

# Senate Bill 304

Sponsored by Senator JOHNSON (at the request of Oregon People's Utility District Association) (Pre-session 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**.

Caps energy resource supplier assessment at \_\_\_\_\_ percent of supplier's gross operating revenue derived within this state in preceding calendar year.

Applies to biennia beginning on or after July 1, 2017.

## A BILL FOR AN ACT

1  
2 Relating to energy resource supplier assessment; creating new provisions; and amending ORS  
3 469.421.

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

5 **SECTION 1.** ORS 469.421 is 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. These expenses may include legal  
12 expenses, expenses incurred in processing and evaluating the application, issuing a final order or  
13 site certificate, commissioning an independent study by a contractor, state agency or local govern-  
14 ment under ORS 469.360, and changes to the rules of the council that are specifically required and  
15 related to the particular site certificate.

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

26 (3) Before submitting a site certificate application, the applicant shall request from the depart-  
27 ment an estimate of the costs expected to be incurred in processing the application. The department  
28 shall inform the applicant of that amount and require the applicant to make periodic payments of  
29 the costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall  
30 provide for payment of 25 percent of the estimated costs when the applicant submits the application.  
31 If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an

**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 itemized statement prepared by the council. In no event shall the council incur evaluation expenses  
2 in excess of 110 percent of the fee initially estimated unless the council provided prior notification  
3 to the applicant and a detailed projected budget the council believes is necessary to complete the  
4 project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

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

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

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

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

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

39 (b) Prior to filing budget forms under ORS 291.208 for purposes related to the compilation and  
40 preparation of the Governor's budget under ORS 291.216, the director shall determine the projected  
41 aggregate amount of revenue to be collected from energy resource suppliers under this subsection  
42 that will be necessary to fund the programs and activities of the council and the department for  
43 each fiscal year of the upcoming biennium. After making that determination, the director shall  
44 convene a public meeting with representatives of energy resource suppliers and other interested  
45 parties for the purpose of providing energy resource suppliers with a full accounting of:

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

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

4 (c) Upon approval of the budget authorization of the council and the department by an odd-  
5 numbered year regular session of the Legislative Assembly, the director shall promptly enter an  
6 order establishing the amount of revenues required to be derived from an assessment pursuant to  
7 this subsection in order to fund programs and activities that the council and the department are  
8 charged with administering and authorized to conduct under the laws of this state, including those  
9 enumerated in ORS 469.030, for the first fiscal year of the forthcoming biennium. On or before June  
10 1 of each even-numbered year, the director shall enter an order establishing the amount of revenues  
11 required to be derived from an assessment pursuant to this subsection in order to fund the programs  
12 and activities that the council and the department are charged with administering and authorized  
13 to conduct under the laws of this state, including those enumerated in ORS 469.030, for the second  
14 fiscal year of the biennium. The order shall take into account any revisions to the biennial budget  
15 of the council and the department made by the Emergency Board meeting in an interim period or  
16 by the Legislative Assembly meeting in special session or in an even-numbered year regular session.

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

20 (e) The amount assessed to an energy resource supplier shall be based on the ratio which that  
21 supplier's annual gross operating revenue derived within this state in the preceding calendar year  
22 bears to the total gross operating revenue derived within this state during that year by all energy  
23 resource suppliers. The assessment against an energy resource supplier shall not exceed [0.375]  
24 \_\_\_\_\_ percent of the supplier's gross operating revenue derived within this state in the preceding  
25 calendar year. The director shall exempt from payment of an assessment any individual energy re-  
26 source supplier whose calculated share of the annual assessment is less than \$250.

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

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

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

38 (B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July  
39 1 of each even-numbered year or 90 days following adjournment sine die of the even-numbered year  
40 regular session of the Legislative Assembly, whichever is later.

41 (h) An energy resource supplier shall provide the director, on or before May 1 of each year, a  
42 verified statement showing its gross operating revenues derived within the state for the calendar  
43 or fiscal year that was used by the energy resource supplier for the purpose of reporting federal  
44 income taxes for the preceding calendar or fiscal year. The statement must be in the form prescribed  
45 by the director and is subject to audit by the director. The statement must include an entry showing

1 the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the  
2 requirements of Article IX, section 3a, of the Oregon Constitution, and ORS 319.020 with reference  
3 to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not  
4 more than 15 days for the requirements of this subsection 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 council or the department from fulfilling its  
9 statutory responsibilities.

10 (i) As used in this section:

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

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

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

20 (j) In determining the amount of revenues that must be derived from any class of energy re-  
21 source suppliers by assessment pursuant to this subsection, the director shall take into account all  
22 other known or readily ascertainable sources of revenue to the council and department, including,  
23 but not limited to, fees imposed under this section and federal funds, and may take into account any  
24 funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter  
25 792, Oregon Laws 1981.

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

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

36 (b) The department shall maintain and cause other state agencies and counties to maintain time  
37 and billing records for the expenditure of any fees collected from an operator of a nuclear fueled  
38 thermal power plant under paragraph (a) of this subsection.

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

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

45 (b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee

1 provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it  
2 is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for  
3 the period that the fee is past due. Any payment made according to the terms of a schedule nego-  
4 tiated under paragraph (a) of this subsection shall not be considered past due. The director may  
5 bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court  
6 of competent jurisdiction. The court may award reasonable attorney fees to the director if the di-  
7 rector prevails in an action under this subsection. The court may award reasonable attorney fees  
8 to a defendant who prevails in an action under this subsection if the court determines that the di-  
9 rector had no objectively reasonable basis for asserting the claim or no reasonable basis for ap-  
10 pealing an adverse decision of the trial court.

11 **SECTION 2. The amendments to ORS 469.421 by section 1 of this 2015 Act apply to re-**  
12 **venue derived from energy resource supplier assessments for biennia beginning on or after**  
13 **July 1, 2017.**

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