

Enrolled
House Bill 3788

Sponsored by COMMITTEE ON SMART GROWTH AND COMMERCE

CHAPTER

AN ACT

Relating to energy; creating new provisions; amending ORS 276.900, 276.905, 276.915, 279.729, 447.010, 447.020, 469.300, 469.320, 469.350, 469.360, 469.403, 469.421, 757.646 and 757.659; and declaring an emergency.

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

SECTION 1. ORS 276.900 is amended to read:

276.900. It is the policy of the State of Oregon that facilities to be constructed or purchased by authorized state agencies be designed, constructed, [*or renovated in a manner that will minimize the consumption of energy in their operation and maintenance*] **renovated and operated so as to minimize the use of nonrenewable energy resources and to serve as models of energy efficiency.**

SECTION 2. ORS 276.905 is amended to read:

276.905. As used in ORS 276.900 to 276.915, unless the context requires otherwise:

(1) "Alternative energy system" means solar, wind, geothermal, heat recovery or other systems which use a renewable resource and are environmentally sound.

(2) "Authorized state agency" means any state agency, board, commission, department or division that is authorized to finance the construction, purchase or renovation of buildings or other structures to be used by the State of Oregon. [*"Authorized state agency" includes but is not limited to the Oregon Department of Administrative Services, the Department of Corrections, the Mental Health and Developmental Disability Services Division, the State Board of Education and the State Board of Higher Education.*]

(3) "Cost-effective" means that an energy resource, facility or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility or conservation measure. Cost comparison shall include, but need not be limited to:

- (a) Cost escalations and future availability of fuels;
- (b) Waste disposal and decommissioning costs;
- (c) Transmission and distribution costs;
- (d) Geographic, climatic and other differences in the state; and
- (e) Environmental impact.

(4) "Energy conservation measure" means a measure primarily designed to [*improve the efficiency of energy use*] **reduce the use of nonrenewable energy resources** in a state-owned facility.

(5) "Energy consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment and components and the external energy load imposed on a major facility by

the climatic conditions of its location. "Energy consumption analysis" includes, but is not limited to:

- (a) The comparison of a range of alternatives that is likely to include all reasonable, cost-effective energy conservation measures and alternative energy systems;
 - (b) The simulation of each system over the entire range of operation of a major facility for a year's operating period;
 - (c) The evaluation of energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs; and
 - (d) The consideration of alternative energy systems.
- (6) "Energy systems" means all utilities, including but not limited to heating, air conditioning, ventilating, lighting and the supply of domestic hot water.
- (7) "Major facility" means any state-owned building having 10,000 square feet or more of usable floor space.
- (8) "Renovation" means any addition to, alteration of or repair of a facility which will involve addition to or alteration of the facility's energy systems, provided that the affected energy systems account for 50 percent or more of the facility's total energy use.

SECTION 3. ORS 276.915 is amended to read:

276.915. (1) *[Except as provided in subsection (4) of this section, on and after October 3, 1989,]* An authorized state agency may construct or renovate a facility only if the authorized state agency determines that the design incorporates all reasonable cost-effective energy conservation measures and alternative energy systems. The determination by the authorized state agency shall include consideration of indoor air quality issues and operation and maintenance costs.

(2) Whenever an authorized state agency determines that any major facility is to be constructed or renovated the agency shall cause to be included in the design phase of the construction or renovation a provision that requires an energy consumption analysis identifying all reasonable cost-effective energy conservation measures and alternative energy systems to be prepared for the facility under the direction of a professional engineer or licensed architect. The authorized agency and the Office of Energy shall agree to the list of energy conservation measures and alternative energy systems to be analyzed. The analysis and facility design shall be delivered to the Office of Energy during the design development phase of the facility design. The Office of Energy shall review the analysis and forward its findings to the authorized state agency within 10 working days after receiving the analysis, if practicable.

(3) The Office of Energy, **in consultation with the Oregon Department of Administrative Services and the State System of Higher Education**, shall adopt rules to carry out the provisions of ORS 276.900 to 276.915. These rules shall:

(a) Include a simplified and usable method for determining which energy conservation measures and alternative energy systems are cost-effective. The method shall reflect the energy costs of the utility serving the facility.

(b) Prescribe procedures for determining if a facility design incorporates all reasonable cost-effective energy conservation measures and alternative energy systems.

(c) Establish fees through which an authorized state agency will reimburse the Office of Energy for its review of energy consumption analyses and facility designs and its reporting tasks. Such fees imposed shall not exceed 0.2 percent of the capital construction cost of the facility. The fees shall be included in the energy consumption analysis required in subsection (2) of this section. **The Office of Energy may provide for a waiver of fees and reviews if the authorized state agency demonstrates that the facility will be designed and constructed in a manner that incorporates only cost-effective energy conservation measures or in a manner that exceeds the energy conservation provisions of the state building code by 20 percent or more.**

(d) **Periodically define highly efficient facilities. A facility constructed or renovated after June 30, 2001, shall exceed the energy conservation provisions of the state building code by 20 percent or more, unless otherwise required by rules adopted under this section.**

(e) **Require an authorized state agency to reduce the amount of use of nonrenewable energy by at least 10 percent from the amount used by the state agency in the 2000 calendar year. The Office of Energy shall require state agencies that fail to achieve and maintain a 10-percent reduction on and after June 30, 2003, to submit biennial energy conservation plans to the Office of Energy. The Office of Energy shall specify the form and content of the energy conservation plans.**

(4) The Office of Energy, the Oregon Department of Administrative Services and the State System of Higher Education shall jointly prepare a biennial report summarizing the progress toward achieving the goals of this section. The biennial report shall be made available to the public.

[(4) Any facility that is in the design development phase and for which principal decisions have been fixed or set on or before the effective date of rules adopted under subsection (3) of this section shall be exempt from the amendments to ORS 276.900, 276.905 and this section by chapter 556, Oregon Laws 1989. Any facility for which the Sixty-fifth Legislative Assembly does not appropriate funds for the purposes of complying with the provisions of subsection (1) of this section shall be exempt from subsection (1) of this section.]

SECTION 4. ORS 279.729 is amended to read:

279.729. (1) The Oregon Department of Administrative Services may:

(a) Establish and enforce standards for all supplies, materials and equipment in common use by state agencies.

(b) Make or cause to be made any test, examination or analysis necessary therefor.

(c) Require the assistance of any and all officers and agencies therefor.

(d) Prepare or cause to be prepared proper and uniform specifications.

(e) Classify the requirements of the various agencies of the state government for the purpose of the use and application of such standard specifications.

(f) In consultation with the Office of Energy, establish criteria relating to the selection of energy efficient equipment.

(2) The department shall prescribe standards and specifications for paper used by state agencies that shall require the highest percentage possible of the total of the paper purchased by the department in any fiscal year be recycled paper or paper in the same grade most nearly meeting the definition of recycled paper. The department shall make available, through its purchasing procedure, in all grades where it can be obtained, recycled paper or that paper in the same grade most nearly meeting the definition of recycled paper.

(3) As used in this section, "recycled paper" has the meaning given that term by ORS 279.545.

NOTE: Section 5 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 6. ORS 469.300, as amended by section 2, chapter 134, Oregon Laws 2001 (Enrolled Senate Bill 843), is amended to read:

469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

(1) "Administrator" means the administrator of the Office of Energy created under ORS 469.030.

(2) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(3) "Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(4) "Associated transmission lines" means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

(5) "Average electric generating capacity" means the peak generating capacity of the facility divided by one of the following factors:

- (a) For wind or solar energy facilities, 3.00;
- (b) For geothermal energy facilities, 1.11; or
- (c) For all other energy facilities, 1.00.
- (6) "Combustion turbine power plant" means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.
- (7) "Construction" means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000.
- (8) "Council" means the Energy Facility Siting Council established under ORS 469.450.
- (9) "Electric utility" means persons, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, supplying, transmitting or distributing electric energy. [*"Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption.*]
- (10)(a) "Energy facility" means any of the following:
 - (A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:
 - (i) Thermal power; or
 - (ii) Combustion turbine power plant.
 - (B) A nuclear installation as defined in this section.
 - (C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:
 - (i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and
 - (ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way.
 - (D) A solar collecting facility using more than 100 acres of land.
 - (E) A pipeline that is:
 - (i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form in a liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;
 - (ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:
 - (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or
 - (II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or
 - (iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.
 - (F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.
 - (G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.
 - (H) A storage facility for liquified natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.
 - (I) A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic

gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

- (i) The underground storage reservoir;
- (ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and
- (iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

(J) An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal, solar or wind energy at a single energy facility or within a single energy generation area.

(b) "Energy facility" does not include a hydroelectric facility.

(11) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more. An "energy generation area" for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(12) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property off-site.

(13) "Facility" means an energy facility together with any related or supporting facilities.

(14) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(15) "Local government" means a city or county.

(16) "Nominal electric generating capacity" means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

(17) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(18) "Nuclear installation" means any power reactor; nuclear fuel fabrication plant; nuclear fuel reprocessing plant; waste disposal facility for radioactive waste; and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities which are part of a thermal power plant.

(19) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines.

(20) "Office of Energy" means the Office of Energy created under ORS 469.030.

(21) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(22) "Project order" means the order, including any amendments, issued by the Office of Energy under ORS 469.330.

(23)(a) "Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and re-

vised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, “radioactive waste” does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

(24) “Related or supporting facilities” means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. “Related or supporting facilities” does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

(25) “Site” means any proposed location of an energy facility and related or supporting facilities.

(26) “Site certificate” means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.

(27) “Thermal power plant” means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. “Thermal power plant” includes a nuclear-fueled thermal power plant that has ceased to operate.

(28) “Transportation” means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(29) “Underground gas storage reservoir” means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous substances. “Underground gas storage reservoir” includes a pool as defined in ORS 520.005.

(30) “Utility” includes:

(a) A person, a regulated electrical company, a people’s utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(31) “Waste disposal facility” means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, “temporary storage” includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government.

SECTION 7. ORS 469.320 is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (9)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (9)(a)(G), if the facility:

(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; and

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge.

(g) A temporary energy generating facility, if the facility complies with all applicable carbon dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and the applicant agrees to provide funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS 469.501. To support the council's finding that the facility complies with all applicable carbon dioxide emissions standards, the applicant shall provide proof acceptable to the council that shows the contracted nominal electric generating capacity of the facility and the contracted heat rate in higher heating value. The applicant shall pay the funds to the qualified organization before commencing construction on the temporary facility. The amount of the carbon dioxide offset funds for a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.

(h) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby gen-

erators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review, and if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), [or] (f) **or (h)** of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7)(a) Any person who proposes to construct or enlarge a temporary energy generating facility and who claims an exemption under subsection (2)(g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 30 days of receiving all of the information necessary to support the determination. Such exemption shall provide that the applicant may not begin construction of the temporary energy generating facility until the facility has received the required local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission. The exemption shall also require that the temporary energy generating facility cease operation no later than 24 months after the date of first commercial operation or January 2, 2006, whichever is earlier. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the order may not be stayed and review by the Supreme Court is limited to the record made by the council.

(b) The council may not grant an exemption for a temporary energy generating facility pursuant to subsection (2)(g) of this section after July 1, 2003.

(c) Within 30 days of ceasing operation of a temporary energy generating facility, the applicant shall report the total actual fuel used during commercial operation of the temporary energy generating facility. Based on the total actual fuel used during commercial operation, the council shall determine whether additional offset funds, as defined in ORS 469.503, and contracting and selection funds are owed to the qualified organization. If the council determines that additional offset funds are owed to the qualified organization, the applicant shall pay such amounts within 60 days of the council's order determining the amount of additional funds.

(d) Notwithstanding the provisions of paragraph (a) of this subsection that require a temporary energy generating facility granted an exemption pursuant to subsection (2)(g) of this section to cease operation within 24 months of first commercial operation, if the owner of a temporary energy generating facility submits an application for a site certificate prior to the last day of the period constituting the exemption or January 1, 2005, whichever date is earlier, the council shall extend the period constituting the exemption and shall allow the temporary energy generating facility to continue operation until the council concludes its review of the site certificate application. The council may specify a date by which the application must be completed. If the application is not completed by the date specified by the council, or is rejected by the council, the energy facility shall cease operation on the specified date. An energy facility operating pursuant to this paragraph shall cease operation if the applicant for the site certificate suspends the application.

[(7)] (8) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) "Temporary energy generating facility" means an electric power generating facility, including a thermal power plant and a combustion turbine power plant, but not including a hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more than 24 months from the date of initial commercial operation.

[(a)] (c) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

[(b)] (d) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(9) Notwithstanding the definition of "energy facility" in ORS 469.300 (10)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

SECTION 8. ORS 469.320, as amended by section 7 of this 2001 Act, is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) No site certificate shall be required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (9)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (9)(a)(G), if the facility:

(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any state-wide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section; and

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge.

[(h)] (g) A temporary energy generating facility, if the facility complies with all applicable carbon dioxide emissions standards adopted by the Energy Facility Siting Council or enacted by statute and the applicant agrees to provide funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reductions in carbon dioxide as specified in ORS 469.501. To support the council's finding that the facility complies with all applicable carbon dioxide emissions standards, the applicant shall provide proof acceptable to the council that shows the contracted nominal electric generating capacity of the facility and the contracted heat rate in higher heating value. The applicant shall pay the funds to the qualified organization before commencing construction on the temporary facility. The amount of the carbon dioxide offset funds for a temporary facility shall be subject to adjustment as provided in subsection (7)(c) of this section.]

[(h)] (g) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of

standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review, and if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or *[(h)]* **(g)** of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

[(7)(a) Any person who proposes to construct or enlarge a temporary energy generating facility and who claims an exemption under subsection (2)(g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 30 days of receiving all of the information necessary to support the determination. Such exemption shall provide that the applicant may not begin construction of the temporary energy generating facility until the facility has received the required local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all state-wide planning goals and applicable rules of the Land Conservation and Development Commission. The exemption shall also require that the temporary energy generating facility cease operation no later than 24 months after the date of first commercial operation or January 2, 2006, whichever is earlier. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the order may not be stayed and review by the Supreme Court is limited to the record made by the council.]

[(b) The council may not grant an exemption for a temporary energy generating facility pursuant to subsection (2)(g) of this section after July 1, 2003.]

[(c) Within 30 days of ceasing operation of a temporary energy generating facility, the applicant shall report the total actual fuel used during commercial operation of the temporary energy generating facility. Based on the total actual fuel used during commercial operation, the council shall determine whether additional offset funds, as defined in ORS 469.503, and contracting and selection funds are

owed to the qualified organization. If the council determines that additional offset funds are owed to the qualified organization, the applicant shall pay such amounts within 60 days of the council's order determining the amount of additional funds.]

[(d) Notwithstanding the provisions of paragraph (a) of this subsection that require a temporary energy generating facility granted an exemption pursuant to subsection (2)(g) of this section to cease operation within 24 months of first commercial operation, if the owner of a temporary energy generating facility submits an application for a site certificate prior to the last day of the period constituting the exemption or January 1, 2005, whichever date is earlier, the council shall extend the period constituting the exemption and shall allow the temporary energy generating facility to continue operation until the council concludes its review of the site certificate application. The council may specify a date by which the application must be completed. If the application is not completed by the date specified by the council, or is rejected by the council, the energy facility shall cease operation on the specified date. An energy facility operating pursuant to this paragraph shall cease operation if the applicant for the site certificate suspends the application.]

[(8)] (7) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

[(b) "Temporary energy generating facility" means an electric power generating facility, including a thermal power plant and a combustion turbine power plant, but not including a hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more than 24 months from the date of initial commercial operation.]

[(c)] (b) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

[(d)] (c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

[(9)] (8) Notwithstanding the definition of "energy facility" in ORS 469.300 (10)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate.

SECTION 9. The amendments to ORS 469.320 by section 8 of this 2001 Act become operative January 2, 2006.

SECTION 10. ORS 469.350 is amended to read:

469.350. (1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

(2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, any other state agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

(3) Any state agency, city or county that is requested by the council to comment and make recommendations under this section shall respond to the council by the specified deadline. If a state agency, city or county determines that it cannot respond to the council by the specified deadline because the state agency, city or county lacks sufficient resources to review and comment on the application, the state agency, city or county shall contract with another entity to assist in preparing a response. A state agency, city or county that

enters into a contract to assist in preparing a response may request funding to pay for that contract from the council pursuant to ORS 469.360.

[3] (4) The Office of Energy shall notify the applicant whether the application is complete. When the Office of Energy determines an application is complete, the Office of Energy shall notify the applicant and provide notice to the public.

SECTION 11. ORS 469.360 is amended to read:

469.360. (1) The Energy Facility Siting Council shall evaluate each site certificate application. As part of its evaluation, the council may commission an independent study by an independent contractor, state agency, local government or any other person, of any aspect of the proposed facility within its statutory authority to review. The council may compensate a state agency or local government for expenses related to:

- (a) Review of the notice of intent, the application or a request for an expedited review;
- (b) The state agency's or local government's participation in a council proceeding; and
- (c) The performance of specific studies necessary to complete the council's statutory evaluation of the application.

(2) The council may enter into a contract under subsection (1) of this section only after the council makes a determination that the council is unable to fully evaluate the application without assistance and identifies specific issues to be addressed and only pursuant to a written contract or agreement with the independent contractor, state agency, local government or other person. The council shall compensate the independent contractor, state agency, local government or other person only to the extent the costs are directly related to issues identified by the council. *[These expenses shall not include expenses of other state agencies for which a fee is otherwise provided under state law or local ordinance.]*

(3) The council shall provide funding to state agencies, cities or counties required to contract with another entity to complete comments and recommendations pursuant to ORS 469.350.

(4) In addition to compensating state agencies and local governments pursuant to subsection (1) of this section, the council may provide funding to the Department of Environmental Quality for the department to conduct modeling and provide technical assistance to expedite preparation, submission and review of applications for permits under ORS 468A.040 required for energy facilities.

SECTION 12. ORS 469.403 is amended to read:

469.403. (1) Any party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the Energy Facility Siting Council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council's approval or rejection of an application for a site certificate or a site certificate amendment shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate or amended site certificate process. Upon such application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the application shall be considered denied. The filing of an application for rehearing shall not, unless specifically ordered by the council, operate as a stay of the site certificate or amended site certificate for the facility.

(2) Any party to a contested case proceeding on a site certificate or amended site certificate application may appeal the council's approval or rejection of the site certificate or amended site certificate application. Issues on appeal shall be limited to those raised by the parties to the contested case proceeding before the council.

(3) Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate or amended site certificate is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within

60 days after the date of service of the council's final order or within 30 days after the date the petition for rehearing is denied or deemed denied. Date of service shall be the date on which the council delivered or mailed its order in accordance with ORS 183.470.

[(4) The filing of the petition for judicial review shall stay the order, except that the Supreme Court may lift the stay upon a showing that:]

[(a) The delay in construction will result in substantial economic injury to the applicant; and]

[(b) Construction will not result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.]

[(5) No bond or other undertaking shall be required for operation of the stay under subsection (4) of this section.]

(4) The filing of a petition for judicial review may not stay the order, except that a party to the contested case may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that:

(a) The petitioner will suffer irreparable injury; or

(b) Construction of the energy facility will result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.

(5) If the Supreme Court grants a stay pursuant to subsection (4) of this section, the court:

(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000.

(b) May grant a stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review and shall render a decision within six months of the filing of the petition for review.

(7) The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (6) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

(8) No period of delay resulting from a continuance granted by the Supreme Court under subsection (7)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (7)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

(9) No continuance under subsection (7)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

SECTION 13. ORS 469.421 is amended to read:

469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under section 15 of this 2001 Act, a request for the Office

of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the Office of Energy and the Oregon Department of Administrative Services related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate, commissioning an independent study by a contractor, state agency or local government under ORS 469.360, and changes to the rules of the council that are specifically required and related to the particular site certificate.

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

(3) Before submitting a site certificate application, the applicant shall request from the Office of Energy an estimate of the costs expected to be incurred in processing the application. The Office of Energy shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

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

(5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the Office of Energy's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the administrator of the Office of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the administrator estimates is needed to fund the cost of assuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the Office of Energy under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the administrator shall include both the actual direct cost to be incurred by the council, the Office of Energy and the Oregon Department of Administrative Services to assure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the Office of Energy under ORS 469.405 (3) and any applicable health or safety standards, and the general costs to be incurred by the council, the Office of Energy and the Oregon Department of Administrative Services to assure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the Office of Energy under ORS 469.405 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than ~~[20]~~ **35** percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility and its certificate conditions.

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

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

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

(a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy by a regular session of the Legislative Assembly, the administrator shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the administrator shall enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year of the biennium which order shall take into account any revisions to the biennial budget of the Energy Facility Siting Council, the Office of Energy and the Oregon Department of Administrative Services made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.

(b) Each order issued by the administrator pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph (c) of this subsection.

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

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

(e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this subsection shall be paid to the Office of Energy as follows:

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

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

(f) An energy resource supplier shall provide the administrator, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. The statement shall be in the form prescribed by the administrator and is subject to audit by the administrator. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The administrator may grant an extension of not more than 15 days for the requirements of this subsection if:

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

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

(C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon Department of Administrative Services or the Office of Energy from fulfilling their statutory responsibilities.

(g) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

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

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

(h) In determining the amount of revenues which must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the administrator shall take into account all other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Department of Administrative Services and the Office of Energy, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(i) Orders issued by the administrator pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

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

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

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

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

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for

the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The administrator may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the administrator if the administrator prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the administrator had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

SECTION 14. Sections 15 and 17 of this 2001 Act are added to and made a part of ORS 469.300 to 469.563.

SECTION 15. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370, an applicant may apply under the provisions of this section for expedited review of an application for a site certificate for an energy facility if the energy facility:

(a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup power generation;

(b) Is a permitted or conditional use allowed under an applicable local acknowledged comprehensive plan, land use regulation or federal land use plan, and is located:

(A) At or adjacent to an existing energy facility; or

(B)(i) At, adjacent to or in close proximity to an existing industrial use; and

(ii) In an area currently zoned or designated for industrial use;

(c)(A) Requires no more than three miles of associated transmission lines or three miles of new natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines; or

(B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in the locating of associated transmission lines or new natural gas pipelines outside of existing rights of way;

(d) Requires no new water right or water right transfer;

(e) Provides funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reduction in carbon dioxide emissions as specified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by the energy facility for the life of the energy facility; and

(f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment permit, if needed, within the expedited review process time frame and has written confirmation from the wastewater facility permit holder that the additional wastewater load will be accommodated by the facility without resulting in a significant thermal increase in the facility effluent or without requiring any changes to the wastewater facility National Pollutant Discharge Elimination System permit;

(B) Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:

(i) The municipal corporation has included, or intends to include, the process wastewater load from the energy facility in an application for a National Pollutant Discharge Elimination System permit; and

(ii) All conditions required of the energy facility to allow the discharge of process wastewater from the energy facility will be satisfied; or

(C) Obtains a National Pollutant Discharge Elimination System or water pollution control facility permit for process wastewater disposal, supplies evidence to support a finding that the discharge can likely be permitted within the expedited review process time frame and that the discharge will not require:

(i) A new National Pollutant Discharge Elimination System permit, except for a storm water general permit for construction activities; or

(ii) A change in any effluent limit or discharge location under an existing National Pollutant Discharge Elimination System or water pollution control facility permit.

(2) An applicant seeking expedited review under this section shall submit documentation to the Office of Energy, prior to the submission of an application for a site certificate, that demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this section. The Office of Energy shall determine, within 14 days of receipt of the documentation, on a preliminary, nonbinding basis, whether the energy facility qualifies for expedited review.

(3) If the Office of Energy determines that the energy facility preliminarily qualifies for expedited review, the applicant may submit an application for expedited review. Within 30 days after the date that the application for expedited review is submitted, the Office of Energy shall determine whether the application is complete. If the Office of Energy determines that the application is complete, the application shall be deemed filed on the date that the Office of Energy sends the applicant notice of its determination. If the Office of Energy determines that the application is not complete, the Office of Energy shall notify the applicant of the deficiencies in the application and shall deem the application filed on the date that the Office of Energy determines that the application is complete. The Office of Energy or the council may request additional information from the applicant at any time.

(4) The Office of Energy shall send a copy of a filed application to the Department of Environmental Quality, the Water Resources Department, the State Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agriculture, the Department of Land Conservation and Development, the Public Utility Commission and any other state agency, city, county or political subdivision of the state that has regulatory or advisory responsibility with respect to the proposed energy facility. The Office of Energy shall send with the copy of the filed application a notice specifying that:

(a) In the event the council issues a site certificate for the energy facility, the site certificate will bind the state and all counties, cities and political subdivisions in the state as to the approval of the site, the construction of the energy facility and the operation of the energy facility, and that after the issuance of a site certificate, all permits, licenses and certificates addressed in the site certificate must be issued as required by ORS 469.401 (3); and

(b) The comments and recommendations of state agencies, counties, cities and political subdivisions concerning whether the proposed energy facility complies with any statute, rule or local ordinance that the state agency, county, city or political subdivision would normally administer in determining whether a permit, license or certificate required for the construction or operation of the energy facility should be approved will be considered only if the comments and recommendations are received by the Office of Energy within a reasonable time after the date the application and notice of the application are sent by the Office of Energy.

(5) Within 90 days after the date that the application was filed, the Office of Energy shall issue a draft proposed order setting forth:

(a) A description of the proposed energy facility;

(b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed energy facility;

(c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed energy facility; and

(d) Proposed findings specifying how the proposed energy facility complies with the applicable standards and criteria for approval of a site certificate.

(6) The council shall review the application for site certification in the manner set forth in subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council determines that the facility, with any required conditions to the site certificate, will comply with:

- (a) The requirements for expedited review as specified in this section;**
- (b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and (L) to (o);**
- (c) The requirements of ORS 469.503 (3); and**
- (d) The requirements of ORS 469.504 (1)(b).**

(7) Following submission of an application for a site certificate, the council shall hold a public informational meeting on the application. Following the issuance of the proposed order, the council shall hold at least one public hearing on the application. The public hearing shall be held in the area affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall include, but need not be limited to, the following:

- (a) A description of the energy facility and the general location of the energy facility;**
- (b) The name of an Office of Energy representative to contact and the telephone number at which people may obtain additional information;**
- (c) A statement that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost; and**
- (d) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record, with sufficient specificity to afford the decision maker an opportunity to respond to the issue, will preclude consideration of the issue, by the council or by a court on judicial review of the council's decision.**

(8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present additional written evidence, arguments or testimony regarding the application. In the alternative, prior to the conclusion of the hearing, the applicant may request a contested case hearing on the application. If the applicant requests an opportunity to present written evidence, arguments or testimony, the council shall leave the record open for that purpose only for a period not to exceed 14 days after the date of the hearing. Following the close of the record, the Office of Energy shall prepare a draft final order for the council. If the applicant requests a contested case hearing, the council may grant the request if the applicant has shown good cause for a contested case hearing. If a request for a contested case hearing is granted, subsections (9) to (11) of this section do not apply, and the application shall be considered under the same contested case procedures used for a nonexpedited application for a site certificate.

(9) The council shall make its decision based on the record and the draft final order prepared by the Office of Energy. The council shall, within six months of the date that the application is deemed filed:

- (a) Grant the application;**
- (b) Grant the application with conditions;**
- (c) Deny the application; or**
- (d) Return the application to the site certification process required by ORS 469.320.**

(10) If the application is granted, the council shall issue a site certificate pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose conditions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based on those standards.

(11) Judicial review of the approval or rejection of a site certificate by the council under this section shall be as provided in ORS 469.403.

SECTION 16. The provisions of section 15 of this 2001 Act apply to applications for site certificates received by the Energy Facility Siting Council after March 31, 2001.

SECTION 17. Notwithstanding ORS 197.180, when a state agency action or recommendation concerning an energy facility requires a land use compatibility statement prior to the action being completed, the state agency shall satisfy any applicable requirement of ORS 197.180 by conditioning the agency action or recommendation on a determination by either the Energy Facility Siting Council or the applicable city or county that the energy facility as affected by the state agency action satisfies, or will continue to satisfy, the applicable requirements of ORS 197.180.

SECTION 18. ORS 757.646 is amended to read:

757.646. (1) The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive. The commission may require an electric company acting as an electricity service supplier do so through an affiliate.

[(2) The commission may provide incentives for divestiture to unaffiliated persons of the generation assets of an electric company, or the structural separation of such assets. The commission shall ensure that divestiture does not deprive consumers of the benefit of the utility's or the region's low-cost resources, independent of the power supplier.]

[(3)] **(2)** The commission shall establish by rule a code of conduct for electric companies and their affiliates to protect against market abuses and anticompetitive practices. The code shall, at a minimum:

(a) Require an electric company and any affiliate that shares the same name and logo to disclose to all consumers the relationship between the company and affiliate and to clarify that the affiliate is not the same as the electric company and that in order to receive service from the company a consumer does not have to purchase the services of the affiliate;

(b) Prohibit preferential access by an electric company affiliate to confidential consumer information;

(c) Prohibit cross-subsidization between competitive operations and regulated operations, including the use of electric company personnel and other resources;

(d) Prohibit joint marketing activities and exclusive referral arrangements between an electric company and its affiliates;

(e) Provide the commission with all necessary access to books and records;

(f) Require electric companies to make regular compliance filings; and

(g) Require fair treatment of all competitors by a distribution utility.

[(4)] **(3)** An electric company shall provide the commission access to all books and records necessary for the commission to monitor the electric company and its affiliate relationships. The commission shall require an electric company biannually to file a report detailing compliance with this subsection.

SECTION 19. ORS 757.659 is amended to read:

757.659. According to the applicable provisions of ORS 183.310 to 183.550 and 756.060, the Public Utility Commission shall adopt such rules as are necessary to implement ORS 757.600 to 757.667. Rules adopted by the commission shall address at least the following:

(1) Requirements and methodologies for each electric company to provide unbundled rates and services pursuant to ORS 757.642.

(2) Requirements for each electric company allowing aggregation of electricity loads pursuant to ORS 757.627, which may include aggregation of demand for other services available under direct access.

(3) Requirements for consumer protection. Consumer protection rules adopted by the commission that relate to electricity service suppliers shall be applicable throughout this state and shall, at a minimum, contain provisions for the disclosure of price, power source and environmental impact in contract offers and marketing information.

(4) Market valuation methodologies for determining the amount and recovery of the costs of uneconomic utility investment and the amount of and credit for economic utility investment.

[(5) Policies for the divestiture or structural separation of generating assets and power supply contracts owned or controlled by electric companies, consistent with the provisions of ORS 757.646.]

[(6)] (5) Requirements for each electric company to offer a portfolio of rate options under ORS 757.603.

[(7)] (6) The method of determining a default supplier for those consumers who are not eligible to participate in a portfolio program under ORS 757.603 in a manner that provides for viable competition among electricity service suppliers and among power generation companies. The commission may condition the use of a default service option by requiring reasonable notice and commitment from a consumer who intends to use the default service option in nonemergency situations.

[(8)] (7) Requirements for market structure described in ORS 757.646.

[(9)] (8) Requirements for public purpose charges and credits under ORS 757.612.

[(10)] (9) Requirements for meters, metering services, billing and collection services, and customer response functions.

SECTION 20. Section 21 of this 2001 Act is added to and made a part of ORS chapter 757.

SECTION 21. (1) Notwithstanding any other provision of this chapter, a customer of a public utility that entered into a contract with the public utility before the effective date of this 2001 Act, and that under the terms of the contract is not paying for electricity based on a market index price on the effective date of this 2001 Act, but would be required, on or after October 1, 2001, to pay for electricity based on a market index price for wholesale power or a market-based rate for a specific time period, may elect to pay for electricity from the public utility pursuant to the terms of any tariff rate that the public utility offers to other customers who have similar load characteristics.

(2) An election under this section may be made only for the period beginning on January 1, 2002, and ending on December 31, 2003.

(3) The provisions of this section do not apply to customers of a municipal electric utility, a people's utility district or an electric cooperative.

SECTION 22. (1) Notwithstanding ORS 447.020, a person may not engage in the trade of installing solar heating and cooling systems unless the person possesses either a certificate of competency as a journeyman plumber issued under ORS chapter 693 or a specialty registration issued by the State Plumbing Board under section 23 of this 2001 Act.

(2) A specialty registration issued under section 23 of this 2001 Act does not authorize a person to connect a solar heating and cooling system to a potable water source. The connection of a solar heating and cooling system to a potable water source must be made only by a journeyman plumber possessing a certificate of competency issued under ORS chapter 693.

SECTION 23. The State Plumbing Board shall:

(1) Establish education, training and other standards for persons seeking a specialty registration as a solar heating and cooling system installer. The board may administer or approve examinations designed to demonstrate the qualifications and competency of a person to work as a solar heating and cooling system installer.

(2) Impose appropriate fees for applications, examinations and issuance or renewal of registrations.

(3) Impose continuing education requirements for persons registered as solar heating and cooling system installers.

(4) Suspend, revoke or refuse to issue or renew a registration for a person found by the board to have violated a provision of this section or section 22 of this 2001 Act or rules adopted thereunder.

(5) Make all rules necessary and proper for carrying out the duties of the board relating to solar heating and cooling system installers.

SECTION 24. The State Plumbing Board may impose a civil penalty on a person who violates section 22 or 23 of this 2001 Act or a board rule adopted thereunder. A civil penalty may not exceed \$5,000. The imposition of civil penalties under this section is subject to ORS 183.310 to 183.550.

SECTION 25. ORS 447.010 is amended to read:

447.010. As used in ORS 447.010 to 447.160, unless the context requires otherwise:

- (1) "Board" means the State Plumbing Board established under ORS 693.115.
- (2) "Department" means the Department of Consumer and Business Services.
- (3) "Director" means the Director of the Department of Consumer and Business Services.
- (4) "Journeyman plumber" has the meaning given that term in ORS 693.010.
- (5) "Ordinary minor repairs" means the repair, replacement or maintenance of existing plumbing fixtures, appliances, appurtenances and related water supply and drain attachments for the purpose of restoring a plumbing installation to a safe and sanitary operating condition.

(6) "Plumbing" is the art of installing, altering or repairing in or adjacent to or serving buildings:

(a) Pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried waste, including the water supply distributing pipes.

(b) Fixtures and fixture traps.

(c) Soil, waste and vent pipes.

(d) House drain and house sewer to the sewer service lateral at the curb, or in the street, or alley, or other disposal terminal holding human or domestic sewage.

(e) Storm water drainage, with their devices, appurtenances and connections.

(f) Pipes, fixtures and other apparatus for medical gas, anesthetic waste gas and vacuum systems.

(g) Solar heating and cooling systems.

SECTION 26. ORS 447.020 is amended to read:

447.020. (1) All installations of plumbing and drainage in buildings and structures in this state and all potable water supply, drainage, and waste installations, within or serving buildings or structures, except in temporary construction camps, and except as otherwise provided in ORS 447.010 to 447.160, shall be made in accordance with the requirements of ORS 447.010 to 447.160 and ORS chapter 455.

(2) The Director of the Department of Consumer and Business Services with the approval of the State Plumbing Board shall make rules pursuant to ORS 183.310 to 183.550 for the purpose of setting standards for plumbing and defining compliance with the provisions of ORS 447.010 to 447.160 particularly pertaining to installation of piping, protection and adequacy of the water supply, workmanship and materials, traps and cleanouts, domestic hot water storage tanks and devices, drinking fountains, **solar heating and cooling systems**, approval of devices, equipment and fixtures, hangers and supports, drainage and venting, house drains and house sewers, storm water drains, special wastes, light and ventilation of water closets and bathrooms, and excavation and grading.

(3) The director shall appoint an adequate staff experienced and trained to serve as plumbing inspectors to enforce rules adopted under this section.

SECTION 27. Section 22 of this 2001 Act becomes operative July 1, 2002.

SECTION 28. The amendments to ORS 447.010 and 447.020 by sections 25 and 26 of this 2001 Act apply to solar heating and cooling system installations made on or after the operative date of section 22 of this 2001 Act. A building inspector may not disapprove a solar heating and cooling system installed prior to the operative date of section 22 of this 2001 Act based solely upon the installation being performed by a person other than a certified journeyman plumber or a person registered under section 23 of this 2001 Act.

SECTION 29. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Passed by House June 13, 2001

Repassed by House June 20, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate June 19, 2001

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President of Senate

Received by Governor:

.....M.,....., 2001

Approved:

.....M.,....., 2001

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2001

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Secretary of State