Chapter 469

1999 EDITION

Energy Conservation

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

PENALTIES

CROSS-REFERENCES

Administrative procedures governing state agencies, 183.310 to 183.550

Cogeneration and small power production facilities, 757.005, 758.505 to 758.555

Energy conservation information and service for utility customers, 757.056

Energy emergency contingency plan, 176.809

Environmentally hazardous wastes, 466.005

Joint operating agencies for electrical power, 262.005 to 262.115

People's utility districts, Ch. 261

Public meetings law exemption, 192.690

Radioisotopes, diagnostic or therapeutic, left in body of deceased person, 97.153

Small scale local energy projects, Ch. 470

State agency vehicles, alternative fuels, annual report, 283.337

469.030 to 469.155

Housing cost impact statement required for certain rules, 183.530

469.030

Radioactive waste disposal sites, interagency agreement with Department of Environmental Quality, 466.380

469.040

Geothermal well drilling applications, 522.125

469.160 to 469.180

Income tax credit for alternative energy device or alternative fuel device, 315.354, 316.116

469.160

Alternative energy devices, 316.116, 317.115

469.530

Hazardous wastes:

Department of Transportation authority to set standards for transporting, 824.090

Standards for safe transportation, 825.258

469.631 to 469.687

Energy conservation measures, cash payment, tax exemptions, 316.744, 317.386

469.730 to 469.745

Public building lighting standards, 455.530 to 455.580

469.730

Energy conservation in public buildings built in 1978 or after, 455.560 to 455.580

GENERAL PROVISIONS

469.010 Policy. The Legislative Assembly finds and declares that:

(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include,

but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 s.1; 1979 c.723 s.1]

469.020 Definitions. As used in ORS 176.820, 469.010 to 469.225, 469.860 (3), 469.880 to 469.895, 469.900 (3), 469.990, 469.992, 757.710 and 757.720, unless the context requires otherwise:

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

(2) “Agency” includes a department or other agency of state government, city, county, municipal corporation, political subdivision, port, people's utility district, joint operating agency and electric cooperative.

(3) “Coal supplier” means any person engaged in the wholesale distribution in this state of coal intended for use in this state for an energy facility.

(4) “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 under this definition shall include but 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.

(5) “Council” means the Energy Facility Siting Council established under ORS 469.450.

(6) “Energy facility” has the meaning given in ORS 469.300.

(7) “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 25 megawatts 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.

(8) “Geothermal reservoir” means an aquifer or aquifers containing a common geothermal fluid.

(9) “Nominal electric generating capacity” has the meaning given in ORS 469.300.

(10) “Office of Energy” means the Office of Energy created under ORS 469.030.

(11) “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.

(12) “Petroleum supplier” means a petroleum refiner in this state, or any person engaged in the wholesale distribution of crude petroleum or derivative thereof or of propane in this state.

(13) “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 structure, 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.

(14) “Site” means a proposed location of an energy facility, and its related or supporting facilities.

(15) “Thermal power plant” has the meaning given that term by ORS 469.300.

(16) “Utility” includes:

(a) An individual, 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. [1975 c.606 s.2; 1977 c.794 s.1; 1979 c.723 s.2; 1981 c.629 s.1; 1981 c.792 s.1; 1991 c.480 s.3; 1993 c.569 s.1; 1995 c.505 s.4; 1995 c.551 s.2]

OFFICE OF ENERGY; ADMINISTRATION

469.030 Office of Energy; duties. (1) There is created the Office of Energy.

(2) The Office of Energy shall:

(a) Be the central repository within the state government for the collection of data on energy resources;

(b) Endeavor to utilize all public and private sources to inform and educate the public about energy problems and ways in which the public can conserve energy resources;

(c) Engage in research, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the Office of Energy shall endeavor to avoid duplication of research whether completed or in progress;

(d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

(f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;

(g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720;

(h) Maintain an inventory of energy research projects in Oregon and the results thereof;

(i) Collect, compile and analyze energy statistics, data and information;

(j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section; and

(k) Upon request of the governing body of any affected jurisdiction, coordinate a public review of a proposed transmission line according to the provisions of ORS 469.442. [1975 c.606 s.4; 1981 c.792 s.2; 1987 c.200 s.4; 1993 c.569 s.2; 1995 c.551 s.3; 1999 c.934 s.5; 1999 c.1043 s.9]

469.040 Administrator; duties; appointment. (1) The Office of Energy shall be under the supervision of the administrator of the Office of Energy who shall:

(a) Supervise the day-to-day functions of the Office of Energy;

(b) Supervise and facilitate the work and research on energy facility siting applications at the direction of the Energy Facility Siting Council;

(c) Hire, assign, reassign and coordinate personnel of the Office of Energy, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(d) Adopt rules and issue orders to carry out the duties of the administrator and the Office of Energy in accordance with ORS 183.310 to 183.550 and the policy stated in ORS 469.010.

(2) The administrator may delegate to any officer or employee the exercise and discharge in the administrator's name of any power, duty or function of whatever character vested in the administrator by law. The official act of any person acting in the administrator's name and by the administrator's authority shall be considered an official act of the administrator.

(3) The administrator shall be appointed by the Governor. [1975 c.606 s.5; 1985 c.593 s.1; 1993 c.496 s.3; 1995 c.551 s.4; 1999 c.934 s.6; 1999 c.1043 s.10]

469.050 Limitations on employment of past administrator; sanctions. (1) A person who has been the administrator of the Office of Energy shall not, within two years after the person ceases to be the administrator, be an employee of:

(a) An owner or operator of an energy facility;

(b) An applicant for a site certificate; or

(c) Any person who engages in the sale or manufacture of any energy resource or of any major component of an energy facility in Oregon.

(2) Employment of any individual in violation of subsection (1)(a) or (b) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual. [1975 c.606 ss.6,7]

469.060 Comprehensive energy plan; energy pricing structures research. (1) Every odd-numbered year, the Office of Energy shall transmit to the Governor and the Legislative Assembly a comprehensive plan including comments on the energy forecasts of the utilities and on the Office of Energy's independent analysis and evaluation. The plan shall be designed to identify emerging trends related to energy supply, need and conservation and public health and safety factors, to estimate the level of statewide energy need for each year in the forthcoming five-year period and for the 10th and 20th year following issuance of the plan.

(2) Notwithstanding ORS 469.030 (2)(c), the Office of Energy shall conduct research into all energy pricing structures, relating price to consumption and considering the interchangeability of the various energy forms. In conducting the research, the Office of Energy shall consider matters including, but not limited to, price elasticity, cross elasticity of demand and energy rate structures, as well as the rate structure studies of the Public Utility Commission. This research shall be submitted biennially to the Legislative Assembly and the Governor as a part of the plan described in subsection (1) of this section.

(3) Consistent with the legislatively approved budget, the plan described in subsections (1) and (2) of this section shall include, but not be limited to:

(a) An inventory of existing energy resources available to Oregon.

(b) An estimation of the potential contribution that various energy resources could make in satisfying Oregon's future energy needs consistent with the policy stated in ORS 469.010 and where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(c) Recommendations for state and local governments to assist in the development and maximum use of cost-effective conservation and renewable resources, consistent with the policy stated in ORS 469.010 and, where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(d) Recommendations for proposed research, development and demonstration projects and programs necessary to evaluate the availability and cost-effectiveness of conservation and renewable resources in Oregon.

(4) The plan described in this section shall be compiled by organizing and refining data acquired by the Office of Energy in the performance of its existing duties. [1975 c.606 s.8; 1983 c.273 s.1; 1989 c.466 s.1; 1995 c.505 s.5; 1995 c.551 s.19a]

469.070 Energy forecast; contents. (1) At least biennially the Office of Energy shall issue a forecast on the energy situation as it affects Oregon. The forecast shall include, but not be limited to, an estimate of:

(a) Energy demand and the resources available to meet that demand; and

(b) Impacts of conservation and new technology, increased efficiency of present energy facilities, additions to present facilities, and construction of new facilities, on the availability of energy to Oregon.

(2) The forecast shall include summary forecasts for:

(a) Each of the first five years immediately following issuance of the forecast; and

(b) The 10th and 20th year following the issuance of the forecast.

(3) The forecast shall identify all major components of demand and any anticipated increase in demand, including but not limited to population, commercial, agricultural and industrial growth.

(4) The Office of Energy, by July 1 of each even-numbered year, shall issue a statement setting forth the methodology and assumptions it intends to employ in preparing the forthcoming forecast, any changes in the preceding forecast, and an outline of the contents of the biennial plan to be published by the Office of Energy on the following January 1, and not later than the 45th day thereafter, commence public hearings thereon.

(5) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the administrator of the Office of Energy believes have an interest in the subject or who have applied to the administrator therefor, shall be supplied a copy of the statement issued by the Office of Energy on July 1 of each even-numbered year. The

administrator may charge a reasonable fee for a copy of this statement not to exceed the cost thereof.

(6) After the public hearings required by subsection (4) of this section, but not later than January 1 following the issuance of its statement, the Office of Energy shall issue the forecast required by subsection (1) of this section.

(7) The forecast shall be included within the plan provided for in ORS 469.060 (1). [1975 c.606 s.9; 1977 c.794 s.3; 1983 c.273 s.2]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The administrator of the Office of Energy may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;

(c) Inventory of energy resources; and

(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

(2) In obtaining information under subsection (1) of this section, the administrator with the written consent of the Governor may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, administer oaths, and may cause the depositions of persons residing within or without Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts, to obtain information relevant to energy resources.

(3) In obtaining information under this section the administrator:

(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the administrator for such study; and

(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or records as provided in ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720, may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C. [1975 c.606 s.18; 1977 c.358 s.9; 1977 c.794 s.4a; 1979 c.284 s.154]

469.085 Procedure for imposing civil penalties. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall be imposed as provided in ORS 183.090.

(2) Notwithstanding ORS 183.090 (2), the notice to the person against whom a civil penalty is to be imposed shall reflect a complete statement of the consideration given to the factors listed in subsection (7) of this section. The notice may be served by either the administrator of the Office of Energy or the Energy Facility Siting Council.

(3) Notwithstanding ORS 183.090, if a hearing is not requested or if the person requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency.

(4) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the administrator or the council under this section may be joined by the administrator or the council with any other action against the same person under this chapter.

(5) Any civil penalty recovered under this section shall be paid into the General Fund.

(6) The administrator or the council shall adopt by rule a schedule of the amount of civil penalty that may be imposed for a particular violation.

(7) In imposing a penalty under ORS 469.992, the administrator or the council shall consider:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct or prevent any violation;

(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged violation;

(c) The impact of the violation on public health and safety or public interests in fishery, navigation and recreation;

(d) Any other factors determined by the administrator or the council to be relevant; and

(e) The alleged violator's cooperativeness and effort to correct the violation.

(8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and conditions as the administrator or council determines to be proper. Upon the request of the person incurring the penalty, the administrator or council shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.480 s.2; 1991 c.734 s.106]

469.090 Confidentiality of information submitted under ORS 469.080. (1) Information furnished under ORS 469.080 shall be confidential and maintained as such, if so requested by the person providing the information, if the information meets one of the following requirements:

(a) The information is proprietary in nature; or

(b) The information consists of geological and geophysical information and data, including maps, concerning oil, gas or geothermal resource wells.

(2) Nothing in this section prohibits the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons. [1975 c.606 s.19]

469.095 [1979 c.561 s.9; repealed by 1993 c.475 s.3]

469.097 Duty to monitor industry progress in energy conservation. The Office of Energy shall to the extent permitted by its resources monitor industry progress in achieving energy conservation. [1981 c.865 s.3; 1987 c.158 s.96]

469.100 Agency consideration of legislative policy. (1) All agencies shall consider the policy stated in ORS 469.010 in adopting or modifying their rules and policies.

(2) All agencies shall review their rules and policies to determine their consistency with the policy stated in ORS 469.010. [1975 c.606 s.3; 1995 c.551 s.20]

469.110 Dealings with federal government; intervention by Office of Energy in agency action. (1) As to any matter involving the federal government, its departments or agencies, which is within the scope of the power and duties of the Office of Energy, the Office of Energy may represent its interest or, upon request, may represent the interest of any county, city, state agency, special district or owner or operator of any energy facility.

(2) The Office of Energy may intervene in any proceeding undertaken by an agency for the purpose of expressing its views as to the effect of an agency action, upon state energy resources and state energy policy. [1975 c.606 s.12]

469.120 Office of Energy Account; appropriation; record of moneys. (1) The Office of Energy Account is established.

(2) All funds received by the Office of Energy pursuant to law shall be paid into the State Treasury and credited to the Office of Energy Account. All moneys in the account are continuously appropriated to the Office of Energy for payment of expenses of the Office of Energy, the Oregon Department of Administrative Services and the Energy Facility Siting Council.

(3) The administrator of the Office of Energy shall keep a record of all moneys deposited in the Office of Energy Account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. [1975 c.606 s.13; 1995 c.551 s.5]

469.130 [1975 c.606 s.47; 1977 c.794 s.5; 1977 c.891 s.10; 1987 c.879 s.16; repealed by 1995 c.551 s.21]

469.135 Energy Conservation Clearinghouse for Commerce and Industry. The Office of Energy shall expand the Energy Conservation Clearinghouse for Commerce and Industry so that it provides:

(1) Current information to business and industry on:

(a) State and federal financing mechanisms;

(b) Tax advantages of energy conservation investments; and

(c) General economic advantages of energy conservation investments.

(2) Teaching on conservation techniques and management of energy by corporations. [1981 c.865 s.2]

469.140 [1975 c.606 s.48; repealed by 1977 c.794 s.6]

469.150 Energy suppliers to provide conservation services and information. (1) As used in this section “energy conservation services” means services provided by energy suppliers to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of

buildings and residences.

(2) Energy suppliers other than public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such guidelines as the administrator of the Office of Energy may by rule prescribe.

(3) As used in this section "energy supplier" means a publicly owned utility or fuel oil dealer which supplies electricity or fuel oil for the space heating of dwellings. [1977 c.887 s.13]

469.155 Advisory energy conservation standards for dwellings. (1) As used in this section:

(a) "Dwelling" means real or personal property inhabited as the principal residence of an owner or renter. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and multiple unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(b) "Energy conservation standards" means standards for the efficient use of energy for space and water heating in a dwelling.

(2) The administrator of the Office of Energy shall establish advisory energy conservation standards for existing dwellings. The standards shall be adopted by rule in accordance with ORS 183.310 to 183.410. The standards:

(a) Shall take cost-effectiveness into account; and

(b) Shall be compatible with and further the state's incentive programs for residential energy conservation.

(3) The administrator shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards. [1981 c.565 s.2; 1987 c.158 s.97; 1989 c.648 s.65]

469.157 [1981 c.746 s.7; repealed by 1995 c.79 s.287]

ALTERNATIVE ENERGY DEVICES

469.160 Definitions for ORS 469.160 to 469.180. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

(1) "Alternative energy device" means:

(a) Any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation or wind for space heating, cooling or electrical energy for one or more dwellings that meets or exceeds 10 percent of the total energy requirement for the dwelling or dwellings;

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;

(c) A ground water heat pump and ground loop system;

(d) A wind powered turbine that generates electricity;

(e) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;

(f) Equipment used in the production of alternative fuels;

(g) A generator powered by alternative fuels and used to produce electricity;

(h) A fuel cell;

(i) An energy efficient appliance; or

(j) An alternative fuel device.

(2) "Alternative fuel device" means any of the following:

(a) An alternative fuel vehicle;

(b) Related equipment; or

(c) A fueling station necessary to operate an alternative fuel vehicle.

(3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

(a) Registered in this state; and

(b) Manufactured or modified to use an alternative fuel, including but not limited to electricity, natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the administrator of the Office of Energy that produces less exhaust emissions than vehicles fueled by gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without regard to energy consumption savings.

(4) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(5) “Contractor” means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(6)(a) “Cost” means the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer for the alternative energy device.

(b) For an alternative fuel vehicle, “cost” means the difference between the cost of the alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification. “Cost” does not include any amounts paid for remodification of the same vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, “cost” means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180 and any rules adopted by the administrator of the Office of Energy.

(d) For related equipment, “cost” means the cost of the related equipment and any modifications or additions to the related equipment necessary to prepare the related equipment for use in converting a vehicle to alternative fuel use.

(7) “Domestic water heating” means the heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(8) “Dwelling” means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. “Dwelling” includes, but is not limited to, an individual unit within multiple unit residential housing.

(9) “Energy efficient appliance” means a clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major household appliance that has been certified by the Office of Energy to have premium energy efficiency characteristics.

(10) “First year energy yield” of an alternative energy device is the usable energy produced under average environmental conditions in one year.

(11) “Fueling station” includes but is not limited to a compressed natural gas compressor fueling system or an electric charging system for vehicle power battery charging.

(12) “Placed in service” means:

(a) The date an alternative energy device is ready and available to produce usable energy or save energy.

(b) For an alternative fuel vehicle:

(A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an alternative fuel vehicle ready and available for use.

(B) In the case of modification, the date that the modification is completed and the vehicle is ready and available for use as an alternative fuel vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fueling station is first operational.

(d) For related equipment, the date that the equipment is first operational.

(13) “Related equipment” means equipment necessary to convert a vehicle to use an alternative fuel. [1977 c.196 s.2; 1979 c.670 s.3; 1981 c.894 s.4; 1983 c.346 s.1; 1983 c.768 s.2; 1987 c.492 s.2; 1989 c.880 s.1; 1995 c.746 s.19a; 1997 c.534 s.4; 1999 c.510 s.1]

469.165 Rules; federal standards. (1) For the purposes of carrying out ORS 469.160 to 469.180, the Office of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings.

(2) The Office of Energy, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act of 1974).

(3) The administrator of the Office of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further define an alternative fuel vehicle, related equipment or fueling station necessary to operate an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel vehicle as a condition of tax credit eligibility. [1977 c.196 s.3; 1989 c.880 s.2; 1997 c.534 s.5]

469.170 Claim for tax credit for alternative energy devices or fueling stations; eligibility; contents; contractor system certification. (1) Any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the

person is a corporation) if the person:

(a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

(b) Meets the requirements of ORS 469.160 to 469.180; and

(c) Pays, subject to subsection (10) of this section, all or a portion of the costs of an alternative energy device.

(2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling station necessary to operate an alternative fuel vehicle.

(3) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming a tax credit for construction or installation of an alternative energy device (including a fueling station) shall have the system certified by the Office of Energy or constructed or installed by a contractor certified by the Office of Energy under subsection (5) of this section. This subsection does not apply to an alternative fuel vehicle or to related equipment. Certification of an alternative fuel vehicle or related equipment shall be accomplished under rules that shall be adopted by the administrator of the Office of Energy.

(4) Verification of the purchase, construction or installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall contain:

(a) The location of the alternative energy device;

(b) A description of the type of device;

(c) If the device was constructed or installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and construct or install the alternative energy device;

(d) If the device was constructed or installed by a contractor, a statement signed by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device;

(B) A copy of consumer information published by the Office of Energy;

(C) An operating manual for the alternative energy device; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate as appropriate;

(e) If the device was not constructed or installed by a contractor, evidence that:

(A) The Office of Energy has issued an alternative energy device system certificate for the device; and

(B) The taxpayer has obtained all building permits required for construction or installation of the device;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer is the contractor, a statement signed by the contractor that the construction or installation meets all of the requirements of ORS 469.160 to 469.180;

(g) The date the alternative energy device was purchased;

(h) The date the alternative energy device was placed in service; and

(i) Any other information that the administrator of the Office of Energy or the Department of Revenue determines is necessary.

(5)(a) When the Office of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the administrator of the Office of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

(b) Any person who sells or installs more than 12 alternative energy devices in one year shall apply for a contractor system certification. An application for a contractor system certification shall be made in writing on a form provided by the Office of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and construction or installation of the alternative energy device;

(B) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing and siting method and construction or installation procedure;

(C) The addresses of three installations of the system that are available for inspection by the Office of Energy;

(D) The range of installed costs to purchasers of the device;

(E) Any important construction, installation or operating instructions; and

(F) Any other information that the Office of Energy determines is necessary.

(c) A new application for contractor system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) The Office of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and installation of the same domestic water heating

alternative energy devices authorized by the dealer certification.

(e) If the Office of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the administrator may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device constructed or installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the Office of Energy and shall contain:

(A) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing, siting method and construction or installation procedure;

(B) The constructed or installed cost of the device; and

(C) A statement that the taxpayer has all permits required for construction or installation of the device.

(6) To claim the tax credit, the verification form described in subsection (4) of this section shall be submitted with the taxpayer's tax return for the year the alternative energy device is placed in service or the immediately succeeding tax year. A copy of the contractor's certification certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate also shall be submitted.

(7) The verification form and contractor's certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

(8) The verification form and contractor's certificate described under this section may be transferred to the first purchaser of a dwelling or, in the case of construction or installation of a fueling station in an existing dwelling, the current owner, who intends to use or is using the dwelling as a principal or secondary residence.

(9) A tax credit under ORS 316.116 or 317.115 is allowed only with respect to an alternative energy device that is placed in service on or before December 31, 2001.

(10) An investor owned utility that pays to a contractor the present value to the utility of the tax credit granted for a fueling station under ORS 316.116 or 317.115 shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. [1977 c.196 s.4; 1979 c.670 s.4; 1981 c.894 s.5; 1983 c.346 s.2; 1987 c.492 s.3; 1989 c.880 s.3; 1995 c.746 s.20; 1997 c.534 s.6; 1999 c.21 s.78]

469.171 Transfer of tax credit for alternative fuel vehicle. (1) The owner of an alternative fuel vehicle as defined in ORS 469.160 may transfer a tax credit otherwise allowed under ORS 316.116 for cost of the vehicle in exchange for a cash payment equal to the present value of the tax credit.

(2) The Office of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [1999 c.765 s.2]

469.172 Ineligible devices. The following devices are not eligible for the alternative energy device tax credit under ORS 316.116:

(1) Standard furnaces;

(2) Standard back-up heating systems;

(3) Woodstoves or wood furnaces, or any part of a heating system that burns wood;

(4) Air-to-air and air-to-water heat pumps or any device that uses ambient air to make heat;

(5) Heat pump water heaters;

(6) Structures that cover or enclose a swimming pool;

(7) Swimming pools, hot tubs or spas used to store heat;

(8) Above ground, uninsulated swimming pools, hot tubs or spas;

(9) Photovoltaic systems installed on recreational vehicles;

(10) Devices that use water or geothermal resources for space heating, cooling, electrical energy, domestic water heating or swimming pool, spa or hot tub heating;

(11) Devices that use wind for space heating, cooling, domestic water heating or swimming pool, spa or hot tub heating;

(12) Conversion of an existing alternative energy device to another type of alternative energy device;

(13) Repair or replacement of an existing alternative energy device; or

(14) Any other device identified by the Office of Energy. [1989 c.880 s.7; 1995 c.746 s.20a; 1999 c.510 s.2]

469.175 [1977 c.196 s.5; 1979 c.670 s.5; 1981 c.894 s.6; 1983 c.346 s.3; 1987 c.492 s.4; repealed by 1989 c.880

s.4 (469.176 enacted in lieu of 469.175)]

469.176 Performance assumptions and prescriptive measures for tax credits. (1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS 469.160 to 469.180, the Office of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices constructed or installed in a dwelling.

(2) The Office of Energy shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The Office of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the Office of Energy shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating energy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the construction or installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply with comparable requirements as determined by the Office of Energy.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the Office of Energy.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the Office of Energy. [1989 c.880 s.5 (enacted in lieu of 469.175); 1997 c.534 s.7]

469.180 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection. (1) Upon the Department of Revenue's own motion, or upon request of the Office of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) In the case of an alternative energy device other than an alternative fuel vehicle or related equipment, the alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or

(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device by the Office of Energy after a reasonable, written request for such an inspection by the Office of Energy. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(2) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the administrator of the Office of Energy may order the revocation of a contractor certificate issued under ORS 469.170 if the administrator finds that:

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;

(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or installation of an alternative energy device is ordered forfeited due to an action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a

result of the tax credit relief under ORS 316.116 or 317.115.

(4) If the tax credit for the construction or installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. So long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the Office of Energy or its representative may inspect an alternative energy device that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the Office of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [1977 c.196 s.6; 1979 c.670 s.6; 1981 c.894 s.7; 1983 c.346 s.4; 1987 c.492 s.5; 1989 c.880 s.8; 1993 c.684 s.1; 1997 c.534 s.10]

RENEWABLE ENERGY RESOURCES

469.185 Definitions for ORS 469.185 to 469.225 and 469.878. As used in ORS 469.185 to 469.225 and 469.878:

(1) “Alternative fuel vehicle” means a vehicle as defined by the administrator of the Office of Energy by rule that is used primarily in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption savings.

(2) “Cost” means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a facility.

(3) “Energy facility” means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business; or

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(4) “Facility” means an energy facility, recycling facility, transportation facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station.

(5) “Qualified transit pass contract” means a purchase agreement entered into between a transportation provider and an employer, the terms of which obligate the employer to purchase transit passes on behalf of the employer's employees over a specified period of time.

(6) “Recycling facility” means equipment used by a trade or business solely for recycling:

(a) Including:

(A) Equipment used solely for hauling and refining used oil;

(B) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used further in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(D) Any equipment used solely for processing recyclable materials such as bailers, flatteners, crushers, separators and scales.

(b) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the administrator.

(7)(a) "Renewable energy resource" includes, but is not limited to, straw, forest slash, wood waste or other wastes from farm or forest land, industrial waste, solar energy, wind power, water power or geothermal energy.

(b) "Renewable energy resource" does not include a hydroelectric generating facility larger than one megawatt of installed capacity unless the facility qualifies as a research, development or demonstration facility.

(8) "Transportation facility" means a transportation project that reduces energy use during commuting to and from work or during work-related travel, and may be further defined by the Office of Energy by rule. "Transportation facility" includes, but is not limited to, a qualified transit pass contract or a transportation services contract.

(9) "Transportation provider" means a public, private or nonprofit entity that provides transportation services to members of the public.

(10) "Transportation services contract" means a contract that is related to a transportation facility, and may be further defined by the Office of Energy by rule. [1979 c.512 s.3; 1981 c.894 s.17; 1985 c.745 s.1; 1991 c.711 s.1; 1997 c.534 s.11; 1997 c.656 s.5; 1999 c.365 s.1; 1999 c.623 s.4; 1999 c.765 s.4]

469.190 Policy. In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [1979 c.512 s.2]

469.195 Priority given to certain projects; criteria. In determining the eligibility of facilities for tax credits, preference shall be given to those projects which:

(1) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(a) Nonowner occupied single family dwellings; and

(b) Multiple unit residential housing; or

(2) Provide long-term energy savings from the use of renewable resources or conservation of energy resources. [1979 c.512 s.4; 1985 c.745 s.2]

469.200 Annual limit to cost of facility in granting tax credits. The total cost of a facility that receives a preliminary certification from the administrator of the Office of Energy for tax credits in any calendar year shall not exceed $10 million. The administrator shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225. The administrator may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the determination. [1979 c.512 s.5; 1981 c.894 s.18; 1985 c.745 s.3; 1987 c.158 s.98; 1991 c.711 s.3; 1993 c.684 s.2; 1995 c.746 s.15a; 1997 c.534 s.12; 1997 c.656 s.6a; 1999 c.365 s.2]

469.205 Application for renewable energy resource facility tax credit; eligibility; contents; fees. (1) Prior to erection, construction, installation or acquisition of a proposed facility any person may apply to the Office of Energy for preliminary certification under ORS 469.210 if:

(a) The erection, construction, installation or acquisition of the facility is to be commenced on or after October 3, 1979;

(b) The facility complies with the standards or rules adopted by the administrator of the Office of Energy; and

(c) The applicant meets one of the following criteria:

(A) The applicant will be the owner or contract purchaser of the facility at the time of erection, construction, installation or acquisition of the proposed facility, and:

(i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the facility in

connection with Oregon property;

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person who will utilize the facility in connection with Oregon property; or

(iii) The applicant is a person to whom a tax credit has been transferred under ORS 469.208.

(B) Notwithstanding ORS 315.354 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing rental housing unit energy conservation measures as described in ORS 469.636 or alternative fuel vehicles for commercial or industrial customers as provided in ORS 469.878.

(C) Notwithstanding ORS 315.354 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing alternative fuel vehicles or associated facilities.

(D) Notwithstanding ORS 315.354 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing transportation facilities.

(2) An application for preliminary certification shall be made in writing on a form prepared by the Office of Energy and shall contain:

(a) A statement that the applicant or the lessee of the applicant's facility:

(A) Intends to convert from a purchased energy source to a renewable energy resource;

(B) Plans to acquire, construct or install a facility that will use a renewable energy resource or solid waste instead of electricity, petroleum or natural gas;

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

(D) Plans to acquire, construct or install a facility that substantially reduces the consumption of purchased energy;

(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (6);

(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alternative fuel vehicle;

(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

(H) Plans to acquire transit passes for use by the applicant's employees; or

(I) Plans to acquire, construct or install a transportation facility.

(b) A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application.

(c) Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy that will be produced for sale, as the result of using the facility.

(d) The projected cost of the facility.

(e) If applicable, a copy of the proposed qualified transit pass contract or transportation services contract.

(f) Any other information the administrator of Office of Energy considers necessary to determine whether the proposed facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or standards adopted by the administrator.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469.217. The administrator may refund the fee if the application for certification is rejected.

(4) The administrator may allow an applicant to file the preliminary application after the start of erection, construction, installation or acquisition of the facility if the administrator finds:

(a) Filing the application before the start of erection, construction, installation or acquisition is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225. [1979 c.512 s.6; 1981 c.894 s.19; 1985 c.745 s.4; 1989 c.765 s.7; 1991 c.711 s.2; 1993 c.684 s.3; 1995 c.746 s.16; 1997 c.656 s.7; 1999 c.623 s.5; 1999 c.765 s.5]

469.206 Transferability of renewable energy facility tax credit. (1) The owner of an energy facility described in ORS 469.185 (3)(a)(A) or (B) may transfer a tax credit for the energy facility in exchange for a cash payment equal to the present value of the tax credit.

(2) The Office of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [1997 c.534 s.9]

469.207 Tax credit for rental housing units; eligibility. (1) Except as provided in subsection (3) of this section, an applicant under ORS 469.205 (1)(c)(A)(iii) or (B) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636. The tax credit shall apply to only the first $5,000 of actually installed energy conservation measure costs per dwelling unit.

(2) An owner, contract purchaser or lessee of a rental housing unit for which energy conservation measures have been financed by an applicant under subsection (1) of this section is ineligible for an energy conservation measure tax credit for such measures.

(3) No applicant under ORS 469.205 (1)(c)(A)(iii) or (B) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636 if the rental housing units are constructed on or after January 1, 1996. [1985 c.745 s.9; 1993 c.684 s.4; 1995 c.746 s.16a]

469.208 Transferability of rental housing unit tax credit. (1) The owner of a rental housing unit may transfer a tax credit for energy conservation measures installed in rental housing units under ORS 469.207 in exchange for a cash payment equal to the present value of the tax credit. To be eligible for a transfer, the energy conservation measures must have been recommended in an energy audit as provided in ORS 469.633, 469.651 or 469.675.

(2) The Office of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [1993 c.684 s.6]

469.210 Submission of plans, specifications and contract terms; preliminary certification. (1) The administrator of the Office of Energy may require the submission of plans, specifications and contract terms, and after examination thereof, may request corrections and revisions of the plans, specifications and terms.

(2) If the administrator determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the administrator, the administrator shall issue a preliminary certificate approving the acquisition, erection, construction or installation of the facility. If the administrator determines that the acquisition, erection, construction or installation does not comply with the provisions of ORS 469.185 to 469.225 and applicable rules and standards, the administrator shall issue an order denying certification.

(3) If within 120 days of the receipt of an application for preliminary certification, the administrator fails to issue a preliminary certificate of approval or an order denying certification, the preliminary certificate shall be considered to have been denied. [1979 c.512 s.7; 1995 c.746 s.17; 1997 c.656 s.8; 1999 c.365 s.3]

469.215 Final certification; eligibility; application; content. (1) No certification shall be issued by the administrator of the Office of Energy under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the administrator.

(2) Any person may apply to the Office of Energy for final certification of a facility:

(a) After having obtained preliminary certification for the facility under ORS 469.210; and

(b) After completion of erection, construction, installation or acquisition of the proposed facility or, if the facility is a qualified transit pass contract, after entering into the contract with a transportation provider.

(3) An application for final certification shall be made in writing on a form prepared by the Office of Energy and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the facility certified to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the facility is less than $50,000, copies of receipts for purchase and installation of the facility;

(c) A statement that the facility is in operation or, if not in operation, that the applicant has made every reasonable effort to make the facility operable; and

(d) Any other information determined by the administrator to be necessary prior to issuance of a final certificate, including inspection of the facility by the Office of Energy.

(4) The administrator shall act on an application for certification before the 60th day after the filing of the application under this section. The administrator, after consultation with the Public Utility Commission, may issue the certificate together with such conditions as the administrator determines are appropriate to promote the purposes of this section and ORS 315.354, 469.185, 469.200, 469.205 and 469.878. The action of the administrator shall include

certification of the actual cost of the facility. However, in no event shall the administrator certify an amount for tax credit purposes which is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

(5) If the administrator rejects an application for final certification, or certifies a lesser actual cost of the facility than was claimed in the application, the administrator shall send to the applicant written notice of the action, together with a statement of the findings and reasons therefor, by certified mail, before the 60th day after the filing of the application. Failure of the administrator to act constitutes rejection of the application.

(6) Upon approval of an application for final certification of a facility, the administrator shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the administrator may certify the operational unit under one certificate. [1979 c.512 s.8; 1981 c.894 s.20; 1985 c.745 s.5; 1989 c.765 s.8; 1991 c.711 s.4; 1995 c.746 s.18; 1997 c.656 s.9; 1999 c.365 s.4; 1999 c.623 s.6]

469.217 Fees for certification. By rule and after hearing, the administrator of the Office of Energy may adopt a schedule of reasonable fees which the Office of Energy may require of applicants for preliminary or final certification under ORS 469.185 to 469.225. Before the adoption or revision of the fees, the Office of Energy shall estimate the total cost of the program to the Office of Energy. The fees shall be used to recover the anticipated cost of filing, investigating, granting and rejecting applications for certification and shall be designed not to exceed the total cost estimated by the Office of Energy. Any excess fees shall be held by the Office of Energy and shall be used by the Office of Energy to reduce any future fee increases. The fee may vary according to the size and complexity of the facility. The fee shall not be considered as part of the cost of the facility to be certified. [1985 c.745 s.8]

469.220 Certificate required for tax credits; certification not to exceed five years. A certificate issued under ORS 469.215 is required for purposes of obtaining tax credits in accordance with ORS 315.354. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which a certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the election of the applicant. [1979 c.512 s.9]

469.225 Revocation of certificate; forfeiture of tax credits; collection. (1) Under the procedures for a contested case under ORS 183.310 to 183.550, the administrator of the Office of Energy may order the revocation of the certificate issued under ORS 469.215 if the administrator finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to construct or to make every reasonable effort to operate the facility in compliance with the plans, specifications and procedures in such certificate.

(2) As soon as the order of revocation under this section becomes final, the administrator shall notify the Department of Revenue of such order.

(3) If the certificate is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax credits provided to the holder of the certificate by virtue of such certificate shall be forfeited and upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under ORS 315.354. The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certificate is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.354 in connection with such facility from and after the date that the order of revocation becomes final. [1979 c.512 s.10]

469.228 [1989 c.926 s.1; 1991 c.67 s.134; 1991 c.641 s.5; 1993 c.617 s.1; repealed by 1999 c.880 s.2]

469.230 [1989 c.926 s.3; repealed by 1999 c.880 s.2]

469.232 [1989 c.926 ss.4,10; 1993 c.617 s.2; 1997 c.249 s.165; 1997 c.632 s.9; repealed by 1999 c.880 s.2]

469.234 [1989 c.926 ss.5,9; 1993 c.617 s.4; repealed by 1999 c.880 s.2]

469.236 [1989 c.926 s.6; repealed by 1999 c.880 s.2]

469.240 [1989 c.926 ss.11,12; repealed by 1999 c.880 s.2]

469.241 [1993 c.617 s.22; repealed by 1999 c.880 s.2]

469.242 [1993 c.617 s.20; repealed by 1999 c.880 s.2]

469.243 [1993 c.617 s.21; repealed by 1999 c.880 s.2]

469.244 [1989 c.926 ss.16,25; repealed by 1993 c.617 s.28]

469.245 [1993 c.617 s.19; repealed by 1999 c.880 s.2]

469.246 [1989 c.926 ss.13,18; 1991 c.67 s.135; 1993 c.617 s.5; repealed by 1999 c.880 s.2]

469.247 [1993 c.617 s.16; repealed by 1999 c.880 s.2]

469.248 [1989 c.926 s.39; 1991 c.67 s.136; 1993 c.617 s.6; repealed by 1999 c.880 s.2]

469.249 [1993 c.617 s.18; repealed by 1999 c.880 s.2]

469.250 [1989 c.926 ss.7,8; 1991 c.67 s.137; repealed by 1999 c.880 s.2]

469.252 [1989 c.926 ss.14,15; repealed by 1993 c.617 s.28]

469.253 [1993 c.617 s.17; repealed by 1999 c.880 s.2]

469.254 [1989 c.926 s.19; 1993 c.617 s.7; 1997 c.838 s.6; repealed by 1999 c.880 s.2]

469.256 [1989 c.926 s.29; repealed by 1993 c.617 s.29]

469.258 [1989 c.926 s.20; 1991 c.641 s.6; repealed by 1999 c.880 s.2]

469.259 [1991 c.641 s.2; 1993 c.617 s.8; repealed by 1999 c.880 s.2]

469.260 [1989 c.926 s.21; 1991 c.67 s.138; repealed by 1999 c.880 s.2]

469.262 [1989 c.926 s.24; repealed by 1999 c.880 s.2]

469.267 [1989 c.926 s.26; 1993 c.617 s.9; repealed by 1999 c.880 s.2]

469.269 [1989 c.926 s.27; 1993 c.617 s.10; repealed by 1999 c.880 s.2]

469.270 [1989 c.926 s.28; 1991 c.67 s.139; repealed by 1993 c.617 s.29]

469.274 [1989 c.926 ss.31,32; 1991 c.641 s.7; 1993 c.617 s.11; repealed by 1999 c.880 s.2]

469.276 [1989 c.926 s.33; repealed by 1999 c.880 s.2]

469.278 [1989 c.926 s.34; repealed by 1999 c.880 s.2]

469.280 [1989 c.926 s.35; repealed by 1999 c.880 s.2]

469.282 [1989 c.926 s.36; repealed by 1999 c.880 s.2]

469.284 [1989 c.926 s.37; repealed by 1999 c.880 s.2]

469.286 [1989 c.926 s.38; 1991 c.67 s.140; 1993 c.617 s.12; repealed by 1999 c.880 s.2]

469.290 [1989 c.926 s.23; 1991 c.641 s.8; 1993 c.617 s.13; repealed by 1999 c.880 s.2]

469.292 [1989 c.926 s.22; 1991 c.641 s.9; repealed by 1999 c.880 s.2]

469.296 [1989 c.926 s.17; 1993 c.617 s.14; repealed by 1999 c.880 s.2]

469.298 [1989 c.926 s.2; repealed by 1999 c.880 s.2]

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions. 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) “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.

(6) “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.

(7) “Council” means the Energy Facility Siting Council established under ORS 469.450.

(8) “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.

(9)(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;

(ii) Geothermal, solar or wind power produced from a single energy generation area; or

(iii) 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.

(b) “Energy facility” does not include a hydroelectric facility.

(10) “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 25 megawatts 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.

(11) “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.

(12) “Facility” means an energy facility together with any related or supporting facilities.

(13) “Geothermal reservoir” means an aquifer or aquifers containing a common geothermal fluid.

(14) “Local government” means a city or county.

(15) “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.

(16) “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.

(17) “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.

(18) “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.

(19) “Office of Energy” means the Office of Energy created under ORS 469.030.

(20) “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.

(21) “Project order” means the order, including any amendments, issued by the Office of Energy under ORS 469.330.

(22)(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 revised 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.

(23) “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.

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

(25) “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.

(26) “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.

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

(28) “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.

(29) “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.

(30) “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. [Formerly 453.305; 1977 c.796 s.1; 1979 c.283 s.1; 1981 c.587 s.1; 1981 c.629 s.2; 1981 c.707 s.1; 1981 c.866 s.1; 1991 c.480 s.4; 1993 c.544 s.3; 1993 c.569 s.3; 1995 c.505 s.6; 1995 c.551 s.10; 1997 c.606 s.1; 1999 c.365 s.5]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. It is furthermore the policy of this state, notwithstanding ORS 469.010 (2)(f) and 469.020 (4), that the need for new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in ORS 469.503. [Formerly 453.315; 1997 c.428 s.1]

(Siting)

469.320 Site certificate required; exceptions. (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.

(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) 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) As used in this section:

(a) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

(b) “Useful thermal energy” means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application. [Formerly 453.325; 1977 c.86 s.1; 1979 c.730 s.8; 1982 s.s.1 c.6 s.1; 1987 c.200 s.5; 1991 c.480 s.5; 1993 c.569 s.4; 1995 c.505 s.7; 1999 c.365 s.6; 1999 c.385 s.1]

469.330 Notice of intent to file application for site certificate; public notice; standards, application requirements and study requirements; project order. (1) Each applicant for a site certificate shall submit to the Energy Facility Siting Council a notice of intent to file an application for a site certificate. The notice of intent must provide information about the proposed site and the characteristics of the facility sufficient for the preparation of the Office of Energy's project order.

(2) The council shall cause public notice to be given upon receipt of a notice of intent by the council. The public notice shall provide a description of the proposed site and facility in sufficient detail to inform the public of the location and proposed use of the site.

(3) Following review of the notice of intent and any public comments received in response to the notice of intent, the Office of Energy may hold a preapplication conference with state agencies and local governments that have regulatory or advisory responsibility with respect to the facility. After the preapplication conference, the Office of Energy shall issue a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application. A project order is not a final order.

(4) A project order issued under subsection (3) of this section may be amended at any time by either the Office of Energy or the council. [Formerly 453.335; 1977 c.794 s.9; 1989 c.88 s.1; 1993 c.569 s.5; 1995 c.505 s.8]

469.340 [1975 c.552 s.37; 1975 c.606 s.26a; repealed by 1981 c.629 s.3]

469.350 Application for site certificate; comment and recommendation. (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) 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. [Formerly 453.345; 1977 c.794 s.10; 1989 c.88 s.2; 1993 c.569 s.6; 1995 c.505 s.9]

469.360 Evaluation of site applications; costs; payment. (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. [Formerly 453.355; 1987 c.450 s.1; 1989 c.88 s.3; 1993 c.569 s.7; 1995 c.505 s.10]

469.370 Draft proposed order for hearing; issues raised; final order; expedited processing. (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the Office of Energy shall prepare and issue a draft proposed order on the application.

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:

(a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;

(b) Include a description of the facility and the facility's general location;

(c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;

(d) State that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost; and

(e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the Office of Energy's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the Office of Energy and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

(4) After reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the Office of Energy shall issue a proposed order recommending approval or rejection of the application. The Office of Energy shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

(5) Following receipt of the proposed order from the Office of Energy, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS 183.310 to 183.550 and any procedures adopted by the council. The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:

(a) The Office of Energy failed to follow the requirements of subsection (2) or (3) of this section; or

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

(6) If no person requests party status to challenge the Office of Energy's proposed order, the proposed order shall

be forwarded to the council and the contested case hearing shall be concluded.

(7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.

(8) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.

(9) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a name plate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or

(C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(10) At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with a generating capacity of less than 100 megawatts. No notice of intent shall be required. Following approval of a request for expedited review, the Office of Energy shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant. For a geothermal, wind or solar facility, the generating capacity is the electrical generating capacity available for delivery at the point the facility is connected to the transmission system, as demonstrated through a power sales contract or other objective means.

(11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the automatic issuance or denial of a site certificate.

(12) The council shall specify in the site certificate a date by which construction of the facility must begin.

(13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

(a) Elimination of duplicative application, study and reporting requirements;

(b) Council use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable council standards;

(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency. [Formerly 453.365; 1977 c.296 s.14; 1977 c.794 s.11; 1977 c.895 s.1; 1985 c.569 s.17; 1993 c.544 s.4; 1993 c.569 s.8; 1995 c.79 s.288; 1995 c.505 s.11; 1997 c.428 s.2]

469.371 [1985 c.569 s.5; 1991 c.480 s.6; repealed by 1993 c.544 s.9]

469.372 [1985 c.569 s.14; 1985 c.673 s.196; repealed by 1993 c.544 s.9]

469.374 [1985 c.569 s.15; repealed by 1993 c.544 s.9]

469.375 Required findings for radioactive waste disposal facility certificate. The Energy Facility Siting Council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill by-product or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year flood plain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

(F) An area having experienced volcanic activity within the last two million years.

(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;

(3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of federal government for disposal of such wastes;

(4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;

(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;

(6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and

(7) That, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the Office of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:

(a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.

(8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 s.3; 1981 c.587 s.3; 1985 c.4]

469.380 [Formerly 453.375; 1977 c.794 s.12; 1977 c.895 s.2; 1993 c.569 s.9; repealed by 1995 c.505 s.32]

469.390 [Formerly 453.385; repealed by 1993 c.569 s.31]

469.400 [Formerly 453.395; 1977 c.794 s.13; 1977 c.895 s.3; repealed by 1993 c.569 s.10 (469.401 and 469.403 enacted in lieu of 469.400)]

469.401 Energy facility site certificate; conditions; effect of issuance on state and local government agencies. (1) Upon approval, the site certificate or any amended site certificate with any conditions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the council and by the applicant. The certificate or amended certificate shall authorize the applicant to construct, operate and retire the facility subject to the conditions set forth in the site certificate or amended site certificate. The duration of the site certificate or amended site certificate shall be the life of the facility.

(2) The site certificate or amended site certificate shall contain conditions for the protection of the public health and safety, for the time for completion of construction, and to ensure compliance with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed, except that upon a clear showing of a significant threat to the public health, safety or the environment that requires application of later-adopted laws or rules, the council may require compliance with such

later-adopted laws or rules. For a permit addressed in the site certificate or amended site certificate, the site certificate or amended site certificate shall provide for facility compliance with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules.

(3) Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the facility. After issuance of the site certificate or amended site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate or amended site certificate, subject only to conditions set forth in the site certificate or amended site certificate. After the site certificate or amended site certificate is issued, the only issue to be decided in an administrative or judicial review of a state agency or local government permit for which compliance with governing law was considered and determined in the site certificate or amended site certificate proceeding shall be whether the permit is consistent with the terms of the site certificate or amended site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility. [1993 c.569 s.11 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 s.12; 1999 c.385 s.2]

469.402 Delegation of review of future action required by site certificate. If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the Office of Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case. [1995 c.505 s.27; 1999 c.385 s.3]

Note: 469.402 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.403 Rehearing on approval or rejection of application for site certificate or amendment; appeal; judicial review vested in Supreme Court. (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.

(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. [1993 c.569 s.12 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 s.13; 1999 c.385 s.4]

469.405 Amendment of site certificate; judicial review; exemption. (1) A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403.

(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law, the land use approval by an affected local government of a proposed amendment to a facility and the recommendation of the special advisory group of applicable substantive criteria shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to show compliance with the statewide planning goals by demonstrating that the facility has received local land use approval, the provisions of this section shall apply only to proposed projects for which the land use approval by the local government occurs after the date an application for amendment is submitted to the Office of Energy.

(3) An amendment to a site certificate is not required for a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline will connect to a council certified surface facility related to an underground gas storage reservoir or to a council certified gas pipeline, whether the proposed pipeline is to be located inside or outside the site of a council certified facility, the certificate holder must obtain, prior to construction, the approval of the Office of Energy for the construction, operation and retirement of the proposed pipeline. The Office of Energy shall approve such a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding ORS 469.503 (3), the Office of Energy may not review the proposed pipeline for compliance with other state standards. Notwithstanding ORS 469.503 (4), or any council rule addressing compliance with land use standards, the Office of Energy shall not review such a proposed pipeline for compliance with land use requirements. Notwithstanding ORS 469.401 (3), the approval by the Office of Energy of such pipeline shall not bind any state or local agency. The council may adopt appropriate procedural rules for the Office of Energy review. The Office of Energy shall issue an order approving or rejecting the proposed pipeline. Judicial review of an Office of Energy order under this section shall be as provided in ORS 469.403. [1995 c.505 s.2; 1999 c.385 s.5]

Note: 469.405 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.407 Amendment of application to increase capacity of facility. (1) A recipient may by amendment of its application for a site certificate or by amendment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council finds that:

(a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the council;

(b) The enlarged facility does not exceed 500 megawatts and meets the applicable carbon dioxide standard provided for in ORS 469.503 (2) for any increase in capacity beyond the capacity of the 500-megawatt exemption; and

(c) The enlarged facility meets all other applicable council standards.

(2) A recipient is deemed to meet any applicable need standard and carbon dioxide emissions standard for the nominal generating capacity of the 500-megawatt exemption provided that the recipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies the conditions.

(3) As used in this section:

(a) “Recipient” means any base load gas plant, as defined in ORS 469.503, determined by the council to have the lowest net monetized air emissions among the applicants participating in a contested case proceeding.

(b) “500-megawatt exemption” means the council order in which a recipient was determined to have the lowest net monetized air emissions. [1997 c.428 s.8]

Note: 469.407 and 469.409 were added to and made a part of 469.300 to 469.563 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.409 Amendment of site certificate to demonstrate compliance with carbon dioxide emissions standard;

binding arbitration to resolve disputes. Any site certificate holder that is required by its site certificate or by law to demonstrate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions standard applicable to the type of facility subject to the site certificate before beginning construction. Such a demonstration shall be made as an amendment to the site certificate. Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the Energy Facility Siting Council shall not conduct a contested case hearing on such amendment and the council's order shall not be subject to judicial review. Any dispute about the site certificate holder's demonstration of compliance with the applicable carbon dioxide emissions standard shall be settled through binding arbitration. [1997 c.428 s.7]

Note: See note under 469.407.

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate; monitoring programs. (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Energy Facility Siting Council for:

(a) Any transmission lines for which application has been filed with the federal government and the Public Utility Commission of Oregon prior to July 2, 1975; and

(b) Any energy facility under construction on July 2, 1975.

(2) Each applicant for a site certificate under this section shall pay the fees required by ORS 469.421 (2) to (9), if applicable, and shall execute a site certificate in which the applicant agrees:

(a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and

(b) On and after July 2, 1975, to abide by the rules of the administrator of the Office of Energy adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930.

(3) The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the Office of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the site certificate and any applicable health or safety standards.

(4) The council shall establish programs for monitoring the environmental and ecological effects of the operation and the decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

(5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of the administrator adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [1975 c.606 s.24; 1983 c.740 s.184; 1989 c.88 s.5; 1993 c.569 s.13; 1995 c.505 s.15]

469.420 [Formerly 453.405; 1977 c.813 s.1; 1979 c.234 s.1; 1981 c.792 s.3; repealed by 1981 c.792 s.4 (469.421 enacted in lieu of 469.420)]

469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty. (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 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 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. [1981 c.792 s.5 (enacted in lieu of 469.420); 1983 c.273 s.5; 1987 c.450 s.2; 1989 c.88 s.4; 1993 c.569 s.14; 1995 c.505 s.14; 1995 c.542 s.1; 1995 c.551 s.11; 1995 c.618 s.74a; 1995 c.696 s.22; 1997 c.249 s.166; 1999 c.385 s.6]

469.430 Site inspections. The Energy Facility Siting Council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the Office of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to assure that the facility is being operated consistently with the terms and conditions of the site certificate or any order issued by the Office of Energy under ORS 469.405 (3). The council shall avoid duplication of effort with site inspections by other state and federal agencies and local governments that have issued permits or licenses for the facility. [Formerly 453.415; 1993 c.569 s.15; 1995 c.505 s.16; 1999 c.385 s.7]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS 183.310 to 183.550, a site certificate or an amended site certificate may be revoked or suspended:

(1) For failure to comply with the terms or conditions of the site certificate or amended site certificate;

(2) For violation of the provisions of ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992 or rules adopted pursuant to ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992; or

(3) If the site certificate was executed prior to July 2, 1975, for violation of the provisions of ORS 469.300 to 469.520 or rules adopted pursuant to ORS 469.300 to 469.520 or for failure to comply with applicable health or safety standards. [Formerly 453.425; 1993 c.569 s.16; 1995 c.505 s.17; 1999 c.385 s.8]

469.441 Justification of fees charged; judicial review. (1) All expenses incurred by the Energy Facility Siting Council and the Office of Energy under ORS 469.360 (1) and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the Office of Energy or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption, a request for a pipeline described in ORS 469.405 (3) or a request for an expedited review must submit under ORS 469.421 at the time of submitting the notice of intent, request for exemption, request for pipeline or request for expedited review. The fee schedule shall be designed to recover the council's actual costs of evaluating the notice of intent, request for exemption, request for pipeline or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and Office of Energy to the extent historical costs are

available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, request for exemption, request for pipeline or request for expedited review is submitted, whether the notice of intent, request for exemption, request for pipeline or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the Office of Energy shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1989 c.88 s.8; 1993 c.569 s.17; 1999 c.385 s.9]

(High Voltage Transmission Lines)

469.442 Procedure prior to construction of transmission line in excess of 230,000 volts; review committee. (1) Any person who proposes to construct a transmission line in excess of 230,000 volts capacity that is not otherwise under the jurisdiction of the Energy Facility Siting Council shall:

(a) Give public notice of the proposed action at least six months before beginning any process to obtain local permits required for the proposed transmission line. Notification shall be given:

(A) By publication once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the transmission line is to be constructed; and

(B) To the governing bodies and planning directors of cities and counties which are within or partially within the project study area.

(b) Provide an opportunity for public comment on the proposed transmission line and conduct public meetings to review the proposal.

(c) Respond specifically and in writing to local concerns and recommendations regarding the proposed transmission line.

(2) The administrator of the Office of Energy shall establish a committee to include technical experts and members of the public to coordinate public review of a proposed transmission line under subsection (1) of this section when requested to do so by ordinance or resolution of the affected governing body.

(3) At the conclusion of the public review, the committee shall make a summary report to the affected governing body including public concerns and recommendations concerning the proposed transmission line.

(4) The scope of work and cost of conducting the review shall be negotiated between the Office of Energy and the project sponsor. The negotiated cost shall be paid by the project sponsor.

(5) Subsections (1) to (4) of this section shall not apply to a person who proposes to construct transmission lines entirely within 500 feet of an existing corridor occupied by transmission lines with a capacity in excess of 230,000 volts. [1987 c.200 s.2; 1993 c.569 s.18]

469.445 [1987 c.200 s.3; repealed by 1993 c.569 s.31]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established an Energy Facility Siting Council to be located within the Oregon Department of Administrative Services and consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) No member of the council shall be an employee, director or retired employee or director of or a consultant to or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in any corporation or utility operating or interested in establishing an

energy facility in this state or in any manufacturer of related equipment.

(4) No member shall for two years after the expiration of the term of the member accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or any agency thereof and held by the owner or operator of the energy facility that employs such person. [Formerly 453.435; 1995 c.551 s.12]

469.460 Officers; meetings; compensation and expenses. (1) The Energy Facility Siting Council shall annually elect from among its members a chairperson and vice chairperson with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The Governor or the chairperson of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.

(2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445]

469.470 Powers and duties. The Energy Facility Siting Council shall:

(1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.

(2) In accordance with the applicable provisions of ORS 183.310 to 183.550, and subject to the provisions of ORS 469.501 (3), adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.

(3) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in performing the functions vested by law in the council.

(4) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(5) Consult with the Water Resources Commission on the need for power and other areas within the expertise of the council when the Water Resources Commission is determining whether to allocate water for hydroelectric development.

(6) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [Formerly 453.455; 1991 c.480 s.7; 1993 c.544 s.5; 1993 c.569 s.19; 1995 c.505 s.18]

469.480 Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee. (1) The Energy Facility Siting Council shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.

(2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such advisory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.

(3) Subject to applicable laws regulating travel and other expenses of state officers and employees, members of any advisory committee appointed under subsection (1) of this section shall receive no compensation but may receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

(4) The council by rule shall form an Electric and Magnetic Field Committee which shall meet at the call of the council chair. The committee shall include representatives of the public, utilities, manufacturers and state agencies. The committee shall monitor information being developed on electric and magnetic fields and report the committee's findings to the council. The council shall report the findings of the Electric and Magnetic Field Committee to the Legislative Assembly. [Formerly 453.475; 1991 c.491 s.1; 1993 c.569 s.20; 1995 c.551 s.17]

(Rules; Standards; Compliance)

469.490 Adoption of rules; determination of validity. All rules adopted by the Energy Facility Siting Council pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be adopted in the manner required by ORS 183.310 to 183.550. The validity of any rule adopted by the council may be determined only upon a petition by any person to the Supreme Court. The petition must be filed within 60 days after the date the rule becomes effective under ORS 183.355. The review by the Supreme Court of the validity of any rule adopted by the council shall otherwise be according to ORS 183.400. The Supreme Court shall give priority on its docket to such a petition for review. [Formerly 453.495; 1995 c.505 s.19]

469.500 [Formerly 453.505; repealed by 1993 c.569 s.21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.501 Energy facility siting, construction, operation and retirement standards; exemptions. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

(a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.

(b) Seismic hazards.

(c) Areas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

(d) The financial ability and qualifications of the applicant.

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(h) The accumulation, storage, disposal and transportation of nuclear waste.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities as defined in ORS 469.503.

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

(n) Soil protection.

(o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).

(2) The council may adopt exemptions from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.

(3) The council may issue a site certificate for a facility that does not meet one or more of the standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet. [1993 c.569 s.22 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 s.20; 1997 c.428 s.3]

469.503 Requirements for approval of energy facility site certificate; carbon dioxide emissions standard; offset funds; use of offset funds by qualifying organization. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rule-making record:

(A) Promote facility fuel efficiency;

(B) Promote efficiency in the resource mix;

(C) Reduce net carbon dioxide emissions;

(D) Promote cogeneration that reduces net carbon dioxide emissions;

(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;

(F) Minimize transaction costs;

(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;

(H) Allow either the applicant or third parties to implement offsets;

(I) Be attainable and economically achievable for various types of power plants;

(J) Promote public participation in the selection and review of offsets;

(K) Promote prompt implementation of offset projects;

(L) Provide for monitoring and evaluation of the performance of offsets; and

(M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved. The council shall determine the quantity of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council

shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

(i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) The ability of the council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and

(iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first $500,000 of the offset funds and 4.286 percent of any offset funds in excess of $500,000. This amount shall not be less than $50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other

enforcement action by the council with respect to the site certificate holder.

(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the Office of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

(e) As used in this subsection:

(A) “Adjusted to ISO conditions” means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(B) “Base load gas plant” means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(C) “Fossil-fueled power plant” means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

(D) “Generating facility” means those energy facilities that are defined in ORS 469.300 (9)(a)(A), (B) and (D).

(E) “Gross carbon dioxide emissions” means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

(F) “Net carbon dioxide emissions” means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(G) “New and clean basis” means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

(H) “Nongenerating facility” means those energy facilities that are defined in ORS 469.300 (9)(a)(C) and (E) to (I).

(I) “Offset” means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions of carbon dioxide.

(J) “Offset funds” means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

(K) “Qualified organization” means an entity that:

(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

(iv) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

(3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission. [1993 c.569 s.23 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 s.21; 1997 c.428 s.4; 1999 c.365 s.11]

469.504 Finding that facility complies with statewide planning goals; amendment of local plan and land use regulations; conflicts; technical assistance to local governments. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646 (3);

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(5) Upon request by the Office of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the Office of Energy's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a) or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 (9)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the Office of Energy.

(9) The Office of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction. [1997 c.428 s.5; 1999 c.385 s.10]

Note: 469.504 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.505 Consultation with other agencies. (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the federal government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council's review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.

(2) Before resolving any conflicting conditions in site certificates or amended site certificates under ORS 469.503 (3) and 469.504, the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict resolution. [1993 c.569 s.24 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1997 c.428 s.9; 1999 c.385 s.11]

469.507 Monitoring environmental and ecological effects of construction and operation of energy facilities. (1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.

(2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the administrator of the Office of Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(3) The monitoring program may be conducted in cooperation with any federally operated program if the information available from the federal program is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the council or its designee.

(4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation. [1993 c.569 s.25 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 s.22]

469.510 [Formerly 453.515; 1977 c.794 s.15; repealed by 1993 c.569 s.21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development. (1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the Office of Energy, promptly of its activities and programs relating to energy and radiation.

(2) Each state agency proposing to adopt, amend or rescind a rule relating to energy facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.

(3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]

(Plant Operations; Radioactive Wastes)

469.525 Radioactive waste disposal facilities prohibited; exceptions. Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(1) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at sites approved by the Energy Facility Siting Council in accordance with ORS 469.375.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner consistent with rules adopted by the

Department of Environmental Quality after consultation with and approval by the Health Division.

(3) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued pursuant to this chapter shall not constitute operation of a waste disposal facility so long as such coal ash is maintained in accordance with the terms of the site certificate as amended from time to time as necessary to protect the public health and safety. [Formerly 459.630; 1979 c.283 s.2; 1981 c.587 s.2]

469.530 Review and approval of security programs. The Energy Facility Siting Council and the administrator of the Office of Energy shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval. [Formerly 453.535; 1981 c.707 s.3; 1989 c.6 s.1]

469.533 Office of Energy rules for health protection and evacuation procedures in nuclear emergency. Notwithstanding ORS chapter 401, the Office of Energy in cooperation with the Health Division and the Office of Emergency Management shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear power plant or nuclear installation. [Formerly 453.765; 1983 c.586 s.43]

469.534 County procedures. Each county in this state that has a nuclear-fueled thermal power plant located within county boundaries and each county within this state that has any portion of its area located within 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written procedures that are compatible with the rules adopted by the Office of Energy under ORS 469.533. The Office of Energy shall review the county procedures to determine whether they are compatible with the rules of the Office of Energy. [1983 c.586 s.46]

469.535 Governor may assume control of emergency operations during nuclear accident or catastrophe. Notwithstanding ORS chapter 401, when an emergency exists because of an accident or catastrophe in the operation of a nuclear power plant or nuclear installation or in the transportation of radioactive material, the Governor, for the duration of the emergency, may:

(1) Assume complete control of all emergency operations in the area affected by the accident or catastrophe, direct all rescue and salvage work and do all things deemed advisable and necessary to alleviate the immediate conditions.

(2) Assume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.

(3) Close all roads and highways in such area to traffic or by order of the administrator of the Office of Energy limit the travel on such roads to such extent as the administrator deems necessary and expedient.

(4) Designate persons to coordinate the work of public and private relief agencies operating in such area and exclude from such area any person or agency refusing to cooperate with other agencies engaged in emergency work.

(5) Require the aid and assistance of any state or other public or quasi-public agencies in the performance of duties and work attendant upon the emergency conditions in such area. [1983 c.586 s.47]

469.536 Public utility to disseminate information under ORS 469.533. A public utility which operates a nuclear power plant or nuclear installation shall disseminate to the governing bodies of cities and counties that may be affected information approved by the Office of Energy which explains rules or procedures adopted under ORS 469.533. [Formerly 453.770]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs; transport and disposal of radioactive materials. (1) In instances where the administrator of the Office of Energy determines either from the monitoring or surveillance of the administrator that there is danger of violation of a safety standard adopted under ORS 469.501 from the continued operation of a plant or installation, the administrator may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards.

(3) The administrator may order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the administrator believes that ORS 469.300 to 469.619 and 469.930 or rules adopted

pursuant thereto are being violated or are in danger of being violated. [Formerly 453.545; 1989 c.6 s.2; 1993 c.569 s.26]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the administrator of the Office of Energy from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the Energy Facility Siting Council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the administrator shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the administrator must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.563 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the administrator based upon monitoring or surveillance by the administrator, or based upon information from the council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accumulation or storage of radioactive material located at a nuclear-fueled thermal power plant or a nuclear installation, the administrator shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the administrator must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.563.

(3)(a) If the administrator believes there is a clear and immediate danger to public health or safety, the administrator shall halt the transportation or disposal of radioactive material or waste.

(b) The administrator shall serve an order to halt the transportation or disposal of radioactive material on the person responsible for the transport or disposal. The order may be served without prior hearing or notice.

(c) Within 24 hours after the administrator serves an order under paragraph (b) of this subsection, the administrator shall petition the appropriate circuit court for relief under ORS 469.563.

(4) The Governor, in the absence of the administrator, may issue orders and petition for judicial relief as provided in this section. [Formerly 453.555; 1977 c.794 s.16; 1989 c.6 s.3]

469.553 Active uranium mill or mill tailings disposal facility site certification required; procedure for review; fees. (1) Any person desiring to construct or operate an active uranium mill or uranium mill tailings disposal facility after June 25, 1979, shall file with the Energy Facility Siting Council a site certificate application.

(2) The Energy Facility Siting Council shall review an application for a site certificate under this section using the procedure prescribed in ORS 469.350, 469.360, 469.370, 469.375, 469.401 and 469.403, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.421 in connection with site certificates applied for or issued under this section. [1979 c.283 s.7; 1987 c.633 s.1; 1993 c.569 s.27; 1995 c.505 s.25]

469.556 Rules governing uranium-related activities. The Energy Facility Siting Council shall adopt rules governing the location, construction and operation of uranium mills and uranium mill tailings disposal facilities and the treatment, storage and disposal of uranium mine overburden for the protection of the public health and safety and the environment. [1979 c.283 s.8]

469.559 Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor; exception for inactive or abandoned site. (1) Notwithstanding the authority of the Health Division pursuant to ORS 453.605 to 453.800 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, and perform or cause to be performed any and all acts necessary to be performed by the state, including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS 183.310 to 183.550 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Energy Facility Siting Council and the Office of Energy may enter into and carry out cooperative agreements and arrangements with any agency of the federal government implementing the Comprehensive

Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. section 9601 et seq., to clean up wastes and contaminated material, including overburden, created by uranium mining before June 29, 1989. Any such project need not obtain a site certificate from the council, but shall nevertheless comply with all applicable, relevant or appropriate state standards including but not limited to those set forth in ORS 469.375 and rules adopted by the council and other state agencies to implement such standards.

(3) The Governor may do any and all things necessary to implement the requirements of the federal Acts referred to in subsections (1) and (2) of this section.

(4) Notwithstanding ORS 469.553, after June 25, 1979, no site certificate is required for the cleanup and disposal of an inactive or abandoned uranium mill tailings site as authorized under subsection (1) of this section and Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604. [1979 c.283 s.9; 1987 c.633 s.2; 1989 c.496 s.1]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.501 to 192.505, any information filed or submitted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be made available for public inspection and copying during regular office hours of the Office of Energy at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Insurance)

469.561 Property insurance required; exceptions; filing of policy. (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

(2) Insurance required under this section does not apply to:

(a) Any claim of an employee of a person obtaining insurance under this section, if the claim is made under a state or federal workers' compensation Act and if the employee is employed at the site of and in connection with the nuclear power plant at which the nuclear incident occurred; or

(b) Any claim arising out of an act of war.

(3) A person obtaining insurance under this section shall maintain insurance for the term of the license issued to the nuclear power plant by the United States Nuclear Regulatory Commission and for any extension of the term, and until all radioactive material has been removed from the nuclear power plant and transportation of the radioactive material from the nuclear power plant has ended.

(4) A person obtaining insurance under this section shall file a copy of the insurance policy, any amendment to the policy and any superseding insurance policy with the administrator of the Office of Energy.

(5) Property insurance required under this section is in addition to and not in lieu of insurance coverage provided under the Price-Anderson Act (42 U.S.C. 2210).

(6) Property insurance required by subsections (1) to (5) of this section may include private insurance, self-insurance, utility industry association self-assurance pooling programs, or a combination of all three.

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [Formerly 469.565]

469.562 Eligible insurers. (1) In order to provide the private insurance specified under ORS 469.561, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.561 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [Formerly 469.567]

(Enforcement)

469.563 Court orders for enforcement. Without prior administrative proceedings, a circuit court may issue such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.320, 469.405 (3), 469.410, 469.421, 469.430, 469.440, 469.442, 469.507, 469.525 to 469.559, 469.560, 469.561, 469.562, 469.590 to 469.619, 469.930 and 469.992 or with the terms and conditions of a site certificate. [Formerly 469.570; 1999 c.385 s.12]

469.565 [1981 c.866 ss.3,4; renumbered 469.561 in 1997]

(Oregon Hanford Waste Board)

469.566 Findings. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing Hanford, Washington, as a potentially suitable location for the long-term disposal of high-level radioactive waste; or

(b) Insure adequate opportunity for public participation in the assessment process.

(2) Over the past 45 years, the United States has developed and produced nuclear weapons at Hanford, Washington, and during this period large quantities of radioactive hazardous and chemical wastes have accumulated at the Hanford Nuclear Reservation, and the waste sites pose an immediate and serious long-term threat to the environment and to public health and safety.

(3) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Waste Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the federal government, to insure a maximum of public participation in the assessment and cleanup process. [1987 c.514 s.1; 1991 c.562 s.3]

Note: 469.566 to 469.583 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.567 [1981 c.866 s.5; renumbered 469.562 in 1997]

469.568 Construction of ORS 469.566 to 469.583. Nothing in ORS 469.566 to 469.583 shall be interpreted by the federal government or the United States Department of Energy as an expression by the people of Oregon to accept Hanford, Washington, as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 s.2]

Note: See note under 469.566.

469.569 Definitions for ORS 469.566 to 469.583. As used in ORS 469.566 to 469.583:

(1) “Board” means the Oregon Hanford Waste Board.

(2) “High-level radioactive waste” means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) “United States Department of Energy” means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 s.3]

Note: See note under 469.566.

469.570 [Formerly 453.575; 1995 c.505 s.23; renumbered 469.563 in 1997]

469.571 Oregon Hanford Waste Board; members; appointment. There is created an Oregon Hanford Waste Board that shall consist of the following members:

(1) The administrator of the Office of Energy or designee;

(2) The Water Resources Director or designee;
(3) A representative of the Governor;
(4) One member representing the Confederated Tribes of the Umatilla Indian Reservation;
(5) Ten members of the public, appointed by the Governor, one of whom shall be a representative of a local emergency response organization in eastern Oregon and one of whom shall serve as chairperson; and
(6) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 s.4; 1991 c.562 s.1; 1997 c.249 s.271]

Note: See note under 469.566.

469.572 Compensation of board members. (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.
(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.
(3) The board shall be under the supervision of the chairperson. [1987 c.514 s.5]

Note: See note under 469.566.

469.573 Purpose of Oregon Hanford Waste Board. The Oregon Hanford Waste Board:
(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.
(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.
(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 s.6]

Note: See note under 469.566.

469.574 Duties of Oregon Hanford Waste Board; coordination with Washington. In carrying out its purpose as set forth in ORS 469.573, the Oregon Hanford Waste Board shall:
(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste and other issues related to the United States Hanford Reservation.
(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the federal government on any matter related to the long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation. Notification of proposed plans includes notification of proposals to conduct field work, on-site evaluation or on-site testing.
(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.
(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups in preparing this response.
(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation and the opportunities of the public to participate in procedures and decisions related to this waste.
(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the long-term disposal of

high-level radioactive waste or other issues related to the United States Hanford Reservation. If the board finds that the application is not consistent with the state's policy related to such issue or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the federal government related to the long-term disposal of high-level radioactive waste and other issues related to the United States Hanford Reservation.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation.

(9) Coordinate with appropriate counterparts and agencies in the State of Washington. [1987 c.514 s.7; 1991 c.562 s.4]

Note: See note under 469.566.

469.575 Duties of chairperson of Oregon Hanford Waste Board. The chairperson of the Oregon Hanford Waste Board shall:

(1) Supervise the day-to-day functions of the board;

(2) Hire, assign, reassign and coordinate the administrative personnel of the board, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(3) Request technical assistance from any other state agency. [1987 c.514 s.8]

Note: See note under 469.566.

469.576 Review of Hanford as site selected for long-term disposal of high-level radioactive waste. (1) If the United States Department of Energy selects Hanford, Washington, as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Waste Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall:

(a) Include a full scientific review of the adequacy of the selected site and of the site plan;

(b) Use recognized experts;

(c) Conduct one or more public hearings on the site plan;

(d) Make available to the public arguments and evidence for and against the site plan; and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site. [1987 c.514 s.10]

Note: See note under 469.566.

469.577 Lead agency; agreements with federal agencies related to long-term disposal of high-level radioactive waste. (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Waste Board.

(3) The Oregon Hanford Waste Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section or other issues related to the United States Hanford Reservation. [1987 c.514 s.11;

1991 c.562 s.5]

Note: See note under 469.566.

469.578 Oregon Hanford Waste Board to implement agreements with federal agencies. The Oregon Hanford Waste Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under ORS 469.577. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups. [1987 c.514 s.12]

Note: See note under 469.566.

469.579 Authority to accept moneys; disbursement of funds. The Oregon Hanford Waste Board may accept moneys from the United States Department of Energy, other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of ORS 469.566 to 469.583. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of ORS 469.566 to 469.583, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste or other issues related to the United States Hanford Reservation. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under ORS 469.573. [1987 c.514 s.13; 1991 c.562 s.6]

Note: See note under 469.566.

469.580 [1977 c.296 s.13; repealed by 1993 c.569 s.31]

469.581 Advisory and technical committees. The Oregon Hanford Waste Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495. [1987 c.514 s.14; 1991 c.562 s.2]

Note: See note under 469.566.

469.582 Cooperation with Oregon Hanford Waste Board; technical assistance from other state agencies. All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Waste Board in carrying out any of its activities under ORS 469.566 to 469.583 and, at the request of the chairperson, provide technical assistance to the board. [1987 c.514 s.15]

Note: See note under 469.566.

469.583 Rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Oregon Hanford Waste Board shall adopt rules and standards to carry out the requirements of ORS 469.566 to 469.583. [1987 c.514 s.16]

Note: See note under 469.566.

(Federal Site Selection)

469.584 Legislative findings. The Legislative Assembly and the people of the State of Oregon find that:

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress.

(3) The United States Department of Energy has prematurely deferred consideration of numerous potential sites

and disposal media that its own research indicates are more appropriate, safer and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1987 c.13 s.1]

Note: 469.584 and 469.585 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.585 Activities of state related to selection of high-level radioactive waste disposal site. In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly, other statewide officials and state agencies shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste;

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal;

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act;

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste; and

(6) Assure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 s.2]

Note: See note under 469.584.

(Hanford Nuclear Reservation)

469.586 Findings. The Legislative Assembly and the people of the State of Oregon find that:

(1) The maintenance of healthy, unpolluted river systems, airsheds and land are essential to the economic vitality and well-being of the citizens of the State of Oregon and the Pacific Northwest.

(2) Radioactive waste stored at the Hanford Nuclear Reservation is already leaking into and contaminating the water table and watershed of the Columbia River and radioactive materials and toxic compounds have been found in plants, animals and waters downstream from the Hanford Nuclear Reservation and constitute a present and potential threat to the health, safety and welfare of the people of the State of Oregon.

(3) The Hanford Nuclear Reservation is now one of the most radioactively contaminated sites in the world, according to government studies, and will require billions of dollars in costs for cleanup and the ongoing assessment of health effects.

(4) In November 1980, the people of the State of Oregon, by direct vote in a statewide election, enacted a moratorium on the construction of nuclear power plants, and no nuclear power plants are presently operating in the State of Oregon.

(5) In May 1987, the people of the State of Oregon, by direct vote in a statewide election, enacted Ballot Measure 1, opposing the disposal of highly radioactive spent fuel from commercial power plants at the Hanford Nuclear Reservation.

(6) In 1995, the Legislative Assembly resolved that Oregon should have all legal rights in matters affecting the Hanford Nuclear Reservation, including party status in the Hanford tri-party agreement that governs the cleanup of the reservation.

(7) Throughout the administrations of Presidents Ford, Carter, Reagan and Bush, the policy of the federal government banned the use of plutonium in commercial nuclear power plants due to the risk that the plutonium could be diverted to terrorists and to nations that have not renounced the use of nuclear weapons.

(8) The federal government has announced that it will process plutonium from weapons with uranium to produce mixed oxide fuel for commercial nuclear power plants and other nuclear facilities. The Hanford Nuclear Reservation, located on the Columbia River, is a primary candidate site being considered for the production facilities.

(9) The production of mixed oxide fuel will result in enormous new quantities of radioactive and chemical wastes that will present significant additional disposal problems and unknown costs. [1997 c.617 s.1]

Note: 469.586 and 469.587 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.587 Position of State of Oregon related to operation of Hanford Nuclear Reservation. The Legislative Assembly and the people of the State of Oregon:

(1) Declare that the State of Oregon is unalterably opposed to the use of the Hanford Nuclear Reservation for operations that create more contamination at the Hanford Nuclear Reservation, divert resources from cleanup at the Hanford Nuclear Reservation and make the Hanford Nuclear Reservation cleanup more difficult, such as the processing of plutonium to fuel nuclear power plants, reactors or any other facilities, and further declare that vitrification in a safe manner is the preferred means to dispose of excess plutonium, in order to protect human health and the environment.

(2) Request that the President of the United States and the Secretary of the Department of Energy continue their previous policy of banning the use of plutonium to fuel commercial power plants and nuclear facilities.

(3) Request that the federal government honor the federal government's original mandate to implement and complete the cleanup and restoration of the Hanford Nuclear Reservation. [1997 c.617 s.2]

Note: See note under 469.586.

(Siting of Nuclear-Fueled
Thermal Power Plants)

469.590 Definitions for ORS 469.590 to 469.595. As used in ORS 469.590 to 469.595:

(1) “High-level radioactive waste” means spent nuclear fuel or the radioactive by-products from the reprocessing of spent nuclear fuel.

(2) “Spent nuclear fuel” means nuclear fuel rods or assemblies which have been irradiated in a power reactor and subsequently removed from that reactor. [1981 c.1 s.2]

469.593 Findings. The people of this state find that if no permanent repository for high-level radioactive waste is provided by the federal government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes. Therefore, the people of this state enact ORS 469.590 to 469.601. [1981 c.1 s.1]

469.594 Storage of high-level radioactive waste after expiration of license prohibited; continuing responsibility for storage; implementation agreements. (1) Notwithstanding ORS 469.300 (30), no high-level radioactive waste should be stored at the site of a nuclear-fueled thermal power plant after the expiration of the operating license issued to the nuclear power plant by the United States Nuclear Regulatory Commission.

(2) Notwithstanding subsection (1) of this section, a person operating a nuclear power plant under a license issued by the United States Nuclear Regulatory Commission shall remain responsible for proper temporary storage of high-level radioactive materials at the site of the nuclear power plant after termination of a license and until such materials are removed from the site for permanent storage.

(3) The Office of Energy and the operators of nuclear-fueled thermal plants shall pursue agreements with the United States Office of Energy and the United States Nuclear Regulatory Commission to fulfill the provisions of this section. [1985 c.434 s.2; 1991 c.480 s.11; 1993 c.569 s.28; 1995 c.505 s.24]

469.595 Condition to site certificate for nuclear-fueled thermal power plant. Before issuing a site certificate for a nuclear-fueled thermal power plant, the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the federal government. The repository must provide for the terminal disposition of such waste, with or without provision for retrieval for reprocessing. [1981 c.1 s.3]

469.597 Election procedure; elector approval required. (1) Notwithstanding the provisions of ORS 469.370, if the Energy Facility Siting Council finds that the requirements of ORS 469.595 have been satisfied and proposes to issue a site certificate for a nuclear-fueled thermal power plant, the proposal shall be submitted to the electors of this state for their approval or rejection at the next available statewide general election. The procedures for submitting a proposal to the electors under this section shall conform, as nearly as possible to those for state measures, including but not limited to procedures for printing related material in the voters' pamphlet.

(2) A site certificate for a nuclear-fueled thermal power plant shall not be issued until the electors of this state have approved the issuance of the certificate at an election held pursuant to subsection (1) of this section. [1981 c.1 ss.4,5]

469.599 Public Utility Commission's duty. The Public Utility Commission shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.460 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 s.6]

469.601 Effect of ORS 469.595 on applications and applicants. ORS 469.595 does not prohibit:

(1) The Energy Facility Siting Council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 s.8]

(Transportation of Radioactive Material)

469.603 Intent to regulate transportation of radioactive material. It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allowable under and consistent with federal laws and regulations. [1981 c.707 s.2]

469.605 Permit to transport required; application; delegation of authority to issue permits. (1) No person shall ship or transport radioactive material identified by the Energy Facility Siting Council by rule as posing a significant hazard to public health and safety or the environment if improperly transported into or within the State of Oregon without first obtaining a permit from the Office of Energy.

(2) Such permit shall be issued for a period not to exceed one year and shall be valid for all shipments within that period of time unless specifically limited by permit conditions.

(3) Application for a permit under this section shall be made in a form and manner prescribed by the administrator of the Office of Energy and may include:

(a) A description of the kind, quantity and radioactivity of the material to be transported;

(b) A description of the route or routes proposed to be taken and the transport schedule;

(c) A description of any mode of transportation; and

(d) Other information required by the administrator to evaluate the application.

(4) The administrator shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the Office of Energy of performing the duties of the Office of Energy under ORS 469.550 (3), 469.563, 469.603 to 469.619 and 469.992. Fees collected under this subsection shall be deposited in the Office of Energy Account established under ORS 469.120.

(5) The administrator shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.603 to 469.619 and if the proposed route complies with federal law as provided in ORS 469.606.

(6) The administrator may delegate the authority to issue permits for the transportation of radioactive material to the Department of Transportation. In exercising such authority, the Department of Transportation shall comply with

the applicable provisions of ORS 469.603 to 469.619 and rules adopted by the administrator or the Energy Facility Siting Council under ORS 469.603 to 469.619. Permits issued by the Department of Transportation under this subsection shall be enforced according to the provisions of ORS 825.258. The administrator also may delegate other authority granted under ORS 469.605 to 469.619 to other state agencies if the delegation will maintain or enhance the quality of the transportation safety program. [1981 c.707 s.5; 1989 c.6 s.4; 1991 c.233 s.3]

469.606 Determination of best and safest route. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the Office of Energy shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:

(a) The Oregon Department of Transportation, or a designee of the Oregon Department of Transportation;

(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and

(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Commission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determination is made that the proposed route is not the best and safest route for transporting the material, the administrator of the Office of Energy shall deny the application except as provided in subsection (3) of this section.

(3) If the applicant is prohibited by a statute, rule or other action of an adjacent state or a political subdivision in an adjacent state from using the route that complies with federal law, the administrator:

(a) Shall petition the United States Department of Transportation for an administrative determination of preemption of the ban, pursuant to section 13 of the Hazardous Materials Transportation Uniform Safety Act of 1990, P.L. 101-615.

(b) May issue a permit as provided under ORS 469.605 (5) with conditions necessary to assure safe transport over a route available to the applicant, until the United States Department of Transportation determines whether the prohibition by the other state or political subdivision is preempted. [1991 c.233 s.2]

469.607 Authority of council. (1) After consultation with the Department of Transportation and other appropriate state, local and federal agencies, the Energy Facility Siting Council by rule:

(a) May fix requirements for notification, record keeping, reporting, packaging and emergency response;

(b) May designate those routes by highway, railroad, waterway and air where transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, requirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, checkpoints, operator or crew training or other operational requirements to enhance public health and safety; and

(d) May establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.603 to 469.619 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS 183.310 to 183.550. [1981 c.707 s.6; 1989 c.6 s.5; 1995 c.733 s.45]

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes. Annually, the administrator of the Office of Energy shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The administrator's report shall include:

(1) The type and quantity of material transported;

(2) Any mode of transportation used;

(3) The route or routes taken; and

(4) Any other information at the discretion of the administrator. [1981 c.707 s.8; 1989 c.6 s.6]

469.611 Emergency preparedness and response program; radiation emergency response team; training. Notwithstanding ORS chapter 401:

(1) The administrator of the Office of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to assure that the response to a radioactive

material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The administrator shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Health Division shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the Health Division at the scene of a radiological accident, the administrator may designate other technical advisors to work with the local response agencies.

(4) The Health Division shall assist the administrator to insure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Health Division shall report annually to the administrator on training of emergency response personnel. [1981 c.707 s.9; 1983 c.586 s.44; 1989 c.6 s.7]

469.613 Records; inspection. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the Energy Facility Siting Council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the administrator of the Office of Energy. Any requirement imposed by the council under this subsection shall be consistent with regulations of the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(2) The administrator may authorize any employee or agent of the administrator to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.550, 469.563, 469.603 to 469.619 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The administrator shall provide for:

(a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations. [1981 c.707 s.10; 1989 c.6 s.8]

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident. (1) A person transporting radioactive materials in this state shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during that transportation and pay for the cost of response to an accident involving the radioactive material.

(2) With respect to radioactive materials, the administrator of the Office of Energy shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605.

(3) A person who owns, designs or maintains facilities, structures, vehicles or equipment used for handling, transportation, shipment, storage or disposal of nuclear material shall reimburse the state for all expenses reasonably incurred by the state or a political subdivision of the state, in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident caused by the person's acts or omissions. These expenses include but need not be limited to, costs incurred for precautionary evacuations, emergency response measures and decontamination or other clean-up measures. As used in this subsection “nuclear incident” has the meaning given that term in 42 U.S.C. 2014(q).

(4) Nothing in subsection (3) of this section shall affect any provision of subsection (1) or (2) of this section. [1981 c.707 s.11; 1987 c.705 s.9; 1989 c.6 s.9]

469.617 Report to legislature; content. The administrator of the Office of Energy shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the Office of Energy in administering ORS 469.550, 469.563, 469.603 to 469.619 and 469.992; and

(4) Such recommendations for additional legislation as the Energy Facility Siting Council considers necessary and appropriate. [1981 c.707 s.12; 1989 c.6 s.10]

469.619 Office of Energy to make federal regulations available. The Office of Energy shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.550, 469.563, 469.603 to 469.619 and 469.992. [1981 c.707 s.14; 1989 c.6 s.11]

469.621 [1981 c.707 s.7; repealed by 1993 c.742 s.101]

RESIDENTIAL ENERGY CONSERVATION ACT

(Investor-Owned Utilities)

469.631 Definitions for ORS 469.631 to 469.645. As used in ORS 469.631 to 469.645:

(1) “Administrator” means the administrator of the Office of Energy.

(2) “Cash payment” means a payment made by the investor-owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(3) “Commercial lending institution” means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(4) “Commission” means the Public Utility Commission of Oregon.

(5) “Cost-effective” means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(6) “Dwelling” means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

(7) “Dwelling owner” means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the investor-owned utility.

(8) “Energy audit” means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(9) “Energy conservation measures” means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in

unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. “Energy conservation measures” does not include the dwelling owner's own labor.

(10) “Investor-owned utility” means an electric or gas utility regulated by the commission as a public utility under ORS chapter 757.

(11) “Residential customer” means a dwelling owner or tenant who, either directly or indirectly, pays a share of the cost for service billed by an investor-owned utility for electric or natural gas service received at the dwelling.

(12) “Space heating” means the heating of living space within a dwelling.

(13) “Tenant” means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 s.2; 1989 c.233 s.1; 1989 c.648 s.66; 1995 c.551 s.13]

469.633 Investor-owned utility program. Each investor-owned utility shall have an approved residential energy conservation program that, to the Public Utility Commission's satisfaction:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures approved by the commission to a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The minimum financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. Unless the commission approves higher levels of assistance, the financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms approved by the commission:

(i) A principal amount of up to $5,000;

(ii) For an electric utility, an interest rate that does not exceed six and one-half percent annually or, for a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 C.F.R. 201.4 (a)) on the date of the loan application, but not lower than six and one-half percent or higher than 12 percent; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.641 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) $350.

(b) That an otherwise eligible dwelling owner may obtain up to $5,000 in loans or $350 in cash payments for each dwelling.

(c) That there may be up to two loans or cash payments provided for each dwelling.

(d) That a dwelling owner who acquires a dwelling for which a previous loan was obtained under this section and ORS 469.631 may obtain a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.631 to 469.645; and

(B) There remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

(e) If the commission so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling.

(f) If the investor-owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures

financed by the investor-owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The investor-owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) For an electric utility, provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space heating potential.

(6) Provides that the investor-owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.631 to 469.645 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 s.3; 1985 c.745 s.6; 1989 c.233 s.2; 1991 c.67 s.141; 1991 c.78 s.1]

469.634 Contributions for urban and community forest activities by customers of investor-owned utilities; uses. (1) The Public Utility Commission of Oregon by rule shall establish a system to allow customers of investor-owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill. Investor-owned utilities may choose to use the system established by the commission.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with the Public Utility Commission of Oregon and local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, “urban and community forest activities” means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 s.2]

469.635 Alternative program of investor-owned utilities. (1) An investor-owned utility may meet the program submission requirements of ORS 469.633 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 889, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.633.

(2) An investor-owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the investor-owned utility offers another financing program determined by the Public Utility Commission to meet or exceed the program required in ORS 469.633 (3). A program shall be considered to meet or exceed the program required in ORS 469.633 (3) if it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.633 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.633 (3)(a)(B).

(3) An investor-owned utility that has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that is determined by the commission to meet or exceed the requirements in ORS 469.633 and 469.641 shall not be required to submit a separate program. However,

the provisions of ORS 469.637, 469.639, 469.643 and 469.645 nevertheless shall be applicable.

(4) In addition to the residential energy conservation program required in ORS 469.633, an investor-owned utility may offer other energy conservation programs if the commission determines the programs will promote cost-effective energy conservation. [1981 c.778 s.7; 1991 c.78 s.2]

469.636 Additional financing program by investor-owned utility for rental dwelling. In addition to the residential energy conservation program approved under ORS 469.633, an investor-owned utility may offer an additional financing program for energy conservation measures for a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy for space heating from the investor-owned utility. The financing program may consist, at a minimum, of either of the following:

(1) Offering low-interest loans to fund the entire cost of installed energy conservation measures up to $5,000 per dwelling unit. In addition to the loan subsidy provided under ORS 469.633 (3), the loan shall be further subsidized by applying the present value to the public utility of the tax credit received under ORS 469.185 to 469.225. Any portion of the present value of the tax credit shall accrue to the dwelling owner rather than to the investor-owned utility.

(2) Offering cash payments in addition to the cash payments required in ORS 469.633 (3). The additional cash payment shall be equal to the present value of the tax credit received under ORS 469.185 to 469.225. [1985 c.745 s.11; 1989 c.765 s.9]

469.637 Energy conservation part of utility service of investor-owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the investor-owned utility. [1981 c.778 s.4]

469.639 Billing for energy conservation measures. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may require as part of an investor-owned utility residential energy conservation program that, for dwelling owners with approved credit, the utility add to the periodic utility bill for the owner-occupied dwelling for which energy conservation measures have been provided pursuant to ORS 469.631 to 469.645 an amount agreed to between the dwelling owner and the investor-owned utility.

(2) The commission shall allow an investor-owned utility to charge or bill a dwelling owner separately from the periodic utility bill for energy conservation measures provided pursuant to ORS 469.631 to 469.645 if that utility wishes to do so. [1981 c.778 s.5]

469.641 Conditions for cash payments to dwelling owner by investor-owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, an investor-owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981; and

(2) The measures will not be paid for with other investor-owned utility grants or loans. [1981 c.778 s.6; 1991 c.877 s.39]

469.643 Formula for customer charges. The Public Utility Commission shall adopt by rule a formula under which the investor-owned utility shall charge all customers to recover:

(1) The cost to the investor-owned utility of the services required to be provided under ORS 469.633; and

(2) Any bad debts, including casualty losses, attributable to dwelling owner default on a loan for energy conservation measures. [1981 c.778 s.8]

469.645 Implementation of program by investor-owned utility. After the Public Utility Commission has approved the residential energy conservation program of an investor-owned utility required by ORS 469.633, the investor-owned utility promptly shall implement that program. [1981 c.778 s.9]

(Publicly Owned Utilities)

469.649 Definitions for ORS 469.649 to 469.659. As used in ORS 469.649 to 469.659:

(1) “Administrator” means the administrator of the Office of Energy.

(2) “Cash payment” means a payment made by the publicly owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(3) “Commercial lending institution” means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(4) “Cost-effective” means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) “Dwelling” means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

(6) “Dwelling owner” means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the publicly owned utility.

(7) “Energy audit” means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) “Energy conservation measures” means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. “Energy conservation measures” does not include the dwelling owner's own labor.

(9) “Publicly owned utility” means a utility that:

(a) Is owned or operated in whole or in part, by a municipality, cooperative association or people's utility district; and

(b) Distributes electricity.

(10) “Residential customer” means a dwelling owner or tenant who is billed by a publicly owned utility for electric service received at the dwelling.

(11) “Space heating” means the heating of living space within a dwelling.

(12) “Tenant” means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 s.10; 1989 c.648 s.67; 1995 c.551 s.14]

469.651 Publicly owned utility program. Within 30 days after November 1, 1981, each publicly owned utility shall submit to the administrator of the Office of Energy a residential energy conservation program that:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the publicly owned utility or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures at the request of a dwelling owner who

occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. The financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms:

(i) A principal amount of up to $4,000; or

(ii) An interest rate that does not exceed six and one-half percent annually; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.657 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) $350;

(b) That an otherwise eligible dwelling owner may obtain up to $4,000 in loans or $350 in cash payments for each dwelling;

(c) That there may be up to $4,000 in loans or $350 in cash payments for each dwelling;

(d) That a change in ownership of a dwelling shall not prevent the new dwelling owner from obtaining a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.649 to 469.659; and

(B) The amount of the financing is within the limit for that dwelling prescribed in paragraph (c) of this subsection;

(e) If the publicly owned utility so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling; and

(f) If the publicly owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the publicly owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The publicly owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) Provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space-heating potential.

(6) Provides that the publicly owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.649 to 469.659 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 s.11]

469.652 Contributions for urban and community forest activities by customers of publicly owned utilities; uses. (1) Publicly owned utilities may establish a system to allow customers of publicly owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities.

The State Forester by rule, in consultation with local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 s.4]

469.653 Alternative program of publicly owned utility. (1) A publicly owned utility may meet the program submission requirements of ORS 469.651 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 887, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.651.

(2) A publicly owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the publicly owned utility offers another financing program that meets or exceeds the program required in ORS 469.651 (3). A program shall be considered to meet or exceed the program required in ORS 469.651 (3) when it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.651 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.651 (3)(a)(B).

(3) A publicly owned utility whose governing body has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that meets or exceeds the requirements of ORS 469.651 and 469.657 shall not be required to submit a separate program. However, the provisions of ORS 469.655 and 469.659 nevertheless shall be applicable. [1981 c.778 s.14]

469.655 Energy conservation as part of utility service of publicly owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the publicly owned utility. [1981 c.778 s.12]

469.657 Conditions for cash payments to dwelling owner by publicly owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, a publicly owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981.

(2) The measures will not be paid for with other publicly owned utility grants or loans. [1981 c.778 s.13; 1991 c.877 s.40]

469.659 Implementation by publicly owned utility. After the publicly owned utility has submitted to the administrator of the Office of Energy the residential energy conservation program required by ORS 469.651, the publicly owned utility promptly shall implement that program. [1981 c.778 s.15]

(Oil Dealers)

469.673 Definitions for ORS 469.673 to 469.683. As used in ORS 469.673 to 469.683:

(1) "Administrator" means the administrator of the Office of Energy.

(2) "Cash payment" means a payment made by the Office of Energy to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(3) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(4) “Cost-effective” means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) “Dwelling” means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

(6) “Dwelling owner” means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from a fuel oil dealer.

(7) “Energy audit” means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) “Energy conservation measures” means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows, and dehumidifiers. “Energy conservation measures” does not include the dwelling owner's own labor.

(9) “Fuel oil dealer” means a person, association, corporation or other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) “Office of Energy” means the Office of Energy created under ORS 469.030.

(11) “Residential customer” means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service received at the dwelling.

(12) “Space heating” means the heating of living space within a dwelling.

(13) “Tenant” means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 s.16; 1987 c.749 s.8; 1989 c.648 s.68; 1995 c.551 s.15]

469.675 Oil dealer program. Within 30 days after November 1, 1981, each fuel oil dealer shall submit for the approval of the administrator of the Office of Energy a residential energy conservation program that, to the administrator's satisfaction:

(1) Makes available to all residential customers of the fuel oil dealer information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the fuel oil dealer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling. [1981 c.778 s.17]

469.677 Contracts for information, assistance and technical advice; standards for energy audits. (1) The administrator of the Office of Energy shall contract and a fuel oil dealer may rely upon the administrator to contract

for the information, assistance and technical advice required to be provided by a fuel oil dealer under ORS 469.675.

(2) The administrator shall adopt standards for energy audits required under ORS 469.675 by rule in accordance with the rulemaking provisions of ORS 183.310 to 183.550. [1981 c.778 s.18]

469.679 Implementation by fuel dealer. After the administrator of the Office of Energy has approved the residential energy conservation program of a fuel oil dealer required by ORS 469.675, the fuel oil dealer promptly shall implement that program. [1981 c.778 s.19]

469.681 Petroleum supplier assessment; computation; effect of failure to pay; interest. (1) Each petroleum supplier shall pay to the Office of Energy annually its share of an assessment to fund:

(a) Information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the administrator of the Office of Energy contracts under ORS 469.677; and

(b) Cash payments to a dwelling owner or contractor for energy conservation measures.

(2) The amount of the assessment required by subsection (1) of this section shall be determined by the administrator in a manner consistent with the method prescribed in ORS 469.421. The aggregate amount of the assessment shall not exceed $400,000. In making this assessment, the administrator shall exclude all gallons of distillate fuel oil sold by petroleum suppliers that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(3) If any petroleum supplier fails to pay any amount assessed to it under this section within 30 days after the payment is due, the Attorney General, on behalf of the Office of Energy, may institute a proceeding in the circuit court to collect the amount due.

(4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half percent of the payment due per month or fraction of a month from the date the payment was due to the date of payment.

(5) The assessment required by subsection (1) of this section is in addition to any assessment required by ORS 469.421 (8), and any other fee or assessment required by law.

(6) As used in this section, “petroleum supplier” means a petroleum refiner in this state or any person engaged in the wholesale distribution of distillate fuel oil in the State of Oregon. [1981 c.778 s.23; 1983 c.273 s.3; 1987 c.450 s.3; 1989 c.88 s.6; 1993 c.434 s.1; 1993 c.569 s.29; 1995 c.79 s.289]

469.683 Oil-Heated Dwellings Energy Audit Account. (1) There is established, separate and distinct from the General Fund, the Oil-Heated Dwellings Energy Audit Account. Moneys deposited in the account under subsections (2) to (5) of this section shall be used to pay the cost of the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the administrator of the Office of Energy contracts under ORS 469.677.

(2) The Office of Energy shall pay into the State Treasury all assessment moneys received by the Office of Energy under ORS 469.681 during the preceding calendar month. The State Treasurer shall deposit the moneys to the credit of the Oil-Heated Dwellings Energy Audit Account.

(3) The moneys in the Oil-Heated Dwellings Energy Audit Account are continuously appropriated to the Office of Energy for the purpose of:

(a) Paying the cost of information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the administrator contracts under ORS 469.677; and

(b) Providing cash payments to a dwelling owner or contractor for energy conservation measures.

(4) Notwithstanding ORS 293.140, any interest attributable to moneys in the Oil-Heated Dwellings Energy Audit Account shall accrue to that account.

(5) The Office of Energy shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy Audit Account. [1981 c.778 ss.24,25; 1989 c.966 s.55; 1993 c.434 s.2]

(Miscellaneous)

469.685 Use of earlier energy audit. A dwelling owner served by an investor-owned utility, as defined in ORS 469.631, or a publicly owned utility, as defined in ORS 469.649, who applies for financing under the provisions of ORS 316.744, 317.386, 318.090 and 469.631 to 469.687, may use without obtaining a new energy audit an energy audit obtained from an energy supplier under chapter 887, Oregon Laws 1977, or a public utility under chapter 889, Oregon Laws 1977, before November 1, 1981. [1981 c.778 s.30]

469.687 Title for ORS 469.631 to 469.687. ORS 316.744, 317.386, 318.090 and 469.631 to 469.687 shall be known as the Oregon Residential Energy Conservation Act. [1981 c.778 s.1]

ENERGY CONSERVATION PROGRAMS

(Oregon Department of Administrative Services' Provision
of Alternative Fuels to Public Agency or Private Entity)

Note: Sections 1, 2 and 8, chapter 934, Oregon Laws 1999, provide:

Sec. 1. As used in section 2 of this 1999 Act, unless the context requires otherwise:

(1) “Alternative fuel” includes but is not limited to electricity, ethanol, methanol, gasohol and propane or natural gas.

(2) “Alternative fuel fleet vehicle” has the meaning given that term in ORS 469.185.

(3) “Private entity” has the meaning given that term in ORS 383.003.

(4) “Public agency” has the meaning given that term in ORS 537.515. [1999 c.934 s.1]

Sec. 2. (1) When the Oregon Department of Administrative Services determines that alternative fuels are not readily available to a public agency or private entity that operates alternative fuel fleet vehicles, the department may provide alternative fuels to the public agency or private entity.

(2) To implement the authority conferred by this section, the department may:

(a) Enter into agreements with private entities.

(b) Enter into agreements with public agencies pursuant to ORS chapter 190.

(c) Adopt rules.

(d) Without adopting a rule, establish and adjust the prices for which the department will sell alternative fuels.

(3) ORS 190.240 does not apply to an agreement with a public agency under this section.

(4) ORS chapter 279 does not apply to an agreement with a private entity under this section.

(5) The price the department charges for an alternative fuel may not exceed the greater of:

(a) The cost to the department of making the alternative fuel available; or

(b) The reasonable price of the alternative fuel in the private markets near the public agency or private entity.

(6) On sales of alternative fuels to private entities, the department shall collect the taxes that would be due in a transaction between private entities.

(7) When adopting rules under this section, the department may take into account the differences in availability of alternative fuels at reasonably competitive prices in the different geographic regions of the state.

(8) Nothing in this section affects the department's authority under ORS 283.315. [1999 c.934 s.2]

Sec. 8. Sections 1 and 2 of this 1999 Act are repealed December 31, 2003. [1999 c.934 s.8]

(Single Family Residence)

469.700 Energy efficiency ratings; public information; “single family residence” defined. (1) The Building Codes Structures Board, after public hearing, shall adopt a recommended voluntary energy efficiency rating system for single family residences and provide the Office of Energy with a copy thereof.

(2) The rating system shall provide a single numerical value or other simple concise means to measure the energy efficiency of any single family residence, taking into account factors including, but not limited to, the heat loss characteristics of ceilings, walls, floors, windows, doors and heating ducts.

(3) Upon adoption of the rating system under subsections (1) and (2) of this section, the Office of Energy shall publicize the availability of the system, and encourage its voluntary use in real estate transactions.

(4) As used in subsections (1) to (3) of this section, “single family residence” means a structure designed as a residence for one family and sharing no common wall with another residence of any type. [1977 c.413 ss.1,2,3; 1993 c.744 s.113]

(Low Interest Loans)

469.710 Definitions for ORS 469.710 to 469.720. As used in ORS 469.710 to 469.720 and in section 28, chapter 894, Oregon Laws 1981, unless the context requires otherwise:

(1) “Annual rate” means the yearly interest rate specified on the note, and is not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(2) “Commercial lending institution” means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) “Cost-effective” means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) “Dwelling” means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

(5) “Dwelling owner” means the person who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for purchase of real property.

(6) “Energy audit” means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(7) “Energy conservation measures” means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. “Energy conservation measures” does not include the dwelling owner's own labor.

(8) “Finance charge” means the total of all interest, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(9) “Fuel oil dealer” means a person, association, corporation or any other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) “Residential fuel oil customer” means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service for space heating received at the dwelling.

(11) “Space heating” means the heating of living space within a dwelling.

(12) “Wood heating resident” means a person whose primary space heating is provided by the combustion of wood. [1981 c.894 s.22; 1987 c.749 s.5; 1989 c.648 s.69]

469.715 Low interest loans for cost-effective energy conservation; rate. (1) Dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents, shall be eligible for low-interest loans for cost-effective energy conservation measures through commercial lending institutions.

(2) The annual rate shall not exceed six and one-half percent annually for loans provided by commercial lending institutions to dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents for the purpose of financing energy conservation measures pursuant to ORS 469.710 to 469.720. [1981 c.894 ss.23,24; 1987 c.749 s.6]

469.717 When installation to be completed. (1) Installation of the energy conservation measures must be completed within 90 days after receipt of loan funds. The Office of Energy may provide an inspection at the owner's request.

(2) Notwithstanding the provisions of subsection (1) of this section, the Office of Energy may inspect installation of energy conservation measures to verify that all loan or other state subsidy funds have been used for energy conservation measures recommended in the audit, that installation has been performed in a workmanlike manner and that materials used satisfy prevailing industry standards. If requested to do so by the Office of Energy, the dwelling owner shall provide the Office of Energy with copies of receipts and any other documents verifying the cost of energy conservation measures. [1987 c.749 s.3]

469.719 Eligibility of lender for tax credit not affected by owner's failure. Eligibility of the lender for any tax credit under section 28, chapter 894, Oregon Laws 1981, shall not be affected by any dwelling owner's failure to use the loan for qualifying energy conservation measures. [1987 c.749 s.4]

469.720 Energy audit required; permission to inspect required; owner not to receive other incentives. (1) A dwelling owner who is or who rents to a residential fuel oil customer or who is or who rents to a wood heating resident, may not apply for low-interest financing under ORS 469.710 to 469.720 unless:

(a) The dwelling owner, customer or resident has first requested and obtained an energy audit from a fuel oil dealer, a publicly owned utility or an investor-owned utility or from a person under contract with the Office of Energy under ORS 316.744, 317.111, 317.386, 318.090 and 469.631 to 469.687;

(b) The dwelling owner first submits to the Office of Energy written permission to inspect the installations to verify that installation of energy conservation measures has been made;

(c) The dwelling owner presents to the lending institution a copy of the energy audit together with certification that the dwelling in question receives space heating from fuel oil or wood and a copy of the written permission to inspect submitted to the Office of Energy under paragraph (b) of this subsection; and

(d) The dwelling owner does not receive any other state incentives for that part of the cost of the energy conservation measures to be financed by the loan.

(2) Any dwelling owner applying for low-interest financing under ORS 469.710 to 469.720 who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may use without obtaining a new energy audit any assistance and technical advice obtained from an energy supplier before November 1, 1981, under chapter 887, Oregon Laws 1977, or from a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials. [1981 c.894 ss.25,26; 1987 c.749 s.7; 1997 c.249 s.167]

(Public Buildings)

469.730 Declaration of purpose. It is the purpose of ORS 469.730 to 469.745 to promote voluntary measures to conserve energy in public buildings or groups of buildings constructed prior to January 1, 1978, through the adoption of energy conservation standards. [1977 c.853 s.1]

469.735 Definitions for ORS 469.730 to 469.745. As used in ORS 469.730 to 469.745, unless the context requires otherwise:

(1) “Department” means the Department of Consumer and Business Services.

(2) “Director” means the Director of the Department of Consumer and Business Services.

(3) “Public building” means any publicly or privately owned building constructed prior to January 1, 1978, including the outdoor areas adjacent thereto, which:

(a) Is open to and frequented by the public; or

(b) Serves as a place of employment. [1977 c.853 s.2; 1987 c.414 s.154; 1993 c.744 s.114]

469.740 Energy conservation standards for public buildings; bases. In accordance with ORS 183.310 to 183.550 and after consultation with the Building Codes Structures Board and the Office of Energy, the Director of the Department of Consumer and Business Services shall adopt rules establishing energy conservation standards for public buildings. The standards shall provide means of measuring and reducing total energy consumption and shall take into account:

(1) The climatic conditions of the areas in which particular buildings are located; and

(2) The three basic systems comprising any functioning building, which are:

(a) Energized systems such as those required for heating, cooling, lighting, ventilation, conveyance and business equipment operation.

(b) Nonenergized systems such as floors, ceilings, walls, roof and windows.

(c) Human systems such as maintenance, operating and management personnel, tenants and other users. [1977 c.853 s.3; 1987 c.414 s.154a; 1993 c.744 s.115]

469.745 Voluntary compliance program. To provide the public with a guide for energy conservation, the administrator of the Office of Energy shall adopt a program for voluntary compliance by the public with the standard adopted by the Director of the Department of Consumer and Business Services under ORS 469.740. [1977 c.853 s.4; 1987 c.414 s.155]

469.750 State purchase of alternative fuels. (1) Any state agency, board, commission, department or division that is authorized to purchase or otherwise acquire fuel for the systems providing heating, air conditioning, lighting and the supply of domestic hot water for public buildings and grounds may enter into long-term contracts for the purchase of alternative fuels. Such contracts may be for terms not longer than 20 years.

(2) As used in this section:

(a) “Alternative fuels” includes all fuels other than petroleum, natural gas, coal and products derived therefrom. The term includes, but is not limited to, solid wastes or fuels derived from solid wastes.

(b) “Public buildings and grounds” has the meaning given that term in ORS 276.210. [1981 c.386 s.6]

Note: 469.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(State Agency Projects)

469.752 Definitions for ORS 469.752 to 469.756. As used in ORS 469.752 to 469.756, unless the context requires otherwise:

(1) “Office of Energy” means the Office of Energy created under ORS 469.030.

(2) “Project” means a state agency's improvement of the efficiency of energy use through conservation, development of cogeneration facilities or use of renewable resources. “Project” does not include a plan of a state agency to improve the efficiency of energy use in a state rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(3) “Savings” means any reduction in energy costs or net income derived from the sale of energy generated through a project.

(4) “State agency” has the meaning given that term in ORS 278.005. [1991 c.487 s.1; 1993 c.86 s.1; 1995 c.551 s.16]

Note: 469.752 to 469.756 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.754 Authority of state agencies to establish projects; use of savings. (1) State agencies are authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance projects on-site at state owned or state rented facilities. In developing such projects, state agencies shall offer a right of first refusal of two months for conservation and direct use renewable resources and three months for cogeneration and generating renewable resources to each local utility providing utility service to the agency to jointly develop, finance, operate and otherwise act together in the development and operation of such projects. The Office of Energy shall adopt rules to establish the procedure by which the right of first refusal shall be administered. In adopting the rules, the Office of Energy shall insure that the local utility providing utility service to the state agency is entitled to the first right to negotiate with the state agency and that the utility is entitled to match any offer made by any other entity to participate in the project. The Office of Energy also shall adopt procedures that insure that the right to first negotiate and the right to match any offer applies to the sale of electrical or steam output from the project.

(2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings:

(A) A state agency's budget shall not be cut because of savings due to the project; and

(B) A state agency shall retain 50 percent of the net savings to the state agency after any project debt service.

(b) Savings from a project shall be deposited in a revolving fund administered by the state agency.

(3) A state agency shall spend the savings under subsection (2) of this section to increase productivity through:

(a) Energy efficiency projects;

(b) High-tech improvements, such as the purchase or installation of new desk-top or lap-top computers or the linkage of computers into systems or networks; or

(c) Infrastructure improvements.

(4) The moneys credited to the revolving fund may be invested and reinvested as provided in ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or other earnings on moneys in the revolving fund shall be credited to the revolving fund.

(5) The remaining 50 percent of net savings to the state agency after any project debt service shall be deposited in the General Fund.

(6) Nothing in ORS 469.752 to 469.756 authorizes a state agency to sell electricity to an entity other than an investor owned utility, a publicly owned utility, an electric cooperative utility or the Bonneville Power Administration.

(7) Nothing in ORS 469.752 to 469.756 limits the authority of a state agency conferred by any other provision of law, or affects any authority, including the authority of a municipality, to regulate utility service under existing law. [1991 c.487 s.2; 1993 c.86 s.2]

Note: See note under 469.752.

469.756 Rules; technical assistance; evaluations. The Office of Energy in consultation with other state agencies and utilities shall adopt rules, guidelines and procedures that are necessary to establish savings for projects and to implement other provisions of ORS 469.752 to 469.756, including, but not limited to, rules prescribing the procedures to be followed by an agency in negotiating with local utilities to develop agreements suitable for the joint development of projects, and procedures to determine which local utility, if any, shall be chosen to jointly develop the project. The Office of Energy may enter into agreements under ORS chapter 190 with state agencies to provide technical assistance in selecting appropriate projects and to evaluate and determine energy and cost savings. [1991 c.487 s.3]

Note: See note under 469.752.

469.800 [1981 c.49 s.1; renumbered 469.803 in 1999]

PACIFIC NORTHWEST ELECTRIC POWER
AND CONSERVATION PLANNING COUNCIL

469.802 Definition for ORS 469.802 to 469.845. As used in ORS 469.802 to 469.845, “council” means the Pacific Northwest Electric Power and Conservation Planning Council. [1999 c.59 s.141]

469.803 Oregon participation in Pacific Northwest Electric Power and Conservation Planning Council. The State of Oregon agrees to participate in the formation of the Pacific Northwest Electric Power and Conservation Planning Council pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501. Participation of the State of Oregon in the council is essential to assure adequate representation for the citizens of Oregon in decision making to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the Pacific Northwest region of an efficient and adequate power supply and to fulfill the other purposes stated in section 2 of Public Law 96-501. [Formerly 469.800]

469.805 State members of council; confirmation; qualifications. (1) The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the Pacific Northwest Electric Power and Conservation Planning Council for terms of three years.

(2) In making the appointments under subsection (1) of this section, the Governor shall consider but is not limited to:

(a) Prior experience, training and education as related to the duties and functions of the council and the priorities contained in section 4 of Public Law 96-501.

(b) General knowledge of the concerns, conditions and problems of the physical, social and economic environment of the State of Oregon.

(c) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501.

(3) Of the persons appointed under subsection (1) of this section, not more than one member of the Oregon delegation to the council shall reside within the boundary of an area that includes the First and Third Congressional Districts as described in ORS 188.135 and the Portland, Oregon, Standard Metropolitan Statistical Area. [1981 c.49 s.2; 1995 c.156 s.1; 1997 c.249 s.168]

469.810 Conflicts of interest prohibited. (1) A council member, or member of the council member's household, as defined in ORS 244.020, shall not own or have any beneficial interest in any stock or indebtedness of any utility or direct service industry.

(2) A council member, or a member of a council member's household, as defined in ORS 244.020, shall not be a director, officer, agent or employee of any utility or direct service industry.

(3) A council member, or a member of a council member's household, as defined in ORS 244.020, shall not be a director, officer, agent or employee of or hold any proprietary interest in any consulting firm which does business with any utility or direct service industry.

(4) A council member, or a member of the council member's household, as defined in ORS 244.020, shall not receive any compensation from any utility or direct service industry arising out of the member's business, trade or profession.

(5) A council member shall be considered a public official and be subject to the provisions of ORS chapter 244, including the reporting requirements thereof.

(6) A council member shall be a citizen of the United States and have been a resident of the State of Oregon for one year preceding appointment.

(7) A council member shall not hold any other elected or appointed public lucrative office or be principally engaged in any other business or vocation.

(8) As used in this section:

(a) “Beneficial interest” does not include an interest in a pension fund, a mutual fund or an insurance fund.

(b) “Consulting firm” means any corporation, partnership or sole proprietorship whose principal business is providing personal services.

(c) “Utility or direct service industry” means a utility or direct service industry customer that purchases electrical energy directly from the Bonneville Power Administration. [1981 c.49 s.3; 1987 c.566 s.23]

469.815 Status of members; duties; attendance at public meetings; technical assistance. (1) Persons appointed by the Governor and confirmed by the Senate to serve as council members shall be considered to be full-time state public officials. Council members shall perform the duties of members of the council as specified in Public Law 96-501, consistently with the priorities contained in section 4 thereof and as otherwise provided in state law.

(2) If public meetings are held in the State of Oregon, pursuant to section 4(g)(1) of Public Law 96-501, council members must either attend the meeting or otherwise become familiar with the nature and content of the meeting.

(3) A council member may request, and state agencies shall provide, technical assistance to assist the council member in performing the council member's duties. [1981 c.49 s.4]

469.820 Term; reappointment; vacancy. (1) Each council member shall serve a term ending January 15 of the third year following appointment. A council member, except upon removal as provided in ORS 469.830 (2), continues to serve as a member of the council until a successor is appointed and confirmed.

(2) A council member is eligible for reappointment, subject to Senate confirmation, but no member shall serve more than three consecutive terms. A council member who serves 18 months or more of a term shall be considered to have served a full term. However, with respect to the initial term consisting of two years, a council member who serves 12 months or more shall be considered to have served a full term.

(3) Within 30 days of the creation of a vacancy in the position of a council member, the Governor shall appoint a person to serve the succeeding term or the remainder of the unexpired term. However, the Governor need not appoint a person to serve the remainder of the unexpired term if the vacancy occurs within 30 days or less of the expiration of

the term. [1981 c.49 s.5]

469.825 Prohibited activities of members. (1) A person who has been a council member shall not engage in any of the activities prohibited by ORS 469.810 (2) and (3), within one year after ceasing to be a council member.

(2) A person who has been a council member shall not appear as a representative of any party on any matter before the council within three years after ceasing to be a council member.

(3) A person who has been a council member shall not represent, aid, counsel, consult or advise for financial gain any person on any matter before the council within three years after ceasing to be a council member.

(4) A person who has been a council member shall not appear for financial gain as a representative of or aid, counsel or advise any party before the council or the Bonneville Power Administration or communicate with the council or the Bonneville Power Administration with the intent to influence the outcome of any decision on any matter in which the council member was substantially and personally involved while on the council.

(5) Notwithstanding the status of council members as state officers, the provisions of 18 U.S.C. 207 relating to post-employment activities shall be considered to be state law in so far as they do not conflict therewith, applicable to council members appointed pursuant to ORS 469.802 to 469.845 and 469.990 (3), regardless of the salary paid to the council members.

(6) Subsections (2) to (5) of this section shall not apply to any appearance, attendance, communication or other action on behalf of the State of Oregon; nor shall subsections (2) to (5) of this section apply to an appearance or communication made in response to a subpoena. [1981 c.49 s.6]

469.830 Removal of members; grounds; procedure. (1) Council members shall serve at the pleasure of the Governor, except as provided in subsection (2) of this section.

(2) The Governor shall remove a council member for the following causes:

(a) Failure to attend three consecutive council meetings except for good cause.

(b) Conviction of a felony.

(c) Violation of ORS chapter 244.

(d) Violation of ORS 469.810.

(3) Before removal of a council member by the Governor, the council member shall be given a written statement of the reasons for removal and, upon request by the member, an opportunity to be heard publicly on such reasons before the Governor. A copy of the statement of reasons and a transcript of the record of the hearing shall be filed with the Secretary of State. [1981 c.49 s.7]

469.835 Salary of members; staff. (1) Each council member shall receive a salary not to exceed the salary of a member of the Public Utility Commission, or the maximum salary authorized under section 4(a)(3) of Public Law 96-501.

(2) Each council member is entitled to appoint one secretarial staff assistant who shall be in the unclassified service. [1981 c.49 s.8; 1989 c.171 s.64]

469.840 Northwest Regional Power and Conservation Account; uses. (1) There is established a Northwest Regional Power and Conservation Account. Moneys received pursuant to Public Law 96-501 shall be placed in the account.

(2) The account created by subsection (1) of this section is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commission, the Office of Energy, the State Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action. [1981 c.49 s.9; 1987 c.158 s.99]

469.845 Annual report to Governor and legislature. Council members shall prepare a report which shall be presented to the Governor and to the President of the Senate and the Speaker of the House of Representatives of the Legislative Assembly on October 1 of each year. The report shall include a review of the council's actions during the prior year. [1981 c.49 s.10]

COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAM

469.860 Definitions for ORS 469.860 to 469.900. (1) As used in ORS 469.865 to 469.875, 469.900 (1) and (2)

and subsection (2) of this section:

(a) “Commercial building” means a public building as defined in ORS 456.746.

(b) “Commission” means the Public Utility Commission.

(c) “Conservation services” means providing energy audits or technical assistance for energy conservation measures as part of a program approved under ORS 469.860 to 469.900.

(d) “Electric utility” means a public utility, as defined in ORS 757.005, which produces, transmits, delivers or furnishes electric power and is regulated by the commission under ORS chapter 757.

(e) “Energy conservation measure” means a measure primarily designed to improve the efficiency of energy use in a commercial building. “Energy conservation measures” include, but are not limited to, improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(2) As used in ORS 469.865 and 469.900 (2), “gas utility” means a public utility, as defined in ORS 757.005, which delivers or furnishes natural gas to customers for heat, light or power.

(3) As used in ORS 469.880 to 469.895 and 469.900 (3):

(a) “Commercial building” means a public building as defined in ORS 455.560.

(b) “Conservation services” has the meaning given in subsection (1) of this section.

(c) “Energy conservation measure” has the meaning given in subsection (1) of this section.

(d) “Publicly owned utility” means an electric utility owned or operated, in whole or in part, by a municipality, cooperative association or people's utility district. [1981 c.708 ss.1,7,13]

Note: 469.860 (1) and (2) and 469.863 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.863 Gas utility to adopt commercial energy audit program. (1) Within 365 days after November 1, 1981, the Public Utility Commission shall adopt rules governing energy conservation programs provided by gas utilities under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building.

(2) Within 180 days after the effective date of the rules adopted by the commission under subsection (1) of this section, each gas utility shall present for the commission's approval a commercial energy audit program which shall, to the commission's satisfaction:

(a) Make information about energy conservation measures available to any commercial building customer of the gas utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the gas utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the recommended energy conservation measure; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section. [1981 c.708 s.8]

Note: See note under 469.860.

469.865 Electric utility to adopt commercial energy conservation services program. (1) Within 180 days after the adoption of the rules by the Public Utility Commission under section 2, chapter 708, Oregon Laws 1981, each electric utility shall present for the commission's approval a commercial energy conservation services program which shall, to the commission's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the electric utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the electric utility, upon request, an on-site energy audit of the

customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the electric utility. [1981 c.708 s.3]

469.870 Application of ORS 469.865, 469.870 and 469.900 (1) to electric utility. ORS 469.865, 469.900 (1) and this section shall not apply to an electric utility if the Public Utility Commission determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections. [1981 c.708 s.4]

469.875 Fee for gas utility audit. The Public Utility Commission shall determine whether the gas utility may charge a reasonable fee to the customer for the energy audit service and, if so, the fee amount. [1981 c.708 s.9]

469.878 Alternative fuels program. (1) An investor-owned utility may offer cash payments to assist the utility's commercial and industrial customers in purchasing a facility as defined in ORS 469.185, including but not limited to an alternative fuel vehicle refueling station. The utility may pay the customer the present value to the utility of the tax credit to which the customer would be entitled under ORS 469.185 to 469.225.

(2) As used in this section, “cash payment” and “investor-owned utility” have the meanings given those terms in ORS 469.631. [1991 c.711 s.6; 1993 c.18 s.123; 1995 c.746 s.18a; 1999 c.623 s.8; 1999 c.765 s.6]

469.880 Energy audit program. Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The administrator shall adopt rules governing the commercial energy audit program established under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. [1981 c.708 s.14; 1987 c.158 s.100]

469.885 Publicly owned utility to adopt commercial energy audit program; fee. (1) Within 180 days after the adoption of rules by the administrator of the Office of Energy under ORS 469.880, each publicly owned utility shall present for the administrator's approval a commercial energy audit program which shall, to the administrator's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the publicly owned utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section.

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 ss.15,16]

469.890 Publicly owned utility to adopt commercial energy conservation program; fee. (1) Within 365 days after November 1, 1981, the administrator of the Office of Energy shall adopt rules governing energy conservation programs prescribed by ORS 469.895, 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the administrator, each covered publicly owned utility shall present for the administrator's approval a commercial energy conservation services program which shall, to the administrator's satisfaction:

(a) Make information about energy conservation available to all commercial building customers of the covered publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the covered publicly owned utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of energy

conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the covered publicly owned utility.

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 ss.18,19]

469.895 Application of ORS 469.890 to 469.900 to publicly owned utility. (1) ORS 469.890, 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890, 469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

(2) ORS 469.890, 469.900 (3) and this section shall not apply to a covered publicly owned utility if the administrator of the Office of Energy determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the administrator shall publish a list identifying each covered publicly owned utility to which ORS 469.890, 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c.708 s.17]

469.900 Duty of commission to avoid conflict with federal requirements. (1) The Public Utility Commission shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

(2) The commission shall insure that each gas utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to gas utilities and energy conservation in commercial buildings.

(3) The administrator of the Office of Energy shall insure that each covered publicly owned utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to covered publicly owned utilities and energy conservation in commercial buildings. [1981 c.708 ss.5,10,20]

Note: 469.900 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

469.930 Northwest Interstate Compact on Low-Level Radioactive Waste Management. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is enacted into law by the State of Oregon and entered into with all other jurisdictions lawfully joining therein in a form as provided for as follows:

ARTICLE I

Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this

compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II

Definitions

As used in this compact:

(1) “Facility” means any site, location, structure or property used or to be used for the storage, treatment or disposal of low-level waste, excluding federal waste facilities.

(2) “Low-level waste” means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) “Generator” means any person, partnership, association, corporation or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) “Host state” means a state in which a facility is located.

ARTICLE III

Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state.

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon.

(3) Authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state.

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

(6) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

ARTICLE IV

Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such

certificate shall be in such form as may be required by the host state and shall contain at least the following:

(a) The generator's name and address;

(b) A description of the contents of the low-level waste container;

(c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and

(d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in the region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V

Northwest Low-Level Waste Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI

Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this Article any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a

statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

ARTICLE VII

Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c.497 s.1]

469.935 [1981 c.497 s.3; repealed by 1997 c.632 s.14]

469.950 Authority to enter into interstate cooperative agreements to control power costs and rates. The State of Oregon shall pursue and may enter into an interstate cooperative agreement with the states of Washington, Idaho and Montana for the purpose of making collective efforts to control Bonneville Power Administration wholesale power costs and rates by studying and developing a region-wide response to:

(1) Federal attempts to increase arbitrarily the interest rates on federal funds previously used to build public facilities in the Pacific Northwest.

(2) Federal initiatives to sell the Bonneville Power Administration.

(3) Bonneville Power Administration rate increase and budget expenditure proposals in excess of their actual needs.

(4) Regional uses of surplus firm power, including uses by existing or newly attracted Pacific Northwest industries, to provide long-term use of the surplus for job development.

(5) Power transmission intertie access. [1985 c.780 s.1]

Note: 469.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

469.990 Penalties. (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, willfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2)(a) Willful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine of not more than $10,000 or imprisonment for up to one year, or both, for each offense.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is a Class A violation.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c.606 s.20; subsection (3) enacted as 1981 c.49 s.11; 1999 c.1051 s.185]

469.991 [1989 c.926 s.40; 1991 c.67 s.142; repealed by 1999 c.880 s.2]

469.992 Civil penalties. (1) The administrator of the Office of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of an Office of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than $25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of $50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than $100 per day nor more than $1,000 per day may be assessed by the

administrator or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the administrator pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than $25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 may be assessed by the circuit court upon complaint of any person injured by the violation. [Formerly 453.994; 1977 c.794 s.17; 1981 c.707 s.13; 1983 c.273 s.4; 1987 c.158 s.101; 1989 c.6 s.12; 1991 c.480 s.8; 1999 c.385 s.13; 1999 c.1051 s.309]

Note: The amendments to 469.992 by section 17, chapter 653, Oregon Laws 1991, become operative when the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. See section 18, chapter 653, Oregon Laws 1991. The text of 469.992 that would become operative upon an exemption or change, including amendments by section 14, chapter 385, Oregon Laws 1999, and section 310, chapter 1051, Oregon Laws 1999, is set forth for the user's convenience.

469.992. (1) The administrator of the Office of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of an Office of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than $25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of $50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than $100 per day nor more than $1,000 per day may be assessed by the administrator or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the administrator pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than $25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 or section 14, chapter 653, Oregon Laws 1991, may be assessed by the circuit court upon complaint of any person injured by the violation.

Note: Section 18, chapter 653, Oregon Laws 1991, provides:

Sec. 18. Sections 12 to 16 of this Act and the amendments to ORS 469.992 by section 17 of this Act do not become operative until the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. [1991 c.653 s.18]

469.994 Civil penalty when contractor certificate revoked. (1) The administrator of the Office of Energy may impose a civil penalty against a contractor if a contractor certificate is revoked under ORS 469.180. The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 or 317.115 to the contractor or to purchasers of the system for which a contractor's certificate has been revoked.

(2) The Office of Energy may not collect any of the amount of a civil penalty imposed under subsection (1) of this section from a purchaser of the system for which the final certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469.180 (3) to collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's fraud or misrepresentation under ORS 469.180 (1)(a).

(3) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(4) A penalty recovered under this section shall be paid into the State Treasury and credited to the General Fund and is available for general governmental expenses. [1981 c.894 s.8; 1983 c.346 s.5; 1989 c.706 s.18; 1989 c.880 s.13a; 1991 c.734 s.38; 1997 c.534 s.13]