

Chapter 470

2007 EDITION

Small Scale Local Energy Projects

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GENERAL PROVISIONS

470.050 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Alternative fuel project" means:

(a) A fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, ethanol, gasohol with at least 10 percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy; and

(B) Produce lower or equivalent exhaust emissions or are more energy efficient than vehicles fueled by gasoline; and

(b) A facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.

(2) "Applicant" means an applicant for a small scale local energy project loan.

(3) "Committee" means the Small Scale Local Energy Project Advisory Committee created under ORS 470.070.

(4) "Cooperative" means a cooperative corporation organized under ORS chapter 62.

(5) "Director" means the Director of the State Department of Energy appointed under ORS 469.040.

(6) "Eligible federal agency" means a federal agency or public corporation created by the federal government that proposes to use a loan for a small scale energy project. "Eligible federal agency" does not include a federal agency or public corporation created by the federal government that proposes to use a loan for a small scale energy project to generate electricity for sale.

(7) "Eligible state agency" means a state officer, board, commission, department, institution, branch or agency of the state whose costs are paid wholly or in part from funds held in the State Treasury.

(8) "Loan" includes the purchase or other acquisition of evidence of indebtedness and money used for the purchase or other acquisition of evidence of indebtedness.

(9) "Loan contract" means the evidence of indebtedness and all instruments used in the purchase or acquisition of the evidence of indebtedness. For eligible federal or state agencies or municipal corporations that are tax exempt entities, a loan contract may include a lease purchase agreement with respect to personal property.

(10) "Loan fund" means the Small Scale Local Energy Project Loan Fund created by Article XI-J of the Oregon Constitution.

(11) "Municipal corporation" has the meaning given in ORS 297.405 and also includes any Indian tribe or authorized Indian tribal organization or any combination of two or more of these tribes or organizations acting jointly in connection with a small scale local energy project.

(12) "Oregon business" means a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity that is organized or authorized to do business under Oregon law for profit.

(13) "Recycling project" means a facility or equipment that converts waste into a new and usable product.

(14) "Small business" means:

(a) An Oregon business that is:

(A) A retail or service business employing 50 or fewer persons at the time the loan is made; or

(B) An industrial or manufacturing business employing 200 or fewer persons at the time the loan is made; or

(b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity for which the total number of employees for both the subsidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other form of business entity at the time the loan is made is:

(A) Fifty or fewer persons if the subsidiary is a retail or service business; and

(B) Two hundred or fewer if the subsidiary is an industrial or manufacturing business.

(15) "Sinking fund" means the Small Scale Local Energy Project Administration and Bond Sinking Fund created in ORS 470.300.

(16) "Small scale local energy project" means:

(a) A system, mechanism or series of mechanisms located primarily in Oregon that directly or indirectly uses or enables the use of, by the applicant or another person, renewable resources including, but not limited to, solar, wind, geothermal, biomass, waste heat or water resources to produce energy, including heat, electricity and substitute fuels, to meet a local community or regional energy need in this state;

(b) A system, mechanism or series of mechanisms located primarily in Oregon or providing substantial benefits to Oregon that directly or indirectly conserves energy or enables the conservation of energy by the applicant or another person, including energy used in transportation;

(c) A recycling project;

(d) An alternative fuel project;

(e) An improvement that increases the production or efficiency, or extends the operating life, of a system, mechanism, series of mechanisms or project otherwise described in this subsection, including but not limited to restarting a dormant project;

(f) A system, mechanism or series of mechanisms installed in a facility or portions of a facility that directly or indirectly reduces the amount of energy needed for the construction and operation of the facility and that meets the sustainable building practices standard established by the State Department of Energy by rule; or

(g) A project described in paragraphs (a) to (f) of this subsection, whether or not the existing project was originally financed under this chapter, together with any refinancing necessary to remove prior liens or encumbrances against the existing project.

(h) A project described in paragraphs (a) to (g) of this subsection that conserves energy or produces energy by generation or by processing or collection of a renewable resource. [1979 c.672 §1; 1981 c.50 §1; 1983 c.188 §1; 1985 c.593 §2; 1993 c.496 §4; 1995 c.551 §8; 1997 c.29 §1; 1999 c.365 §7; 2003 c.186 §55; 2005 c.201 §3]

470.060 Application for loan funds; content; fee. (1) Any individual who is a resident of Oregon, an Oregon business, a nonprofit or public cooperative, a nonprofit corporation, an eligible federal agency, an eligible state agency, a public corporation created by the state, an intergovernmental entity created pursuant to an intergovernmental agreement under ORS 190.003 to 190.130, or a municipal corporation may file with the State Department of Energy an application to obtain loan funds for a small scale local energy project as provided in this chapter.

(2) Applications to obtain funds for a small scale local energy project shall be made in writing on a form prescribed by the State Department of Energy. Applications submitted to the State Department of Energy shall:

(a) Describe the nature and purpose of the proposed small scale local energy project.

(b) State whether any purposes other than energy production, but consistent with energy production, will be served by the proposed small scale local energy project, and the nature of the other purposes, if any.

(c) Include an evaluation of the potential of the small scale local energy project to meet local community energy needs.

(d) Include an evaluation of the potential environmental impacts of the small scale local energy project.

(e) State whether any moneys other than those in the loan fund are proposed to be used for the development of the proposed small scale local energy project, and whether any other moneys are available or have been sought for the project.

(f) Describe the source of funds for repayment of the loan applied for.

(3) A fee of one-tenth of one percent of the amount of the loan applied for or \$2,500, whichever is less, shall be submitted with each application. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed the application fee and which the Director of the State Department of Energy determines are incurred solely in connection with processing the application. The applicant shall be advised of any additional costs the applicant must pay before the costs are incurred. [1979 c.672 §2; 1981 c.50 §2; 1983 c.188 §2; 1985 c.593 §3; 1997 c.29 §2; 2005 c.201 §4]

470.065 Confidentiality of information provided by or on behalf of applicant. (1) The following records, communications and information furnished by or on behalf of the applicant under this chapter shall be confidential and maintained as such, if so requested in writing by the person providing the information:

(a) Personal financial statements;

(b) Financial statements of applicants;

(c) Customer lists;

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur;

(e) Production, sales and cost data;

(f) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both; and

(g) Technical information or data related to an applicant's proposed small scale local energy project, including but not limited to any description, analysis, evaluation or projection regarding the project or a component of the project.

(2) The confidentiality provided by subsection (1)(d) of this section does not apply to concluded litigation. Nothing in subsection (1)(d) of this section limits any right granted by discovery statutes to a party to litigation or potential litigation. [1991 c.118 §2; 2005 c.201 §5; 2007 c.71 §152]

Note: 470.065 was added to and made a part of ORS chapter 470 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

470.070 Small Scale Local Energy Project Advisory Committee. (1) The Director of the State Department of Energy shall appoint a Small Scale Local Energy Project Advisory Committee to review applications made under ORS 470.060 and rules adopted under ORS 470.080, and make recommendations thereon to the director.

(2) Seven members shall be appointed to the Small Scale Local Energy Project Advisory Committee. Each member shall be appointed to serve a two-year term, commencing on the date of appointment, and until a successor is appointed and qualified. The members shall represent the interest of the citizens of this state and shall be knowledgeable in the areas of small scale energy technology, natural resource development, environmental protection, finance, agriculture, local government operations and utility operations. At least three members shall reside outside the Willamette Valley.

(3) The committee shall elect its own presiding officer, adopt rules for its procedure and meet on call of the presiding officer or a majority of the members. A majority of the members shall constitute a quorum to do business. The director shall provide administrative facilities and services for the committee.

(4) Members of the Small Scale Local Energy Project Advisory Committee shall be entitled to expenses as provided by ORS 292.495. [1979 c.672 §3; 1987 c.365 §1; 2003 c.186 §56]

470.080 Standards for small scale local energy projects; review of applications; referral to committee; committee criteria. (1) After consultation with the Small Scale Local Energy Project Advisory Committee, the Director of the State Department of Energy shall establish by rule standards and criteria for small scale local energy projects to be funded under the provisions of ORS 470.060 to 470.080 and 470.090. The standards and criteria shall operate to encourage diversity in projects funded, give preference to the maximum extent practical to projects proposed by individuals and small businesses, ensure acceptability of environmental impacts and shall require consideration of the potential contribution of a project if developed at other suitable locations to meeting the energy needs of this state. The standards and criteria shall give the least preference to projects proposed by an eligible federal agency.

(2) All applications submitted under ORS 470.060 shall be reviewed by the State Department of Energy. The department may re-

quest that the applicant submit additional information or revise the application. The department shall:

(a) Determine whether the application meets the standards and criteria adopted under subsection (1) of this section; and

(b) Recommend approval or denial of the loan application, and if approval is recommended in what amount the loan should be made.

(3) After concluding its review, unless the application meets the criteria established by the committee under subsection (4) of this section, the department shall refer the application and its findings and recommendation to the committee for its review. The department shall notify the applicant of the date, time and place of any oral presentation to the committee on the application. The committee shall review the application and the department's findings and recommendations and advise the director whether the proposed small scale local energy project meets the criteria established by the director under subsection (1) of this section, whether the project should be financed with moneys from the loan fund and in what amount the loan should be made if approved.

(4) The committee may provide for direct referral of an application by the department to the director if the application meets criteria established by the committee. [1979 c.672 §4; 1981 c.50 §3; 1997 c.29 §3; 2003 c.186 §57]

470.085 [1985 c.593 §8; repealed by 1991 c.118 §4]

470.090 Approval or rejection of project financing by director; certification of amount of loan; findings; notice. (1) After consideration of the recommendation of the Small Scale Local Energy Project Advisory Committee or the State Department of Energy as provided by ORS 470.080, the Director of the State Department of Energy may approve or reject the financing of a small scale local energy project described in an application filed as provided in ORS 470.060, using moneys in the Small Scale Local Energy Project Loan Fund. Approval of a loan by the director shall include a certification of the amount of the loan.

(2) The director's approval of a loan for a small scale local energy project shall be based on a finding that:

(a) The proposed small scale local energy project meets established standards and criteria under ORS 470.080;

(b) The proposed project is consistent with the preservation and enhancement of environmental quality;

(c) The proposed project is feasible and a reasonable risk from practical and economic standpoints;

(d) The plan for development of the project is satisfactory;

(e) The applicant is qualified, creditworthy and responsible and is willing and able to enter into a contract with the director for development and repayment as provided in ORS 470.150;

(f) There is a need for the proposed small scale local energy project and the applicant's financial resources are adequate to provide the working capital to maintain the project after completion;

(g) Moneys in the loan fund are or will be available for the development of the proposed small scale local energy project;

(h) A dwelling constructed before January 1, 1979, that will be served by a proposed space heating project is weatherized according to the standards established under ORS 469.155;

(i) Except for a proposed space heating project for a dwelling under paragraph (h) of this subsection, the loan does not finance any project for which the projected economic value of the energy savings of the project during the first year the project is implemented is equal to or greater than the cost of the project; and

(j) The loan will not preclude individuals and small businesses from access to loan funds.

(3) The director shall notify the applicant and the presiding officer of the committee of the director's action and of the reasons for that action. The director shall inform the applicant of the review procedure established in ORS 470.100. [1979 c.672 §5; 1981 c.50 §4; 1981 c.565 §4; 1983 c.188 §3; 2003 c.186 §58; 2005 c.201 §6]

470.100 Committee review of rejection or approval in different amount; committee appeal to Governor; finality of Governor's action. (1) If the Director of the State Department of Energy rejects a loan application or approves a loan amount different than that requested by the applicant, the applicant may request that the Small Scale Local Energy Project Advisory Committee review the director's action.

(2) The committee may review the director's action on its own motion or at the request of the applicant. A majority of the members of the committee may authorize the presiding officer of the committee to appeal the director's action to the Governor.

(3) An appeal of the director's action may be initiated by the presiding officer of the committee no later than 45 days after the date the applicant receives notice of the director's action under ORS 470.090.

(4) The decision of the Governor is final. If the Governor fails to act within 30 days

after receiving the appeal, the appeal shall be considered to be denied.

(5) Notwithstanding ORS chapter 183, a decision of the director or the Governor on an application for loan funds under ORS 470.090 or this section is not subject to judicial review. [1979 c.672 §6; 2003 c.186 §59]

470.110 Gifts credited to loan fund. The Director of the State Department of Energy may accept gifts of money or other property from any source, given for the purposes of ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210. Money so received shall be paid into the loan fund. Money or other property so received shall be used for the purposes for which received. [1979 c.672 §12; 2003 c.186 §60]

470.120 Limit on loan to amount not funded by other sources. If the applicant receives from any source other than the loan fund any funds to assist in the development of the project, the amount of the loan to the applicant from the loan fund shall be limited to that amount necessary for the development of those portions of the project not funded by other sources. [1979 c.672 §15]

470.130 Appropriation of loan fund. All moneys in the loan fund created by Article XI-J of the Oregon Constitution are appropriated continuously to the State Department of Energy and shall be used for the purposes provided in this chapter. [1979 c.672 §16; 2003 c.186 §61]

470.135 Administration of small scale local energy project loan program funds and accounts. The duties of the Director of the Oregon Department of Administrative Services to establish, maintain and keep accounts of, and make disbursements or transfers out of, the funds and accounts established or identified in the two bond indentures, as supplemented, dated June 1, 1981, and September 1, 1985, that relate to the Small Scale Local Energy Project Loan Program established by Article XI-J of the Oregon Constitution and this chapter are transferred to the State Department of Energy. Notwithstanding the transfer of these fiscal functions to the State Department of Energy, in accordance with ORS 291.015 (2), the State Department of Energy's performance of these fiscal functions shall remain subject to the control of the Oregon Department of Administrative Services. [1993 c.496 §2; 2003 c.186 §62]

470.140 Rulemaking authority; biennial report. (1) In accordance with the applicable provisions of ORS chapter 183, the Director of the State Department of Energy may adopt rules considered necessary to carry out the purposes of this chapter.

(2) The director shall submit to the Legislative Assembly and the Governor a biennial report of the transactions of the loan fund and the sinking fund in such detail as will accurately indicate the condition of the funds. [1979 c.762 §§13,27; 2003 c.186 §63]

470.145 State Department of Energy to develop marketing plan. The State Department of Energy shall develop, implement and periodically update a marketing plan to inform potential applicants of the availability of small scale local energy project loans. The first priority of the marketing plan shall be to inform individuals and small businesses that small scale local energy project loans are available. [1983 c.188 §9]

LOANS AND REPAYMENT

470.150 Loan contract; security; content. Except as provided in ORS 470.155, if the Director of the State Department of Energy approves the financing of a small scale local energy project, the director, on behalf of the state, and the applicant may enter into a loan contract, secured by a first lien or by other good and sufficient collateral in the manner provided in ORS 470.155 to 470.210. For purposes of this section, the interest of the State Department of Energy under a lease purchase contract entered into with an eligible federal or state agency or a municipal corporation may constitute good and sufficient collateral. The contract:

(1) May provide that the director, on behalf of the state, must approve the arrangements made by the applicant for the development, operation and maintenance of the small scale local energy project, using moneys in the loan fund for the project development.

(2) Shall provide a plan for repayment by the applicant to the sinking fund of moneys borrowed from the loan fund used for the development of the small scale local energy project and interest on those moneys used at a rate of interest the director determines is necessary to provide adequate funds to recover the administrative expenses incurred under this chapter. The director shall set the interest rate at an incremental rate above the interest rate on the underlying bonds. The incremental rate for projects proposed by an eligible federal agency shall be greater than the incremental rate charged to any other governmental borrower. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for project development and interest thereon not later than two years after the date of the loan contract or at any other time as the director may provide. In addition to any other prepayment option provided in a borrower's

loan agreement, the department shall provide a borrower the opportunity to prepay the borrower's loan, without any additional premium, by defeasing such loan to the call date of the bond or bonds funding the applicable loan, or any refunding bonds linked to the loan, but such defeasance shall occur only if the director finds that after the defeasance, the sinking fund will have sufficient funds to make payments required under ORS 470.300 (1).

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the director.

(c) Shall provide for evidence of debt assurance of and security for repayment by the applicant considered necessary or proper by the director.

(d) Shall set forth the period of loan which shall not exceed the usable life of the completed project, or 30 years from the date of the loan contract, whichever is less.

(e) May set forth a procedure for formal declaration of default of payment by the director, including formal notification of all relevant federal, state and local agencies; and further, a procedure for notification of all relevant federal, state and local agencies that declaration of default has been rescinded when appropriate.

(3) May include provisions satisfactory to the director for field inspection, the director to be the final judge of completion of the project.

(4) May provide that the liability of the state under the contract is contingent upon the availability of moneys in the loan fund for use in the planning and development of the project.

(5) May include further provisions the director considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(6) May provide that the director may institute an appropriate action or suit to prevent use of the project financed by the loan fund by any person who is delinquent in the repayment of any moneys due the sinking fund. [1979 c.672 §7; 1985 c.593 §4; 1987 c.365 §2; 1997 c.29 §4; 1997 c.482 §1; 1999 c.365 §8; 2003 c.186 §64]

470.155 Loan contract in form of intergovernmental agreement; provisions. A loan contract with an eligible state agency for a small scale local energy project may be made in the form of an intergovernmental agreement under ORS chapter 190. The agreement shall set forth, among other matters, that:

(1) The small scale local energy project shall be security for the loan.

(2) The applicant pledges to request each biennium during the term of the loan, spending authorization or appropriation of funds from the Legislative Assembly or pledges to otherwise provide funds sufficient to pay the loan payments due that biennium.

(3) If applicable, the pledge of the applicant to repay the loan shall be contingent upon the continued spending authorization or appropriation by the Legislative Assembly of funds sufficient to pay the loan. [1985 c.593 §6; 1991 c.118 §3; 1997 c.29 §5]

470.160 Payment from loan fund. If the Director of the State Department of Energy approves a loan for a small scale local energy project, the State Treasurer shall pay moneys for such project from the loan fund in accordance with the terms of the loan contract, as prescribed by the director. [1979 c.672 §8; 2003 c.186 §65]

470.170 Security for loan. (1) When a loan is made under this chapter to an applicant other than a municipal corporation, the loan shall be secured pursuant to a mortgage, trust deed, security agreement, pledge, assignment or similar instrument, by a security interest or lien on real or personal property in the full amount of the loan or as the Director of the State Department of Energy shall require for adequate security, including but not limited to long-term leasehold interests or equitable interests in real property or personal property. In lieu of, or in addition to, any of the collateral otherwise described in this subsection, the applicant may secure the loan by providing credit enhancement, including but not limited to a letter of credit or payment bond, or a guaranty acceptable to the director.

(2) When a loan is made to a municipal corporation for the development of a small scale local energy project under this chapter, the loan shall be secured as the director shall require for adequate security. The security may be in the form of a lien, mortgage, interest under a lease-purchase contract or other form of security acceptable to the director and the municipal corporation.

(3) When a loan made under this chapter is secured by a lien on the real property of the applicant, the director shall perfect the lien by recording as provided by law.

(4) Upon payment of all amounts loaned to an applicant pursuant to this chapter, the director shall file a satisfaction or release notice that indicates repayment of the loan.

(5) The director may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less the director's expenses incurred in fore-

closing, into the sinking fund. In a foreclosure proceeding the director may bid on property offered for sale in the proceedings and may acquire title to the property on behalf of the state.

(6) The director may take any action, make any disbursement, hold any funds or institute any action or proceeding necessary to protect the state's interest.

(7) The director may settle, compromise or release, for reasons other than uncollectibility as provided in ORS 293.240, all or part of any loan obligation so long as the director's action is consistent with the purposes of this chapter and does not impair the ability to pay the administrative expenses of the State Department of Energy or the obligations of any bonds then outstanding. [1979 c.672 §9; 1981 c.50 §5; 1983 c.188 §4; 1987 c.365 §3; 1999 c.365 §9; 2001 c.584 §10; 2003 c.186 §66]

470.180 Withholding of state funds due to municipal corporation that defaults on loan. In addition to any other remedy available to the State Department of Energy, if a municipal corporation entitled by law to share in the apportionment of any state revenues or funds defaults on any payments due to the State of Oregon under a loan contract entered into under ORS 470.150, the State Department of Energy may certify that fact to the Oregon Department of Administrative Services and the Oregon Department of Administrative Services shall withhold payment of any revenues or funds in the State Treasury to which the municipal corporation is entitled, in an amount not to exceed the balance owing on the loan, until the State Department of Energy certifies that the default has been remedied. [1979 c.672 §10; 1987 c.365 §4]

470.190 Remedies. If an applicant fails to comply with a contract entered into with the Director of the State Department of Energy for development and repayment as provided in ORS 470.150, the director, in addition to remedies provided in ORS 470.170 and 470.180, may seek other appropriate legal remedies to secure the loan and may contract as provided in ORS 470.150 with any other person for continuance of development and for repayment of moneys from the loan fund used therefor and interest thereon. [1979 c.672 §11; 2003 c.186 §67]

470.200 Refinancing of project; use of funds. If any small scale local energy project is refinanced or an additional grant or loan intended to finance the project development is obtained from other sources after the execution of the loan from the state, all such funds shall be used to repay the state unless the Director of the State Department of Energy finds that repayment of the state from the additional grant or loan would be con-

trary to public interest. [1979 c.672 §14; 1983 c.188 §5]

470.210 Municipal corporation may enter into loan contract; purchase of municipal corporation's general or revenue obligation. (1) Notwithstanding any other provision of law, a municipal corporation may enter into a loan contract with the State Department of Energy to finance a small scale local energy project.

(2) In order to finance a small scale local energy project, the Director of the State Department of Energy, on behalf of the state and in lieu of entering into a loan contract under subsection (1) of this section, may purchase or otherwise acquire a municipal corporation's general obligations or revenue obligations, including but not limited to bonds, notes, certificates of participation, warrants or lease purchase agreements. [1983 c.188 §8; 2003 c.186 §68; 2005 c.201 §7]

BONDS

470.220 Issuance of bonds. In order to provide funds for the purposes specified in Article XI-J of the Oregon Constitution, bonds may be issued as provided in ORS 470.220 to 470.290. [1979 c.672 §17; 1981 c.660 §23; 2005 c.201 §8]

470.225 Procedure for bond issuance. The State Treasurer shall issue bonds described in ORS 470.220 to 470.290 in accordance with the applicable provisions of ORS chapter 286A. [2005 c.201 §2; 2007 c.783 §207]

470.230 Bond proceeds credited to loan fund; use of funds. Except as provided in ORS 470.270, all moneys obtained from the sale of bonds under ORS 470.220 to 470.290 shall be credited by the State Treasurer to the loan fund. Those moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution and ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210, including payment of the costs of issuing the bonds and of obtaining credit enhancement for the bonds, and making payments of interest on bonds issued pursuant to the provisions of ORS 470.220 to 470.290 if there are insufficient funds in the sinking fund to make the payments referred to in ORS 470.300 (1). Moneys loaned to municipal corporations but withheld by the State Department of Energy for security or to pay for future project costs may remain in the loan fund. Pending the use of the moneys in the loan fund for the proper purposes, the moneys may be invested in the manner provided by law. [1979 c.672 §18; 1987 c.365 §5; 2003 c.186 §69; 2005 c.201 §9]

470.240 Bonds as general obligation bonds. All bonds issued under ORS 470.220 to 470.290 shall contain a direct promise of the State of Oregon to pay the principal

amount of the bonds, plus any accrued interest and any redemption premium. The principal of and the interest and redemption premium, if any, upon the bonds, when due, shall be paid at the fiscal agency of the State of Oregon. The charges imposed by that agency for its services shall be paid, upon approval by the State Treasurer, from the sinking fund. [1979 c.672 §19; 1993 c.496 §5; 2005 c.201 §10]

470.250 [1979 c.672 §20; 1981 c.50 §6; 1987 c.158 §102; 2003 c.186 §70; repealed by 2005 c.201 §14]

470.260 [1979 c.672 §23; 1981 c.50 §7; 2003 c.186 §71; repealed by 2005 c.201 §14]

470.270 Refunding bonds. (1) After consultation with the State Treasurer, the Director of the State Department of Energy may issue refunding bonds for the purpose of refunding outstanding bonds issued under ORS 470.220 to 470.290. The refunding bonds may be sold in the same manner as other bonds are sold under ORS 470.220 to 470.290. All moneys obtained from the sale of refunding bonds shall be credited by the State Treasurer to the sinking fund. The issuance of the refunding bonds, the maturity date, and other details thereof, the rights of the holders thereof, and the duties of the Governor, Secretary of State and State Treasurer with respect thereto, shall be governed by the provisions of ORS 470.220 to 470.290. The refunding bonds may be issued to refund bonds previously issued for refunding purposes. Pending the use of moneys obtained from the sale of refunding bonds for proper purposes, such moneys may be invested in the manner provided by law.

(2) Notwithstanding any provision of ORS 470.150, if the State Department of Energy issues taxable refunding bonds at a lower interest rate to refund outstanding general obligation bonds, and is unable to allow loan recipients to receive a portion of the interest savings, the director shall allow the loan recipient to prepay the outstanding loan balance upon the request of the recipient. The director shall respond to such a request within 30 days after receiving the request by specifying the outstanding principal balance after applying reserves held by the state for the borrower and the prepayment premium as listed in the bond document, loan document or bond purchase agreement.

(3) The department shall pursue opportunities for refunding bonds to reduce interest sums payable by the department. When the department refunds a bond with tax-exempt bonds, the department shall share, on an equitable basis, the savings from any refunding with the borrowers whose loans were made with the proceeds of the refunded bonds in an amount consistent with a finding by the director that the sinking fund has, and will continue to have, sufficient funds to make

payments required under ORS 470.300 (1). The department may not refund tax-exempt bonds with taxable bonds, unless the department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds. At least 120 days before the date on which the department intends to issue refunding bonds, the director shall notify each borrower whose loan was made from the proceeds of the bonds being refunded and shall offer the borrower the opportunity to prepay the borrower's loan. A borrower shall respond within 60 days of the date of the notice described in this subsection if the borrower intends to prepay the borrower's loan. [1979 c.672 §22; 1995 c.282 §1; 1997 c.482 §2; 2003 c.186 §72; 2005 c.201 §11]

470.280 Bond repayment from sinking fund. (1) The State Treasurer shall make payment of the principal of and the interest and redemption premium, if any, on any bond issued under ORS 470.220 to 470.290 from the sinking fund.

(2) The State Treasurer shall compute and determine in January of each year, after the sale of bonds under ORS 470.220 to 470.290, the amount of principal, interest and redemption premiums that will fall due during the year on bonds then outstanding and unpaid and shall maintain or hold in the sinking fund sufficient moneys to pay such maturing obligations. [1979 c.672 §§21,24; 2005 c.201 §12]

470.290 Bond indebtedness limited to constitutional limit. No bonds shall be issued or sold under ORS 470.220 to 470.290 nor indebtedness incurred thereunder, which singly, or in the aggregate with previous debts or liabilities incurred for small scale local energy projects, shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under ORS 470.220 to 470.290 exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 470.220 to 470.290 in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1979 c.672 §25]

470.300 Small Scale Local Energy Project Administration and Bond Sinking Fund; uses; sources. (1) There hereby is created the Small Scale Local Energy Project Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the State Department of Energy and the Director of the State Department of Energy in processing applications, investigating potential small

scale local energy projects and proposed loans and servicing and collecting outstanding loans made under this chapter, if the expense is not paid directly by the applicant.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by this chapter.

(c) Principal, interest and redemption premium, if any, of all bonds issued pursuant to the provisions of ORS 470.220 to 470.290.

(d) Net investment earnings on any funds loaned to municipal corporations but withheld as provided in ORS 470.230.

(e) Costs of issuing the bonds and of obtaining credit enhancement for the bonds.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees required by ORS 470.060, unless the department requires the applicant to pay the fee directly for a cost incurred in connection with the application.

(b) Repayment of moneys loaned to applicants from the loan fund, including interest on such moneys.

(c) Such moneys as may be appropriated to the fund by the Legislative Assembly.

(d) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(e) Moneys received from ad valorem taxes levied pursuant to Article XI-J of the Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(f) Interest earned on cash balances invested by the State Treasurer.

(g) Moneys transferred from the Small Scale Local Energy Project Loan Fund.

(3) The director, with the approval of the State Treasurer, may transfer moneys from the sinking fund to the loan fund if:

(a) A cash flow projection shows that, for the term of the bonds outstanding at the time the director transfers the moneys, remaining moneys in the sinking fund, together with expected loan contract payments and fund earnings, will improve the financial basis of the program and will continue to be adequate to pay bond principal, interest, redemption premiums, if any, and administration costs; and

(b) The transfer will not create the need for issuance of any bonds.

(4) The director, with the approval of the State Treasurer, may establish separate and distinct accounts within the sinking fund to accomplish the purpose of this section. [1979 c.672 §26; 1981 c.50 §8; 1983 c.188 §6; 1985 c.805 §4; 1987 c.365 §6; 1993 c.496 §6; 2003 c.186 §73; 2005 c.201 §13]

470.310 Procedure if sinking fund inadequate. (1) If there are insufficient funds in the sinking fund to make the payments referred to in ORS 470.300 (1), the Director of the State Department of Energy may request the funds necessary for such payments from the Legislative Assembly or the Emergency Board.

(2) When the director determines that moneys in sufficient amount are available in the sinking fund, the State Treasurer shall reimburse the General Fund without inter-

est, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1979 c.672 §28; 2003 c.186 §74]

