 723.114.

13 (k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid  
14 to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

15 (L) Fees charged by the Housing and Community Services Department for intellectual property  
16 pursuant to ORS 456.562.

17 (m) New or increased fees that are anticipated in the legislative budgeting process for an  
18 agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted  
19 budget for the agency.

20 (n) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

21 (o) Convenience fees as defined in ORS 182.126 and established by the Oregon Department of  
22 Administrative Services under ORS 182.132 (3) and recommended by the Electronic Government  
23 Portal Advisory Board.

24 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-  
25 pected and temporary revenue surpluses may be increased to not more than their prior level without  
26 compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency  
27 specifies the following:

28 (A) The reason for the fee decrease; and

29 (B) The conditions under which the fee will be increased to not more than its prior level.

30 (b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-  
31 section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

32 **SECTION 5.** ORS 469.410 is amended to read:

33 469.410. (1) Any applicant for a site certificate for an energy facility shall be deemed to have  
34 met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to  
35 469.563, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate  
36 shall be issued by the Energy Facility Siting Council for:

37 (a) Any transmission lines for which application has been filed with the federal government and  
38 the Public Utility Commission of Oregon prior to July 2, 1975; and

39 (b) Any energy facility under construction on July 2, 1975.

40 (2) Each applicant for a site certificate under this section shall pay the fees required by ORS  
41 469.421 (2) to [(9)] (8), if applicable, and shall execute a site certificate in which the applicant  
42 agrees:

43 (a) To abide by the conditions of all licenses, permits and certificates required by the State of  
44 Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975;  
45 and



1 (b) On and after July 2, 1975, to abide by the rules of the Director of the State Department of  
2 Energy adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS  
3 469.300 to 469.563, 469.590 to 469.619 and 469.930.

4 (3) The council has continuing authority over the site for which the site certificate is issued and  
5 may inspect, or direct the State Department of Energy to inspect, or request another state agency  
6 or local government to inspect, the site at any time in order to ensure that the facility is being  
7 operated consistently with the terms and conditions of the site certificate and any applicable health  
8 or safety standards.

9 (4) The council shall establish programs for monitoring the environmental and ecological effects  
10 of the operation and the decommissioning of energy facilities subject to site certificates issued prior  
11 to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate  
12 and any applicable health or safety standards.

13 (5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July  
14 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site  
15 certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of  
16 the director adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to  
17 ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

18 **SECTION 6.** ORS 469.681 is amended to read:

19 469.681. (1) Each petroleum supplier shall pay to the State Department of Energy annually its  
20 share of an assessment to fund:

21 (a) Information, assistance and technical advice required of fuel oil dealers under ORS 469.675  
22 for which the Director of the State Department of Energy contracts under ORS 469.677; and

23 (b) Cash payments to a dwelling owner or contractor for energy conservation measures.

24 (2) The amount of the assessment required by subsection (1) of this section shall be determined  
25 by the director in a manner consistent with the method prescribed in [ORS 469.421] **section 2 of**  
26 **this 2011 Act**. The aggregate amount of the assessment shall not exceed \$400,000. In making this  
27 assessment, the director shall exclude all gallons of distillate fuel oil sold by petroleum suppliers  
28 that are subject to the requirements of section 3a, Article IX of the Oregon Constitution, or ORS  
29 319.020 or 319.530.

30 (3) If any petroleum supplier fails to pay any amount assessed to it under this section within  
31 30 days after the payment is due, the Attorney General, on behalf of the State Department of En-  
32 ergy, may institute a proceeding in the circuit court to collect the amount due.

33 (4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half  
34 percent of the payment due per month or fraction of a month from the date the payment was due  
35 to the date of payment.

36 (5) The assessment required by subsection (1) of this section is in addition to any assessment  
37 required by [ORS 469.421 (8)] **section 2 of this 2011 Act**, and any other fee or assessment required  
38 by law.

39 (6) As used in this section, "petroleum supplier" means a petroleum refiner in this state or any  
40 person engaged in the wholesale distribution of distillate fuel oil in the State of Oregon.

41 **SECTION 7.** ORS 469.992 is amended to read:

42 469.992. (1) The Director of the State Department of Energy or the Energy Facility Siting  
43 Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930 **and section**  
44 **2 of this 2011 Act**, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930 **and**  
45 **section 2 of this 2011 Act**, for violation of any site certificate or amended site certificate issued

1 under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant  
 2 to ORS 469.405 (3). A civil penalty in an amount of not more than \$25,000 per day for each day of  
 3 violation may be assessed.

4 (2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable  
 5 upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

6 (3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may  
 7 be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with  
 8 a subpoena served by the director pursuant to ORS 469.080 (2).

9 (4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of  
 10 any provision of ORS 469.603 to 469.619 may be assessed by the circuit court upon complaint of any  
 11 person injured by the violation.

12 **SECTION 8.** ORS 469.992, as amended by section 17, chapter 653, Oregon Laws 1991, is  
 13 amended to read:

14 469.992. (1) The Director of the State Department of Energy or the Energy Facility Siting  
 15 Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930 **and section**  
 16 **2 of this 2011 Act**, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930 **and**  
 17 **section 2 of this 2011 Act**, for violation of any site certificate or amended site certificate issued  
 18 under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant  
 19 to ORS 469.405 (3). A civil penalty in an amount of not more than \$25,000 per day for each day of  
 20 violation may be assessed.

21 (2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable  
 22 upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

23 (3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may  
 24 be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with  
 25 a subpoena served by the director pursuant to ORS 469.080 (2).

26 (4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of  
 27 any provision of ORS 469.603 to 469.619 or section 14, chapter 653, Oregon Laws 1991, may be as-  
 28 sessed by the circuit court upon complaint of any person injured by the violation.

29 **SECTION 9.** Section 47a, chapter 753, Oregon Laws 2009, is amended to read:

30 **Sec. 47a.** Notwithstanding ORS 469.441, in addition to any assessment imposed under [*ORS*  
 31 *469.421 (8)*] **section 2 of this 2011 Act**, the State Department of Energy may impose a special as-  
 32 sessment on energy resource suppliers that are subject to the assessment described in [*ORS 469.421*  
 33 *(8)*] **section 2 of this 2011 Act**. The special assessment authorized under this section may not exceed  
 34 \$300,000. The department shall calculate the share of the special assessment to be paid by an energy  
 35 resource supplier based on the most recent gross operating revenue ratio determined for that sup-  
 36 plier under [*ORS 469.421 (8)(c)*] **section 2 (2)(d) of this 2011 Act** as of the special assessment date.  
 37 The department may not impose the special assessment authorized under this section more than  
 38 once and may not impose the special assessment after July 1, 2010. Moneys received by the depart-  
 39 ment from the special assessment must be deposited to the Energy Project Supplemental Fund and  
 40 used to pay costs incurred by the department or the Director of the State Department of Energy in  
 41 implementing or administering loan programs for small scale local energy projects.

42 **SECTION 10.** (1) **Section 2 of this 2011 Act and the amendments to ORS 291.055, 469.120,**  
 43 **469.410, 469.421, 469.681 and 469.992 and section 47a, chapter 753, Oregon Laws 2009, by**  
 44 **sections 1 and 3 to 9 of this 2011 Act apply to the 2011-2013 biennium and subsequent biennia.**

45 (2) **As soon as possible after adjournment sine die of the 2011 session of the Seventy-sixth**

1 **Legislative Assembly, the Director of the State Department of Energy shall enter an order**  
2 **establishing the amount of revenue required to be derived from the assessment required by**  
3 **section 2 of this 2011 Act for the purpose of the first fiscal year of the 2011-2013 biennium.**

4 **SECTION 11. This 2011 Act being necessary for the immediate preservation of the public**  
5 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
6 **on its passage.**

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