

House Bill 2764

Sponsored by Representative HOLVEY, Senator BEYER

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**.

Changes calculated share of annual energy resource supplier assessment below which energy resource supplier is exempt from payment of assessment from \$250 to \$2,500.

A BILL FOR AN ACT

1
2 Relating to minimum energy supplier assessment level; amending ORS 469.421.

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

4 **SECTION 1.** ORS 469.421, as amended by section 71, chapter 117, Oregon Laws 2016, is
5 amended to read:

6 469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent,
7 a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370,
8 a request for an expedited review under ORS 469.373, a request for the State Department of Energy
9 to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to
10 amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council and
11 the department related to the review and decision of the council. Expenses under this subsection
12 may include:

13 (a) Legal expenses;

14 (b) Expenses incurred in processing and evaluating the application;

15 (c) Expenses incurred in issuing a final order or site certificate;

16 (d) Expenses incurred in commissioning an independent study under ORS 469.360;

17 (e) Compensation paid to a state agency, a tribe or a local government pursuant to a written
18 contract or agreement relating to compensation as provided for in ORS 469.360; or

19 (f) Expenses incurred by the council in making rule changes that are specifically required and
20 related to the particular site certificate.

21 (2) Every person submitting a notice of intent to file for a site certificate, a request for ex-
22 emption or a request for expedited review shall pay the fee required under the fee schedule estab-
23 lished under ORS 469.441 to the department prior to submitting the notice or request to the council.
24 To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this
25 subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or
26 request shall pay any excess costs shown in an itemized statement prepared by the council. In no
27 event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid
28 unless the council provides prior notification to the applicant and a detailed projected budget the
29 council believes necessary to complete the project. If costs are less than the fee paid, the excess
30 shall be refunded to the person submitting the notice or request.

31 (3) Before submitting a site certificate application, the applicant shall request from the depart-

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

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

12 (5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee,
13 due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the
14 department's budget authorization by an odd-numbered year regular session of the Legislative As-
15 sembly or as revised by the Emergency Board meeting in an interim period or by the Legislative
16 Assembly meeting in special session or in an even-numbered year regular session, the Director of
17 the State Department of Energy promptly shall enter an order establishing an annual fee based on
18 the amount of revenues that the director estimates is needed to fund the cost of ensuring that the
19 facility is being operated consistently with the terms and conditions of the site certificate, any order
20 issued by the department under ORS 469.405 (3) and any applicable health or safety standards. In
21 determining this cost, the director shall include both the actual direct cost to be incurred by the
22 council and the department to ensure that the facility is being operated consistently with the terms
23 and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and
24 any applicable health or safety standards, and the general costs to be incurred by the council and
25 the department to ensure that all certificated facilities are being operated consistently with the
26 terms and conditions of the site certificates, any orders issued by the department under ORS 469.405
27 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed
28 facility. Not more than 35 percent of the annual fee charged each facility shall be for the recovery
29 of these general costs. The fees for direct costs shall reflect the size and complexity of the facility,
30 the anticipated costs of ensuring compliance with site certificate conditions, the anticipated costs
31 of conducting site inspections and compliance reviews as described in ORS 469.430, and the antic-
32 ipated costs of compensating state agencies and local governments for participating in site in-
33 spection and compliance enforcement activities at the request of the council.

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

37 (7) When the actual costs of regulation incurred by the council and the department for the year,
38 including that portion of the general regulation costs that have been allocated to a particular fa-
39 cility, are less than the annual fees for that facility, the unexpended balance shall be refunded to
40 the site certificate holder. When the actual regulation costs incurred by the council and the de-
41 partment for the year, including that portion of the general regulation costs that have been allo-
42 cated to a particular facility, are projected to exceed the annual fee for that facility, the director
43 may issue an order revising the annual fee.

44 (8)(a) In addition to any other fees required by law, each energy resource supplier shall pay to
45 the department annually its share of an assessment to fund the programs and activities of the

1 council and the department.

2 (b) Prior to filing an agency request budget under ORS 291.208 for purposes related to the
3 compilation and preparation of the Governor's budget under ORS 291.216, the director shall deter-
4 mine the projected aggregate amount of revenue to be collected from energy resource suppliers un-
5 der this subsection that will be necessary to fund the programs and activities of the council and the
6 department for each fiscal year of the upcoming biennium. After making that determination, the di-
7 rector shall convene a public meeting with representatives of energy resource suppliers and other
8 interested parties for the purpose of providing energy resource suppliers with a full accounting of:

9 (A) The projected revenue needed to fund each department program or activity; and

10 (B) The projected allocation of moneys derived from the assessment imposed under this sub-
11 section to each department program or activity.

12 (c) Upon approval of the budget authorization of the council and the department by an odd-
13 numbered year regular session of the Legislative Assembly, the director shall promptly enter an
14 order establishing the amount of revenues required to be derived from an assessment pursuant to
15 this subsection in order to fund programs and activities that the council and the department are
16 charged with administering and authorized to conduct under the laws of this state, including those
17 enumerated in ORS 469.030, for the first fiscal year of the forthcoming biennium. On or before June
18 1 of each even-numbered year, the director shall enter an order establishing the amount of revenues
19 required to be derived from an assessment pursuant to this subsection in order to fund the programs
20 and activities that the council and the department are charged with administering and authorized
21 to conduct under the laws of this state, including those enumerated in ORS 469.030, for the second
22 fiscal year of the biennium. The order shall take into account any revisions to the biennial budget
23 of the council and the department made by the Emergency Board meeting in an interim period or
24 by the Legislative Assembly meeting in special session or in an even-numbered year regular session.

25 (d) Each order issued by the director pursuant to paragraph (c) of this subsection shall allocate
26 the aggregate assessment set forth in the order to energy resource suppliers in accordance with
27 paragraph (e) of this subsection.

28 (e) The amount assessed to an energy resource supplier shall be based on the ratio which that
29 supplier's annual gross operating revenue derived within this state in the preceding calendar year
30 bears to the total gross operating revenue derived within this state during that year by all energy
31 resource suppliers. The assessment against an energy resource supplier shall not exceed 0.375 per-
32 cent of the supplier's gross operating revenue derived within this state in the preceding calendar
33 year. The director shall exempt from payment of an assessment any individual energy resource
34 supplier whose calculated share of the annual assessment is less than [~~\$250~~] **\$2,500**.

35 (f) The director shall send each energy resource supplier subject to assessment pursuant to this
36 subsection a copy of each order issued by registered or certified mail or through use of an electronic
37 medium with electronic receipt verification. The amount assessed to the energy resource supplier
38 pursuant to the order shall be considered to the extent otherwise permitted by law a government-
39 imposed cost and recoverable by the energy resource supplier as a cost included within the price
40 of the service or product supplied.

41 (g) The amounts assessed to individual energy resource suppliers pursuant to paragraph (e) of
42 this subsection shall be paid to the department as follows:

43 (A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days
44 following adjournment sine die of the odd-numbered year regular session of the Legislative Assem-
45 bly; and

1 (B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July
2 1 of each even-numbered year or 90 days following adjournment sine die of the even-numbered year
3 regular session of the Legislative Assembly, whichever is later.

4 (h) An energy resource supplier shall provide the director, on or before May 1 of each year, a
5 verified statement showing its gross operating revenues derived within the state for the calendar
6 or fiscal year that was used by the energy resource supplier for the purpose of reporting federal
7 income taxes for the preceding calendar or fiscal year. The statement must be in the form prescribed
8 by the director and is subject to audit by the director. The statement must include an entry showing
9 the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the
10 requirements of Article IX, section 3a, of the Oregon Constitution, and ORS 319.020 with reference
11 to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not
12 more than 15 days for the requirements of this subsection if:

13 (A) The energy supplier makes a showing of hardship caused by the deadline;

14 (B) The energy supplier provides reasonable assurance that the energy supplier can comply with
15 the revised deadline; and

16 (C) The extension of time does not prevent the council or the department from fulfilling its
17 statutory responsibilities.

18 (i) As used in this section:

19 (A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum sup-
20 plier supplying, generating, transmitting or distributing electricity, natural gas or petroleum pro-
21 ducts in Oregon.

22 (B) "Gross operating revenue" means gross receipts from sales or service made or provided
23 within this state during the regular course of the energy supplier's business, but does not include
24 either revenue derived from interutility sales within the state or revenue received by a petroleum
25 supplier from the sale of fuels that are subject to the requirements of Article IX, section 3a, of the
26 Oregon Constitution, or ORS 319.020 or 319.530.

27 (C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

28 (j) In determining the amount of revenues that must be derived from any class of energy re-
29 source suppliers by assessment pursuant to this subsection, the director shall take into account all
30 other known or readily ascertainable sources of revenue to the council and department, including,
31 but not limited to, fees imposed under this section and federal funds, and may take into account any
32 funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter
33 792, Oregon Laws 1981.

34 (k) Orders issued by the director pursuant to this section shall be subject to judicial review
35 under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an en-
36 ergy resource supplier to pay amounts assessed to it on or before the statutory deadline.

37 (9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal
38 power plant or nuclear installation within this state shall pay to the department annually on July
39 1 an assessment in an amount determined by the director to be necessary to fund the activities of
40 the state and the counties associated with emergency preparedness for a nuclear fueled thermal
41 power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys
42 collected as assessments under this subsection are continuously appropriated to the department for
43 this purpose.

44 (b) The department shall maintain and cause other state agencies and counties to maintain time
45 and billing records for the expenditure of any fees collected from an operator of a nuclear fueled

1 thermal power plant under paragraph (a) of this subsection.

2 (10) Reactors operated by a college, university or graduate center for research purposes and
3 electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements
4 of subsections (5), (8) and (9) of this section.

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

8 (b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee
9 provided under subsections (1) to (9) of this section after it is due and payable shall pay, in addition
10 to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any
11 payment made according to the terms of a schedule negotiated under paragraph (a) of this sub-
12 section shall not be considered past due. The director may bring an action to collect an unpaid fee
13 or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may
14 award reasonable attorney fees to the director if the director prevails in an action under this sub-
15 section. The court may award reasonable attorney fees to a defendant who prevails in an action
16 under this subsection if the court determines that the director had no objectively reasonable basis
17 for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

18