



Oregon

John A. Kitzhaber, MD, Governor

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FROM: Robin Freeman, Associate Director, Government Relations
Oregon Department of Energy
Robin.Freeman@odoe.or.us; 503-428-8615

Subject: SB 259 – Siting Process Cost Recovery

625 Marion St. NE
Salem, OR 97301-3737
Phone: (503) 378-4040
Toll Free: 1-800-221-8035
FAX: (503) 373-7806
www.Oregon.gov/ENERGY

What the Bill Does

SB 259 will amend ORS 469.360 to add authority for EFSC to compensate reviewing agencies for expenses directly related to review of the expected facility siting issues before the Notice of Intent (NOI) is submitted if site certificate applicants request reviewing agency input or review before they submit their NOI. The bill will also amend ORS 469.360 to authorize EFSC to compensate any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility for the tribe's identified expenses relating to reviewing the NOI or application. Finally, the bill proposes to amend ORS 469.421 and 469.430 to allow EFSC to compensate state agencies and local governments for reviewing documents and conducting site inspections to ensure the facility complies with all terms and conditions of the site certificate.

Background Information

The Energy Facility Siting Council is a seven member board appointed by the Governor and confirmed by the Senate. It has the responsibility to review applications for site certificates for all state-jurisdictional energy facilities and either issue or deny a site certificate for the energy facility. The Department of Energy administers the EFSC facility siting process, which consolidates state agency and local government regulations into a single review process. State agencies and local governments participate throughout the siting process as reviewing agencies. ORS 469.360 authorizes EFSC to compensate reviewing agencies for their participation in the site certificate process.

In 2013, the Legislature passed HB 2105 requiring the Department of Energy to study several substantive and procedural issues related to energy facility siting. The Department was required to present a report to the Legislature by Nov. 1, 2013. The report required recommendations for potential legislation. SB 259 was one of the recommendations that came out of the report to the Legislature in November of 2013.

Identified Issues

SB 259 addresses two issues related to the reviewing agency compensation provisions of ORS 469.430 and related statutes.

The first issue relates to reviewing agency reimbursement. As part of the EFSC consolidated review process, ORS 469.350 requires state agencies, cities and counties to comment on the notices of intent (NOI) and site certificate applications. The NOI effectively declares the applicant's intention to submit a

site certificate application and includes general information about the project. It is not an application to construct the facility but it does allow state agencies, local governments, and the public to proactively identify applicable requirements and special issues of concern the applicant must address in the application.

ORS 469.360 authorizes EFSC to compensate state agencies and local governments (reviewing agencies) for expenses related to their review of the NOI and application. In addition, ORS 469.430 authorizes EFSC to request that other agencies inspect the site after a facility is operational to ensure compliance with site certificate conditions, and ORS 469.401(3) binds the state and all counties, cities and political subdivisions to the approval of the site and the construction and operation of the facility.

The statute does not allow reviewing agencies to obtain reimbursement for expenses incurred before the NOI is submitted, even when the expenses arise from input or review that is requested by the applicant. It also does not allow reviewing agencies to be reimbursed for compliance related inspections, or for review of conditions related to site certificate compliance. Without the statutory authority for reviewing agencies to recover expenses associated with this work, reviewing agencies do not have the resources to provide the needed evaluation. The earlier coordination with reviewing agencies can occur the more effectively and efficiently the agency and the applicants can predict and respond to issues that arise during the siting process. In addition, site certificate conditions and the ongoing review of compliance with those conditions are necessary to ensure continued compliance with siting standards.

The second issue relates to tribal government reimbursement. As part of the state-wide consolidated review, the department provides information to and seeks comment from each identified reviewing agency. Included within the definition of "reviewing agency" under OAR 345-001-001 (52)(n) is "any tribe identified by the Legislative Commission on Indian Services affected by the proposed facility." ORS 469.360 does not expressly authorize EFSC to compensate a tribe identified as a reviewing agency for the tribe's necessary expenses related to reviewing the NOI or application.

The energy facility siting process depends on the reviewing agency input generally, and tribal input regarding historic, cultural and archeological resources, to ensure all issues are adequately addressed during the siting process. Tribes are often in a unique position to identify resources that could be impacted by a particular facility. Comments and input from recognized tribes that would be affected by a proposed facility assist in development of EFSC's decision making record and help EFSC make a determination on whether the facility satisfies the approval standard related to historic, cultural and archeological resources.