Chapter 470

2009 EDITION

Small Scale Local Energy Projects

DEFINITIONS

470.050 Definitions

SMALL SCALE LOCAL ENERGY LOAN PROGRAM

(General Provisions)

470.060 Application for financing; content; fee

470.065 Confidentiality of information provided by or on behalf of applicant

470.070 Small Scale Local Energy Project Advisory Committee

470.080 Standards for small scale local energy projects; rules; review of applications; referral to committee; committee criteria

470.090 Approval or rejection of project financing by director; certification of amount of loan; findings; notice

470.100 Committee review of rejection or approval in different amount; committee appeal to Governor; finality of Governor's action

470.110 Gifts credited to Small Scale Local Energy Project Loan Fund

470.120 Limit on loan to amount not funded by other sources

470.130 Appropriation of Small Scale Local Energy Project Loan Fund

470.135 Administration of small scale local energy project loan program funds and accounts

470.140 Rulemaking authority; biennial report

470.145 State Department of Energy to develop marketing plan

(Loans and Repayment)

470.150 Loan contract; security; content

470.155 Loan contract in form of intergovernmental agreement; provisions

470.160 Payment from loan funds

470.170 Security for loan

470.180 Withholding of state funds due to municipal corporation that defaults on loan

470.190 Remedies

470.200 Refinancing of project; use of funds

470.210 Municipal corporation may enter into loan contract; purchase of municipal corporation's general or revenue obligation

(Bonds)

470.220 Issuance of bonds

470.225 Procedure for bond issuance

470.230 Bond proceeds credited to Small Scale Local Energy Project Loan Fund; use of funds

470.240 General obligation bonds to include promise to pay principal amount

470.270 General obligation refunding bonds

470.280 General obligation bond repayment from sinking fund

470.290 Bond indebtedness limited to constitutional limit

470.300 Small Scale Local Energy Project Administration and Bond Sinking Fund; uses; sources

470.310 Procedure if sinking fund inadequate

ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY LOAN PROGRAM

(Loan Program Administration)

470.500 Goals

470.505 Delay or suspension of program

470.510 State Department of Energy may enter contracts for loan issuance; financing of loans; consent of utility

470.515 Rules

470.520 State Department of Energy may contract for performance of duties

470.525 Quarterly report

(Project Managers)

470.530 Qualifications; duties; certification program; sustainable energy territories

470.535 Applications for certification as project manager; selection factors

470.540 State Department of Energy to notify unsuccessful applicants; timetable for certification of project manager

470.545 Appeal of certification decision; fee

470.550 Term of certification of project manager; certification approval letter; conditions for termination of certification

470.555 Investor-owned electric utilities and consumer-owned utilities as project managers; contract with qualified third parties; coordination

(Contractors)

470.560 Rules; certification standards; provision for preferred service providers

470.565 Loan applicant request for energy savings projection; processing of loan applications

(Funds)

470.570 Energy Project Supplemental Fund; sources; uses

470.575 Loan Offset Grant Fund; sources; uses

470.580 Energy Project Bond Loan Fund; sources; uses

470.585 Energy Revenue Bond Repayment Fund; uses

(Financial Managers)

470.590 Proposals; selection

470.595 Investment with financial manager; rate of return

(Supplemental Capital Funds)

470.600 State Department of Energy may enter agreements to disburse supplemental capital funds; conditions

(Local Governments)

470.605 Local governments may direct moneys to certain funds to finance loans; accounting of moneys

(Bonds)

470.610 Issuance of bonds; written declaration of State Department of Energy

470.615 Payment of bonds

470.620 Bond pledges; trustees

(Program Loans)

470.630 Form of disbursement; conditions for issuance

470.635 Requirement for energy savings projection; form of projection; use of certified contractors

470.640 Amount of loans

470.645 Application for loan; contents

470.650 Residential small scale local energy projects; weatherization program

(Fees)

470.655 Project initiation fee; rules

(On-Bill Financing)

470.660 Investor-owned utilities; requirements of system; rules; waiver

470.665 Consumer-owned utilities; requirements of system; rules; waiver

470.670 Repayment requirement for customer served by electric utility and gas utility

470.675 Cost eligibility for ratemaking purposes; loan repayment charges; change in property ownership benefited by loan

(Repayment and Liens)

470.680 State Department of Energy to identify forms of acceptable security

470.685 Recording liens; foreclosure of liens; attorney fees and costs

470.690 Avoidance of foreclosure

470.695 Sale of real property; notice of loan repayment charge required

(Loan Offset Grants)

470.700 Use of loan offset grant moneys; alternate mechanisms

(Miscellaneous)

470.710 Apprenticeship and job training

470.715 Costs of adopting rules

(Temporary provisions relating to pilot programs, on-bill financing and delay of energy efficiency and sustainable technology loan program are compiled as notes following ORS 470.715)

DEFINITIONS

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

(1) "Alternative fuel project" means:

(a) Equipment, including vehicles that are not used primarily for personal, family or household purposes, that is modified or acquired directly from a factory and that:

(A) Uses an alternative fuel including electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy; and

(B) Produces lower exhaust emissions or is more energy efficient than equivalent equipment fueled by gasoline or diesel; and

(b) A facility, including a fueling station, or equipment necessary to produce alternative fuel or operate equipment that uses an alternative fuel.

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

(3) "Base efficiency package" means the package of energy efficiency upgrades or renewable energy projects for a property that, when energy savings, project repayment costs, tax or other incentives, loan offset grants and other relevant economic factors are considered, is estimated to not increase the utility bill of the customer over the loan repayment term.

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

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

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

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

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

(9) "Energy efficiency and sustainable technology loan" means a loan for a small scale local energy project that is repayable by means of:

(a) A charge included with the participant's utility customer account billing; or

(b) An alternative repayment method identified by the department and the borrower and specified in the loan agreement.

(10) "Energy Project Bond Loan Fund" means the fund established under ORS 470.580.

(11) "Energy Project Supplemental Fund" means the fund established under ORS 470.570.

(12) "Energy Revenue Bond Repayment Fund" means the fund established under ORS 470.585.

(13) "Energy savings projection" means an examination of the energy performance and site characteristics of a property that, at a minimum, identifies:

(a) A base efficiency package; and

(b) Any additional optional measures that a customer is able to repay and that the sustainable energy project manager believes to be feasible for the site.

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

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

(16) "Loan offset grant" means moneys from the Loan Offset Grant Fund that are used to help offset the initial project costs or loan payments for energy efficiency, renewable energy and energy conservation projects.

(17) "Loan Offset Grant Fund" means the fund established under ORS 470.575.

(18) "Loan repayment charge" means an amount charged to a utility customer account through on-bill financing as a mechanism for the repayment of an energy efficiency and sustainable technology loan.

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

(20) "On-bill financing" means a mechanism for collecting the repayment of an energy efficiency and sustainable technology

loan through a utility customer account billing system.

(21) "Optional package" means measures for promoting energy efficiency or the use of renewable energy:

(a) That are in addition to the measures described in the customer's base efficiency package;

(b) For which a customer has the ability to repay; and

(c) That the sustainable energy project manager believes to be feasible for the site.

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

(23) "Public Purpose Fund Administrator" means the entity designated by the Public Utility Commission to administer moneys collected by a company through the public purpose charge described under ORS 757.612.

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

(25) "Small business" means:

(a) An Oregon business that is:

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

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

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

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

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

(26) "Small scale local energy program loan" means a loan for a small scale local energy project other than an energy efficiency and sustainable technology loan.

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

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

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

(c) A recycling project;

(d) An alternative fuel project;

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

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

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

(h) A project described in paragraphs (a) to (g) of this subsection that conserves energy or produces energy by generation or by processing or collection of a renewable resource.

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

(29) "Small Scale Local Energy Project Loan Fund" means the loan fund created by Article XI-J of the Oregon Constitution and appropriated to the State Department of Energy under ORS 470.130.

(30) "Sustainable energy project manager" means the organization responsible for promoting the energy efficiency and sustainable technology loan program and related incentives for energy efficiency and renewable energy at the neighborhood and community level.

(31) "Sustainable energy territory" means the geographic service area that a sustainable energy project manager is responsible for serving. [1979 c.672 §1; 1981 c.50 §1; 1983 c.188 §1; 1985 c.593 §2; 1993 c.496 §4; 1995 c.551 §8; 1997 c.29 §1; 1999 c.365 §7; 2003 c.186 §55; 2005 c.201 §3; 2009 c.753 §54; 2009 c.760 §1]

SMALL SCALE LOCAL ENERGY LOAN PROGRAM

(General Provisions)

470.060 Application for financing; content; fee. (1) The following may file with the State Department of Energy an application to obtain moneys for a small scale local energy project as provided in this chapter:

(a) An individual who is an Oregon resident;

(b) An Oregon business;

(c) A nonprofit or public cooperative;

(d) A nonprofit corporation;

(e) An eligible federal agency;

(f) An eligible state agency;

(g) A public corporation created by this state;

(h) An intergovernmental entity created pursuant to an intergovernmental agreement under ORS 190.003 to 190.130;

(i) A special district;

(j) A local improvement district; or

(k) A municipal corporation.

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

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

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

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

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

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

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

(3) If the application is for a loan other than an energy efficiency and sustainable technology loan to an individual, a fee of one-tenth of one percent of the amount of the loan applied for or $2,500, whichever is less, shall be submitted with each application. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed the application fee and which the Director of the State Department of Energy determines are incurred solely in connection with processing the application. The applicant shall be advised of any additional costs the applicant must pay before the costs are incurred. [1979 c.672 §2; 1981 c.50 §2; 1983 c.188 §2; 1985 c.593 §3; 1997 c.29 §2; 2005 c.201 §4; 2009 c.753 §55]

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

(a) Personal financial statements;

(b) Financial statements of applicants;

(c) Customer lists;

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

(e) Production, sales and cost data;

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

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

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

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

470.070 Small Scale Local Energy Project Advisory Committee. (1) The Director of the State Department of Energy shall appoint a Small Scale Local Energy Project Advisory Committee to review applications made under ORS 470.060 and rules adopted under ORS 470.080, other than applications for energy efficiency and sustainable technology loans, and make recommendations regarding those applications to the director.

(2) Nine members shall be appointed to the Small Scale Local Energy Project Advisory Committee. Each member shall be ap-

pointed to serve a four-year term, commencing on the date of appointment, and until a successor is appointed and qualified. The members shall represent the interest of the citizens of this state and shall be knowledgeable in the areas of small scale energy technology, natural resource development, environmental protection, finance, agriculture, local government operations and utility operations. At least three members shall reside outside the Willamette Valley.

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

(4) Members of the Small Scale Local Energy Project Advisory Committee shall be entitled to expenses as provided by ORS 292.495. [1979 c.672 §3; 1987 c.365 §1; 2003 c.186 §56; 2009 c.753 §56; 2009 c.760 §2]

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

(2) All applications submitted under ORS 470.060 shall be reviewed by the State Department of Energy. The department may request that the applicant submit additional information or revise the application. The department shall:

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

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

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

(4) The committee may provide for direct referral of an application by the department to the director if the application meets criteria established by the committee. [1979 c.672 §4; 1981 c.50 §3; 1997 c.29 §3; 2003 c.186 §57; 2009 c.753 §57]

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

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

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

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

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

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

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

(e) The applicant is qualified, creditworthy and responsible and is willing and able to enter into a contract with the director for development and repayment as provided in ORS 470.150 or 470.645;

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

the working capital to maintain the project after completion;

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

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

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

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

(3) The director shall notify the applicant and the presiding officer of the committee of the director's action and of the reasons for that action. The director shall inform the applicant of the review procedure established in ORS 470.100. [1979 c.672 §5; 1981 c.50 §4; 1981 c.565 §4; 1983 c.188 §3; 2003 c.186 §58; 2005 c.201 §6; 2009 c.753 §58]

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

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

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

(4) The decision of the Governor is final. If the Governor fails to act within 30 days after receiving the appeal, the appeal shall be considered to be denied.

(5) Notwithstanding ORS chapter 183, a decision of the director or the Governor on an application for financing under ORS 470.090 or this section is not subject to judicial review. [1979 c.672 §6; 2003 c.186 §59; 2009 c.753 §59]

470.110 Gifts credited to Small Scale Local Energy Project Loan Fund. The Director of the State Department of Energy may accept gifts of money or other property from any source, given for the purposes of ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210. Money so received shall be paid into the Small Scale Local Energy Project Loan Fund. Money or other property so received shall be used for the purposes for which received. [1979 c.672 §12; 2003 c.186 §60; 2009 c.753 §60]

470.120 Limit on loan to amount not funded by other sources. If the applicant receives from any source other than the Small Scale Local Energy Project Loan Fund, the Energy Project Supplemental Fund or the Energy Project Bond Loan Fund any moneys to assist in the development of the project, the amount of the loan to the applicant from the Small Scale Local Energy Project Loan Fund, Energy Project Supplemental Fund or Energy Project Bond Loan Fund shall be limited to that amount necessary for the development of those portions of the project not funded by other sources. [1979 c.672 §15; 2009 c.753 §61]

470.130 Appropriation of Small Scale Local Energy Project Loan Fund. All moneys in the Small Scale Local Energy Project Loan Fund created by Article XI-J of the Oregon Constitution are appropriated continuously to the State Department of Energy and shall be used for the purposes authorized under this chapter. [1979 c.672 §16; 2003 c.186 §61; 2009 c.753 §62]

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

470.140 Rulemaking authority; biennial report. (1) In accordance with the applicable provisions of ORS chapter 183, the Director of the State Department of Energy

may adopt rules considered necessary to carry out the purposes of this chapter.

(2) The director shall submit to the Legislative Assembly and the Governor a biennial report of the transactions of the Small Scale Local Energy Project Loan Fund and the Small Scale Local Energy Project Administration and Bond Sinking Fund in such detail as will accurately indicate the condition of the funds. [1979 c.762 §§13,27; 2003 c.186 §63; 2009 c.753 §63]

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

(Loans and Repayment)

470.150 Loan contract; security; content. Except as provided in ORS 470.155 and 470.170, if the Director of the State Department of Energy approves the financing of a small scale local energy project, the director, on behalf of the state, and the applicant may enter into a loan contract, secured by a first lien or by other good and sufficient collateral in the manner provided in ORS 470.155 to 470.210. For purposes of this section, the interest of the State Department of Energy under a lease purchase contract entered into with an eligible federal or state agency or a municipal corporation may constitute good and sufficient collateral. The contract:

(1) May provide that the director, on behalf of the state, must approve the arrangements made by the applicant for the development, operation and maintenance of the small scale local energy project, using moneys in the Small Scale Local Energy Project Loan Fund for the project development.

(2) Shall provide a plan for repayment by the applicant of moneys borrowed from the loan fund used for the development of the small scale local energy project and interest on those moneys used at a rate of interest the director determines is necessary to provide adequate funds to recover the administrative expenses incurred in connection with the loan. The director shall set the interest rate at an incremental rate above the interest rate on the underlying bonds in an amount sufficient to recover all program-related costs including, but not limited to, implementation, financing, administration and promotional costs for the program. The incremental rate for projects proposed by an eligible federal agency shall be greater than the incremental rate charged to any other governmental borrower. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for project development and interest thereon not later than two years after the date of the loan contract or at any other time as the director may provide. In addition to any other prepayment option provided in a borrower's loan agreement, the department shall provide a borrower the opportunity to prepay the borrower's loan, without any additional premium, by defeasing such loan to the call date of the bond or bonds funding the applicable loan, or any refunding bonds linked to the loan, but such defeasance shall occur only if the director finds that after the defeasance, the sinking fund will have sufficient funds to make payments required under ORS 470.300 (1).

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

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

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

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

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

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

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

(6) May provide that the director may institute an appropriate action or suit to prevent use of the project financed by the loan fund by any person who is delinquent in the repayment of any moneys due the sinking fund.

(7) If the project is being financed by an energy efficiency and sustainable technology loan or small scale local energy program loan, in addition to the requirements of subsections (1) to (6) of this section, shall include:

(a) For an energy efficiency and sustainable technology loan that relies on an on-bill financing system for the collection of a loan repayment charge, an agreement by the applicant to notify a person acquiring ownership of, or an interest in, the property from the applicant that the loan repayment charge will be transferred to the utility customer account of the person acquiring the ownership or interest unless the loan is discharged before or at the time the ownership or interest transfers;

(b) A plainly worded acknowledgment by the applicant that failure to make payments as required under the loan agreement may result in the foreclosure of a property lien or other debt collection actions;

(c) A waiver stating that the applicant waives any jurisdictional or other irregularities or defects in:

(A) The energy efficiency and sustainable technology loan program;

(B) A small scale local energy project;

(C) The small scale local energy program loan provisions;

(D) This chapter; or

(E) Department rules that relate in any way to the loan repayment charge, real property lien provisions or any form or combination of loan security or to the requirement to satisfy the loan obligation;

(d) If the applicant is not the owner of the property to be burdened by the loan repayment charge, fixture filing or real property lien, provision for participation by the property owner as a party to the contract or a notarized authorization by the owner for the fixture filing and lien; and

(e) A description of any other conditions required by the department. [1979 c.672 §7; 1985 c.593 §4; 1987 c.365 §2; 1997 c.29 §4; 1997 c.482 §1; 1999 c.365 §8; 2003 c.186 §64; 2009 c.753 §64]

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

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

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

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

470.160 Payment from loan funds. If the Director of the State Department of Energy approves a loan for a small scale local energy project, the State Treasurer shall pay moneys for such project from the Small Scale Local Energy Project Loan Fund or Energy Project Bond Loan Fund in accordance with the terms of the loan contract, as prescribed by the director. [1979 c.672 §8; 2003 c.186 §65; 2009 c.753 §65]

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

(b) To the extent consistent with any declaration, pledge or agreement for bonds issued under ORS 470.220 to 470.290, an energy efficiency and sustainable technology loan shall be secured as provided in ORS 470.680 or 470.685.

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

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

(4) Upon payment of all amounts loaned to an applicant pursuant to this chapter, the

director shall file a satisfaction or release notice that indicates repayment of the loan.

(5) The director may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less the director's expenses incurred in foreclosing, into the Small Scale Local Energy Project Administration and Bond Sinking Fund if the loan was issued from the Small Scale Local Energy Project Loan Fund, or into the Energy Project Bond Loan Fund if the loan was from the Energy Project Bond Loan Fund. In a foreclosure proceeding the director may bid on property offered for sale in the proceedings and may acquire title to the property on behalf of the state.

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

(7) The director may settle, compromise or release, for reasons other than uncollectibility as provided in ORS 293.240, all or part of any loan obligation so long as the director's action is consistent with the purposes of this chapter and does not impair the ability to pay the administrative expenses of the State Department of Energy or the obligations of any bonds then outstanding. [1979 c.672 §9; 1981 c.50 §5; 1983 c.188 §4; 1987 c.365 §3; 1999 c.365 §9; 2001 c.584 §10; 2003 c.186 §66; 2009 c.753 §66]

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

470.190 Remedies. If an applicant fails to comply with a contract entered into with the Director of the State Department of Energy for development and repayment as provided in ORS 470.150 or 470.645, the director, in addition to remedies provided in ORS 470.170 and 470.180, may seek other appropriate legal remedies to secure the loan and may contract as provided in ORS 470.150 with any other person for continuance of development and for repayment of moneys from the Small Scale Local Energy Project Loan Fund or from the Energy Project Bond Loan Fund used therefor and interest thereon. [1979 c.672 §11; 2003 c.186 §67; 2009 c.753 §67]

470.200 Refinancing of project; use of funds. If any small scale local energy project is refinanced or an additional grant or loan intended to finance the project development is obtained from other sources after the execution of the loan from the state, all such funds shall be used to repay the state unless the Director of the State Department of Energy finds that repayment of the state from the additional grant or loan would be contrary to public interest. [1979 c.672 §14; 1983 c.188 §5]

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

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

(Bonds)

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

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

470.230 Bond proceeds credited to Small Scale Local Energy Project Loan Fund; use of funds. Except as provided in ORS 470.270, all moneys obtained from the sale of general obligation bonds under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution shall be credited by the State Treasurer to the Small Scale Local Energy Project Loan Fund. Those moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution, including payment of the costs of issuing the bonds and of obtaining credit enhancement for the bonds, and making payments of in-

terest on bonds issued pursuant to the provisions of ORS 470.220 to 470.290 if there are insufficient funds in the Small Scale Local Energy Project Administration and Bond Sinking Fund to make the payments referred to in ORS 470.300 (1). Moneys loaned to municipal corporations but withheld by the State Department of Energy for security or to pay for future project costs may remain in the loan fund. Pending the use of the moneys in the loan fund for the proper purposes, the moneys may be invested in the manner provided by law. [1979 c.672 §18; 1987 c.365 §5; 2003 c.186 §69; 2005 c.201 §9; 2009 c.753 §68]

470.240 General obligation bonds to include promise to pay principal amount. All general obligation bonds issued under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution shall contain a direct promise of the State of Oregon to pay the principal amount of the bonds, plus any accrued interest and any redemption premium. The principal of and the interest and redemption premium, if any, upon the bonds, when due, shall be paid at the fiscal agency of the State of Oregon. The charges imposed by that agency for its services shall be paid, upon approval by the State Treasurer, from the Small Scale Local Energy Project Administration and Bond Sinking Fund. [1979 c.672 §19; 1993 c.496 §5; 2005 c.201 §10; 2009 c.753 §69]

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

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

470.270 General obligation refunding bonds. (1) After consultation with the State Treasurer, the Director of the State Department of Energy may issue general obligation refunding bonds for the purpose of refunding outstanding bonds issued under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution. The refunding bonds may be sold in the same manner as other bonds are sold under ORS 470.220 to 470.290. All moneys obtained from the sale of refunding bonds shall be credited by the State Treasurer to the Small Scale Local Energy Project Administration and Bond Sinking Fund. The refunding bonds may be issued to refund bonds previously issued for refunding purposes. Pending the use of moneys obtained from the sale of refunding bonds for proper purposes, such moneys may be invested in the manner provided by law.

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

(3) The department shall pursue opportunities for refunding bonds to reduce interest sums payable by the department. When the department refunds a bond with tax-exempt bonds, the department shall share, on an equitable basis, the savings from any refunding with the borrowers whose loans were made with the proceeds of the refunded bonds in an amount consistent with a finding by the director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300 (1). The department may not refund tax-exempt bonds with taxable bonds, unless the department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds. At least 120 days before the date on which the department intends to issue refunding bonds, the director shall notify each borrower whose loan was made from the proceeds of the bonds being refunded and shall offer the borrower the opportunity to prepay the borrower's loan. A borrower shall respond within 60 days of the date of the notice described in this subsection if the borrower intends to prepay the borrower's loan. [1979 c.672 §22; 1995 c.282 §1; 1997 c.482 §2; 2003 c.186 §72; 2005 c.201 §11; 2009 c.753 §70]

470.280 General obligation bond repayment from sinking fund. (1) The State Treasurer shall make payment of the principal of and the interest and redemption premium, if any, on any general obligation bond issued under ORS 470.220 to 470.290 from the Small Scale Local Energy Project Administration and Bond Sinking Fund.

(2) The State Treasurer shall compute and determine in January of each year, after the sale of bonds under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution, the amount of principal, interest and redemption premiums that will fall due during the year on bonds then outstanding and unpaid and shall maintain or hold in the sinking fund sufficient moneys to pay such maturing obligations. [1979 c.672 §§21,24; 2005 c.201 §12; 2009 c.753 §71]

470.290 Bond indebtedness limited to constitutional limit. No bonds shall be issued or sold under ORS 470.220 to 470.290 nor indebtedness incurred thereunder, which singly, or in the aggregate with previous debts or liabilities incurred for small scale local energy projects, shall exceed any limitation provided in the Oregon Constitution

at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under ORS 470.220 to 470.290 exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 470.220 to 470.290 in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1979 c.672 §25]

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

(a) Administrative expenses of the State Department of Energy and the Director of the State Department of Energy in processing applications, investigating potential small scale local energy projects and proposed loans and servicing and collecting outstanding loans made from the Small Scale Local Energy Project Loan Fund, if the expense is not paid directly by the applicant.

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

(c) Principal, interest and redemption premium, if any, of all bonds issued pursuant to the provisions of ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution.

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

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

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

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

(b) Repayment of moneys loaned to applicants from the Small Scale Local Energy Project Loan Fund, including interest on such moneys.

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

(d) Moneys obtained from the sale of refunding bonds under ORS 470.220 to 470.290 and any accrued interest on such bonds.

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

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

(g) Moneys transferred from the loan fund.

(h) Gifts, grants, donations or other moneys for promoting small scale local energy program loan purposes and goals.

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

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

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

(4) The director, with the approval of the State Treasurer, may establish separate and distinct accounts within the sinking fund to accomplish the purpose of this section. [1979 c.672 §26; 1981 c.50 §8; 1983 c.188 §6; 1985 c.805 §4; 1987 c.365 §6; 1993 c.496 §6; 2003 c.186 §73; 2005 c.201 §13; 2009 c.753 §72]

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

(2) When the director determines that moneys in sufficient amount are available in the sinking fund, the State Treasurer shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1979 c.672 §28; 2003 c.186 §74; 2009 c.753 §73]

ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY LOAN PROGRAM

(Loan Program Administration)

470.500 Goals. (1) The Director of the State Department of Energy shall administer the energy efficiency and sustainable technology loan program for the purpose of pro-

viding financing, promotion and technical support to encourage significant investments in energy efficiency, renewable energy and energy conservation.

(2) The goals of the loan program are to:

(a) Provide capital at the lowest possible cost for the purpose of supporting energy efficiency and conservation and renewable energy projects for residential and commercial structures;

(b) Expand, and to simplify taking advantage of, opportunities for small scale local energy project financing;

(c) Leverage multiple sources of public and private capital through a unified and strategic funding mechanism;

(d) Provide technical and financing information to the public and to businesses;

(e) Foster energy savings;

(f) Stimulate job growth; and

(g) Help substantially reduce carbon emissions. [2009 c.753 §2]

470.505 Delay or suspension of program. Notwithstanding any other provision of this chapter, if the Director of the State Department of Energy determines that the State Department of Energy is unable to issue a sufficient number of energy efficiency and sustainable technology loans to offset the reasonable cost to the department of operating the loan program, the director may delay or suspend the energy efficiency and sustainable technology loan program in one or more sustainable energy territories or may delay or suspend any feature of the energy efficiency and sustainable technology loan program. [2009 c.753 §2a]

470.510 State Department of Energy may enter contracts for loan issuance; financing of loans; consent of utility. (1) Except as provided in subsection (3) of this section, the State Department of Energy may enter into contracts for the issuance of energy efficiency and sustainable technology loans. Except as provided in ORS 470.700, the department shall finance the loans using moneys from the Small Scale Local Energy Project Loan Fund, the Energy Project Supplemental Fund or the Energy Project Bond Loan Fund, or from a combination of those funds.

(2) The sustainable energy project manager may enter into agreements with trade associations and other public and private entities for the promotion or marketing of the energy efficiency and sustainable technology loan program.

(3) The department must obtain the consent of the utility before operating an energy efficiency and sustainable technology loan program within the service territory of:

(a) An investor-owned electric utility that serves fewer than 20,000 customers; or

(b) An investor-owned gas utility that is actively administering an energy conservation program established:

(A) On or before January 1, 2009; and

(B) Without assistance from a nongovernmental entity that receives public purpose charge moneys under ORS 757.612. [2009 c.753 §3]

470.515 Rules. The Public Utility Commission may adopt rules for carrying out the duties, functions and powers of the commission and the Public Purpose Fund Administrator under ORS 470.500 to 470.710. [2009 c.753 §4]

470.520 State Department of Energy may contract for performance of duties. The State Department of Energy may contract for persons to perform the duties of the department under ORS 470.500 to 470.710 including, but not limited to, the development of standardized base efficiency packages and standardized optional packages, energy efficiency and sustainable technology loan evaluation, processing and collection. A loan processed by a person contracting with the department, other than a loan processed by a sustainable energy project manager, must include the department as a party to the loan. [2009 c.753 §5]

470.525 Quarterly report. (1) The State Department of Energy shall send a quarterly report to the Small Scale Local Energy Project Advisory Committee. The report shall include, but need not be limited to, a summary of:

(a) The total amount of energy efficiency and sustainable technology loans issued;

(b) The types of projects being funded by the loans; and

(c) The characteristics of loan recipients.

(2) The committee shall review the report to determine whether the goals of the loan program are being implemented and whether applicable rules and statutory standards are met. The committee may send comments regarding the report to the Director of the State Department of Energy. [2009 c.753 §6]

(Project Managers)

470.530 Qualifications; duties; certification program; sustainable energy territories. (1) Except as provided in subsection (5) of this section, the Director of the State Department of Energy may establish qualifications for sustainable energy project managers and may exercise oversight to ensure project manager compliance with those qualifications. A project manager shall provide the promotion, technical and financial sup-

port and verifications necessary to administer the energy efficiency and sustainable technology loan program in the territory served by the project manager.

(2) The project manager shall serve a sustainable energy territory established by the director. The project manager shall provide loan program information and technical and financial information to promote energy efficiency and use of renewable energy at the neighborhood and community levels. The project manager shall be responsible for small scale local energy project verification and for monitoring program effectiveness for energy efficiency and sustainable technology loans and small scale local energy program loans. The project manager may administer the energy efficiency and sustainable technology loan program within the territory.

(3)(a) Except as provided in this subsection, the boundaries of a sustainable energy territory must be consistent with the service territory of a local electric utility.

(b) The boundaries of a sustainable energy territory may be consistent with the service territory of a local gas utility if:

(A) The local electric utility is a consumer-owned electric utility that elects not to be the project manager for the sustainable energy territory; and

(B) The service territory of the local electric utility and the service territory of the local gas utility overlap.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, if the project manager for the sustainable energy territory is other than the Public Purpose Fund Administrator or a consumer-owned utility, the director may adjust the boundaries of the territory or create a larger or smaller territory if the director believes that the territory boundaries as adjusted or created by the director would better accomplish the goals of the energy efficiency and sustainable technology loan program.

(4) A local government, nonprofit, for-profit, tribal or state entity may be a project manager if the entity meets the qualifications established by the director under this section and is approved by the director to provide promotion, outreach and customer support related to the energy efficiency and sustainable technology loan program within a sustainable energy territory. The Public Purpose Fund Administrator is an ex officio sustainable energy project manager. The Public Purpose Fund Administrator shall act as the project manager in any sustainable energy territory that is not served by another project manager.

(5) The director shall establish a sustainable energy project manager certification program. However, the Public Purpose Fund Administrator or a consumer-owned utility is not required to obtain a sustainable energy project manager certificate and the Public Purpose Fund Administrator is not subject to any qualifications established by the director for a project manager. [2009 c.753 §7]

470.535 Applications for certification as project manager; selection factors. (1) The Director of the State Department of Energy shall initiate the certification process for a sustainable energy project manager by publishing a request for proposals.

(2) An applicant for certification as a project manager shall submit information to the director that includes:

(a) Background information about the applicant including, but not limited to, the qualifications, relevant experience, financial status and staff of the applicant;

(b) A proposed plan for implementing and administering the goals and requirements of the energy efficiency and sustainable technology loan program in the sustainable energy territory; and

(c) Any additional information required by the director by rule.

(3) After reviewing all applications received, the director may select a project manager. In selecting the project manager, the director shall consider the following factors:

(a) The organizational experience of the applicant and the capacity of the applicant to successfully implement the energy efficiency and sustainable technology loan program goals and requirements.

(b) The strength of the applicant's proposed plan for implementing the goals and requirements of the energy efficiency and sustainable technology loan program.

(c) The cost at which the applicant can conduct outreach, promotion, loan applicant support and project verification services necessary to implement the energy efficiency and sustainable technology loan program.

(d) Any other factors the director adopts by rule or directive.

(4) An applicant may not be certified as a project manager if the applicant has a fiduciary or other obligation that creates an actual or apparent conflict of interest that may interfere with achieving the goals of the energy efficiency and sustainable technology loan program. [2009 c.753 §8]

470.540 State Department of Energy to notify unsuccessful applicants; timetable for certification of project manager. (1) Upon selecting a proposed sustainable energy project manager, the Director of the

State Department of Energy shall notify all unsuccessful applicants for the position that another candidate is proposed for appointment. The director shall negotiate with the proposed project manager regarding any modifications to the service cost estimates or other features of the applicant's proposed plan that are necessary to ensure that the applicant will meet the goals and requirements of the energy efficiency and sustainable technology loan program and State Department of Energy rules.

(2) To the extent practicable, the director shall certify a project manager not later than four months after publication of the request for proposals and not later than two months after the selection of the proposed project manager. However, the director may at any time select a different applicant as the proposed project manager or may reinitiate the certification process.

(3) Upon deciding to certify the proposed project manager, the director shall give notice of the decision to all unsuccessful candidates, the public and the Small Scale Local Energy Project Advisory Committee. The director may approve the final certification of the project manager if:

(a) A request to appeal under ORS 470.545 is not filed within 15 days after the date the notice is sent; and

(b) The committee does not undertake a review of the proposed certification within 15 days after the date the notice is sent. [2009 c.753 §9]

470.545 Appeal of certification decision; fee. (1) A person that believes a decision of the Director of the State Department of Energy to certify a sustainable energy project manager is inconsistent with applicable rules or statutes may file a request to appeal with the Small Scale Local Energy Project Advisory Committee. Unless the request for appeal is filed by a nonprofit entity, the request must be accompanied by a $2,000 appeal fee. The fee shall be waived for a nonprofit entity. The committee may initiate a review on its own motion.

(2) A majority of the committee may authorize the presiding officer of the committee to appeal the certification decision to the Governor. The presiding officer may initiate an appeal to the Governor no later than 30 days after receiving a request for appeal or 15 days after the committee initiates a review on its own motion.

(3) The decision of the Governor is final. If the Governor does not act within 30 days after receiving the appeal from the presiding officer of the committee, the appeal is denied. [2009 c.753 §10]

470.550 Term of certification of project manager; certification approval letter; conditions for termination of certification. (1) Unless the sustainable energy project manager is the Public Purpose Fund Administrator or a consumer-owned utility, the certification of a project manager shall be for a five-year term. The Director of the State Department of Energy shall issue the project manager a certification approval letter that states any conditions applicable to the certification.

(2) The director may terminate the certification of a project manager for:

(a) Failure to adequately implement an applicable plan for implementing the energy efficiency and sustainable technology loan program;

(b) Noncompliance with the regulatory or statutory requirements of the energy efficiency and sustainable technology loan program;

(c) Failure to meet any project manager criteria established by the director; or

(d) Failure to perform other certification conditions. [2009 c.753 §11]

470.555 Investor-owned electric utilities and consumer-owned utilities as project managers; contract with qualified third parties; coordination. (1) Except as provided in subsection (2) of this section, if a sustainable energy territory is all or part of the service territory for an investor-owned electric utility, the Public Purpose Fund Administrator shall be the sustainable energy project manager for the sustainable energy territory. The Public Purpose Fund Administrator shall inform the Public Utility Commission and the State Department of Energy of the activities of the administrator by filing a yearly action plan and an end-of-year report with the commission and the department.

(2) For a sustainable energy territory described in ORS 470.530 (3)(b), if the local gas utility is an investor-owned utility, the utility may act as the project manager for the territory or may contract with the Public Purpose Fund Administrator to act as project manager on behalf of the utility.

(3) If a territory is served by a consumer-owned utility and is outside the service territory of an investor-owned electric utility, the consumer-owned utility shall be the project manager if the utility agrees to promote energy efficiency and sustainable technology loans as part of any energy efficiency or renewable energy program offered by the utility. A consumer-owned utility may conduct energy efficiency and renewable energy programs within the territory of the utility regardless of whether the territory is served

by an energy efficiency and sustainable technology loan program. A consumer-owned utility may decline to participate in the energy efficiency and sustainable technology loan program.

(4) If a customer is served by both an investor-owned gas utility and a consumer-owned electric utility that have energy efficiency and sustainable technology loan programs, the utility that supplies the customer's primary source of heat for the property shall supply loan program services for that customer.

(5) The existence of an energy efficiency and sustainable technology loan program, or the appointment of a sustainable energy project manager, in a sustainable energy territory does not prevent a consumer-owned utility from conducting any energy efficiency or renewable energy program offered by the utility. If the consumer-owned utility declines to become the project manager for the territory, the utility may:

(a) Continue with existing utility services and policies; or

(b) Work with the Director of the State Department of Energy to solicit and select a qualified entity to serve as the project manager as described in ORS 470.535 and 470.540.

(6) Subject to approval by the director, a project manager may contract with a qualified third party to assist the project manager in providing project manager services within the territory. If a sustainable energy territory is served by a project manager, the appointment of additional project managers shall be a subcontract approved by the existing project manager. If the third party is acting as a financier, the third party is not required to comply with laws regulating utilities based on the actions of the third party as a financier. The project manager may enter into agreements with trade associations and other public and private entities for the promotion or marketing of the energy efficiency and sustainable technology loan program.

(7) The Public Purpose Fund Administrator and sustainable energy project managers shall cooperate with, and coordinate their outreach and promotional efforts with, local utilities and other stakeholders to promote energy efficiency and renewable energy and to use the customer contacts, resources and capacity of utilities to engage and inform utility customers about the energy efficiency and sustainable technology loan program. The Public Purpose Fund Administrator and project managers shall coordinate with gas utilities regarding any changes to a gas pipeline and with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure. The Public Purpose Fund Administrator and project managers shall coordinate with a gas utility regarding the installation of appliances used for space heating, water heating and compressed natural gas refueling. [2009 c.753 §12]

(Contractors)

470.560 Rules; certification standards; provision for preferred service providers. (1) The State Department of Energy shall adopt rules establishing certification standards for contractors participating in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. The department shall design the standards to ensure that the project work performed by a contractor holding the certification is of high quality and will result in a high degree of customer satisfaction.

(2) The certification standards established by the department must, at a minimum, require that the contractor:

(a) Prove that the contractor has sufficient skill to ensure that the contractor can successfully install energy efficiency, renewable energy or weatherization projects.

(b) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.

(c) Be an equal opportunity employer or small business or be a minority or women business enterprise or disadvantaged business enterprise as those terms are defined in ORS 200.005.

(d) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers' Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(e) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.

(f) Demonstrate a history of compliance with federal and state wage and hour laws.

(g) Pay wages to employees used for energy efficiency and sustainable technology loan program projects at a rate equal to at least 180 percent of the state minimum wage.

(3) The State Department of Energy shall consult with the Public Purpose Fund Administrator and utilities when developing contractor certification standards.

(4) The Construction Contractors Board may issue a qualifying contractor a certification authorizing the contractor to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. A contractor seeking certification shall apply to the board as provided under ORS 701.119.

(5) The State Department of Energy shall identify certified contractors that provide employees with health insurance benefits as preferred service providers and may take other actions as practicable to encourage certified contractors to provide employees with health insurance benefits. [2009 c.753 §13]

Note: Section 48, chapter 753, Oregon Laws 2009, provides:

Sec. 48. The State Department of Energy shall adopt rules establishing contractor certification standards required under section 13 of this 2009 Act [470.560] no later than December 1, 2010. The Construction Contractors Board shall implement a certification system for contractors under section 51 of this 2009 Act [701.119] no later than January 1, 2011. [2009 c.753 §48]

470.565 Loan applicant request for energy savings projection; processing of loan applications. (1) At the request of a loan applicant, a contractor that is authorized to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program may conduct an energy savings projection or similar evaluation for a property and conduct post-project verifications of energy savings in a sustainable energy territory that does not have a sustainable energy project manager.

(2) The State Department of Energy shall process a loan application submitted by an applicant in a sustainable energy territory that does not have a project manager in the same manner as an application submitted through a project manager.

(3) The department may approve an energy efficiency and sustainable technology loan for property located in a sustainable energy territory that does not have a project manager if:

(a) On-bill financing is available to the loan applicant through a local utility serving the benefited property; or

(b) The department and the loan applicant agree to an alternative method for ensuring repayment of the loan. [2009 c.753 §14]

Note: 470.565 becomes operative January 1, 2011. See section 53, chapter 753, Oregon Laws 2009.

(Funds)

470.570 Energy Project Supplemental Fund; sources; uses. (1) The Energy Project Supplemental Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Energy Project Supplemental Fund shall be credited to the Energy Project Supplemental Fund.

(2) The Energy Project Supplemental Fund shall consist of any moneys received for purposes of the energy efficiency and sustainable technology loan program or for small scale local energy program loans other than moneys deposited to:

(a) The Small Scale Local Energy Project Loan Fund.

(b) The Small Scale Local Energy Project Administration and Bond Sinking Fund.

(c) The Energy Project Bond Loan Fund.

(d) The Loan Offset Grant Fund, except that Loan Offset Grant Fund moneys used to offset the energy efficiency and sustainable technology loan or small scale local energy program loan repayment obligation of a borrower shall be deposited to the Energy Project Supplemental Fund.

(e) The Energy Revenue Bond Repayment Fund.

(3) Moneys in the Energy Project Supplemental Fund are continuously appropriated to the State Department of Energy for the following purposes:

(a) To provide funding, separately or in conjunction with moneys from the Small Scale Local Energy Project Loan Fund and the Energy Project Bond Loan Fund, for energy efficiency and sustainable technology loans and small scale local energy program loans;

(b) For transfer to the Energy Revenue Bond Repayment Fund, to the extent that moneys available in the Energy Project Bond Loan Fund are insufficient to provide the amount determined prudent by the Director of the State Department of Energy under ORS 470.610 (2); and

(c) To pay costs incurred by the State Department of Energy or the director in implementing or administering loan programs for small scale local energy projects.

(4) The State Treasurer may establish any subaccounts in the Energy Project Supplemental Fund that the treasurer or the director considers reasonable for the efficient administration of the fund. [2009 c.753 §15]

470.575 Loan Offset Grant Fund; sources; uses. (1) The Loan Offset Grant Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Loan Offset Grant Fund shall be credited to the Loan Offset Grant Fund. Moneys in the fund are continuously appropriated to the State Department of Energy for use as provided in this section.

(2) The fund shall consist of any moneys directed by law, gift, grant or donation to the fund.

(3) The department shall use fund moneys:

(a) To promote energy efficiency, renewable energy and energy conservation projects that would otherwise result in a marginally higher overall cost to the applicant when energy costs and the financing and repayment costs for the project are considered, by using the fund moneys to help produce a monthly cost savings for the applicant; or

(b) To transfer to an appropriate fund for carrying out any purpose under this chapter specified as a condition of a gift, grant or donation. [2009 c.753 §16]

470.580 Energy Project Bond Loan Fund; sources; uses. (1) The Energy Project Bond Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Energy Project Bond Loan Fund shall be credited to the fund.

(2) The fund shall consist of:

(a) Net proceeds from the issuance of revenue bonds under ORS 470.610 that are deposited to the fund;

(b) Moneys from project initiation fees under ORS 470.655;

(c) Repayments of any moneys loaned from the fund and interest earned on those moneys;

(d) Any moneys appropriated to the fund;

(e) Moneys from the sale of refunding bonds under ORS 470.610 and any accrued interest on those bonds; and

(f) Interest earned on cash balances invested under ORS 470.595.

(3) Moneys in the fund are continuously appropriated to the State Department of Energy for the following purposes:

(a) Subject to ORS 470.620, to issue and administer small scale local energy program loans and energy efficiency and sustainable technology loans and to administer the loan programs.

(b) For transfer to the Energy Revenue Bond Repayment Fund for the payment of bond obligations, the costs of issuing bonds described in subsection (2) of this section and the costs of administering the revenue bond program and for the funding of bond payment reserves. Transfers under this paragraph shall be carried out as determined by the Director of the State Department of Energy under ORS 470.610 (2).

(4) The State Treasurer may establish any subaccounts in the Energy Project Bond Loan Fund that the treasurer or the director considers reasonable for the efficient administration of the fund. [2009 c.753 §17]

470.585 Energy Revenue Bond Repayment Fund; uses. (1) The Energy Revenue Bond Repayment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Energy Revenue Bond Repayment Fund shall be credited to the fund. Moneys in the fund may be invested as provided in ORS 293.701 to 293.820. Moneys in the fund are continuously appropriated to the State Department of Energy for the payment of:

(a) Administrative expenses of the State Department of Energy and the Director of the State Department of Energy for energy efficiency and sustainable technology loans and small scale local energy program loans made from the proceeds of energy project revenue bonds, to the extent those expenses are not paid from the Energy Project Bond Loan Fund, the Energy Project Supplemental Fund or the Loan Offset Grant Fund;

(b) Administrative expenses incurred by the State Treasurer under this chapter;

(c) Principal, interest and any redemption premiums of energy project revenue bonds;

(d) Net investment earnings on moneys loaned to municipal corporations from energy project revenue bonds under ORS 470.610 but withheld as provided in ORS 470.230; and

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

(2) The Energy Revenue Bond Repayment Fund shall consist of moneys transferred to the fund from the Energy Project Bond Loan Fund and Energy Project Supplemental Fund by the State Treasurer as provided in ORS 470.610 (2). [2009 c.753 §18]

(Financial Managers)

470.590 Proposals; selection. The State Department of Energy may request proposals for and select one or more financial managers for the energy efficiency and sustainable technology loan program. The function of a financial manager is:

(1) To assist in energy efficiency and sustainable technology loan program development;

(2) To cooperate with federal and state agencies and public and private entities for the purpose of securing federal funding, public and private investments of capital and gifts, grants and donations for the purpose of financing small scale local energy projects; and

(3) To provide a platform for the blending of private and public capital from various

sources including, but not limited to, small scale local energy project financing, moneys from the Energy Project Bond Loan Fund, the Loan Offset Grant Fund and the Energy Project Supplemental Fund, private activity bonds and grant moneys. [2009 c.753 §19]

470.595 Investment with financial manager; rate of return. Private utilities and other private entities may invest capital with an energy efficiency and sustainable technology loan program financial manager for use in carrying out the loan program. The Public Utility Commission may establish a reasonable rate of return that a financial manager may pay to a utility investing capital under this section. In establishing the rate of return, the commission shall consider the risk to the utility in providing the investment capital. [2009 c.753 §20]

(Supplemental Capital Funds)

470.600 State Department of Energy may enter agreements to disburse supplemental capital funds; conditions. To achieve the energy efficiency and sustainable technology loan program goals described in ORS 470.500, the Director of the State Department of Energy may enter into agreements to disburse supplemental capital funds through the Small Scale Local Energy Project Loan Fund and the Energy Project Supplemental Fund if:

(1) The director estimates that interest rates and total costs to program applicants that would result from the use of the supplemental capital funds are lower than would result from the use of bond proceeds; and

(2) The supplemental capital funds are made subject to any requirements adopted by the director by rule to ensure adequate protection of project moneys. [2009 c.753 §21]

(Local Governments)

470.605 Local governments may direct moneys to certain funds to finance loans; accounting of moneys. (1) Subject to the approval of the Director of the State Department of Energy, a local government, public utility or other legally organized entity may direct moneys to the Energy Project Supplemental Fund or Loan Offset Grant Fund for use within a limited geographic area of this state as a source of capital for financing energy efficiency and sustainable technology loans, small scale local energy program loans or loan offset grants.

(2) Any moneys deposited under this section shall be separately accounted for and shall be managed consistently with small scale local energy project goals and any agreement between the State Department of Energy and the entity providing the moneys. The moneys may be disbursed only for use as designated by, and in the geographic area designated by, the entity providing the moneys. [2009 c.753 §25]

(Bonds)

470.610 Issuance of bonds; written declaration of State Department of Energy. (1) The State Treasurer, at the request of the Director of the State Department of Energy, from time to time may issue and sell revenue bonds in the name of and on behalf of the State of Oregon in compliance with the applicable provisions of ORS chapter 286A in the principal amount the director considers necessary to carry out the purposes of ORS 470.500 to 470.710, or for paying or refunding any revenue bonds previously issued on behalf of the State Department of Energy for those purposes.

(2) All bonds shall be special revenue obligations of the State of Oregon, and, unless paid from the proceeds of other bonds, shall be payable as to principal, redemption premium, if any, and interest, through the Energy Revenue Bond Repayment Fund solely from the revenues, moneys and other assets of the Energy Project Bond Loan Fund and the Energy Project Supplemental Fund that may be pledged for that payment. The Director of the State Department of Energy shall determine for each fiscal quarter the amount that will fall due during that fiscal quarter for bonds issued under this section, other amounts described in ORS 470.585 and any expected significant changes in bond obligations for upcoming fiscal quarters and the amount necessary to adequately fund reserves. The director shall request that the State Treasurer make transfers from the Energy Project Bond Loan Fund and Energy Project Supplemental Fund to the Energy Revenue Bond Repayment Fund as the director believes prudent to ensure the continuing payment of maturing obligations and the funding of reserves.

(3) Prior to an issuance of revenue bonds under this section, the director shall prepare and sign a written declaration setting forth the amount of the bonds to be issued and the terms and conditions for issuance. If the State Treasurer approves the declaration, the State Treasurer shall certify the approval on the declaration. The approved declaration shall be known as an "energy revenue bond declaration." Each bond declaration shall be deemed to be and shall constitute conclusive proof of the authorization to issue the bonds described in the bond declaration and may contain further pledges and covenants as determined by the director or the State Treasurer. [2009 c.753 §22]

470.615 Payment of bonds. (1) Revenue bonds issued under ORS 470.610 do not constitute a debt, liability or general obligation of this state or any political subdivision of this state or a pledge of the faith and credit of this state or any political subdivision of this state, but shall be payable solely from the revenues, moneys and other assets of the Energy Project Bond Loan Fund and the Energy Project Supplemental Fund that are pledged to the repayment in the energy revenue bond declaration.

(2) Each revenue bond issued under ORS 470.610 shall contain on the face of the bond a statement that the department is not obligated to pay the bond or the interest on the bond except from the revenues or assets pledged for those payments and that neither the faith and credit nor the taxing power of this state or any political subdivision of this state is pledged to the payment of the principal of or the interest on the bond.

(3) A utility or sustainable energy project manager is not liable for the payment of the principal of or the interest on any bond issued under this section. [2009 c.753 §23]

470.620 Bond pledges; trustees. The bonds issued by the State Treasurer under ORS 470.610 and the energy revenue bond declaration may:

(1) Pledge all or any part of the fees received by the State Department of Energy under ORS 470.655 and all or any part of the moneys received in payment of energy efficiency and sustainable technology loans and small scale local energy program loans that are funded with revenue from bonds issued under ORS 470.610, interest on those amounts and other moneys credited to the Energy Project Bond Loan Fund.

(2) Pledge any moneys, loans or grants received from the federal government, this state or any city, county or political subdivision of this state for payment of revenue bonds issued under ORS 470.610.

(3) Vest in a trustee appointed by the Director of the State Department of Energy and approved by the State Treasurer such property, rights, powers and duties in trust as the director may determine. [2009 c.753 §24]

(Program Loans)

470.630 Form of disbursement; conditions for issuance. (1) The State Department of Energy may disburse energy efficiency and sustainable technology loan and small scale local energy program loan moneys by providing the loan moneys through a sustainable energy project manager or providing the loan moneys to or through an entity described in ORS 470.060. Loan moneys may be disbursed through a project manager only for the purpose of enabling the project manager to issue energy efficiency and sustainable technology loans and small scale local energy program loans to applicants in the sustainable energy territory served by the project manager.

(2) The project manager may issue a loan from moneys disbursed under this section only if adequate security exists to ensure repayment of the loan. An energy efficiency and sustainable technology loan from a project manager to an applicant located in the sustainable energy territory served by the project manager must have the features described in ORS 470.150 and 470.645 and is subject to the requirements and processes imposed under ORS 470.500 to 470.710 for energy efficiency and sustainable technology loans issued by the Director of the State Department of Energy. A project manager that issues an energy efficiency and sustainable technology loan to support a small scale local energy project may record a fixture filing and lien on the property that benefits from the project as provided in ORS 470.680 or 470.685. [2009 c.753 §26]

470.635 Requirement for energy savings projection; form of projection; use of certified contractors. (1) The State Department of Energy may not complete an agreement for the issuance of an energy efficiency and sustainable technology loan unless the sustainable energy project manager, a contractor designated by the project manager or a person approved by the department completes an energy savings projection or similar evaluation for the property that will benefit from the small scale local energy project. The projection or other evaluation shall be in writing and shall, at a minimum, identify the following:

(a) The recommended base efficiency package for the structure. A base energy package may include improvements to existing supply lines and equipment.

(b) Any optional package recommended for the structure.

(c) The estimated net monthly cost to the applicant when energy savings, project repayment costs, tax or other incentives, loan offset grants and other relevant economic factors are considered.

(d) The monthly cost to the applicant to repay the loan principal and finance charges.

(e) If the base efficiency package or recommended optional package includes the use of nontraditional technology, a description of the nontraditional technology.

(2) A base efficiency package or optional package may not provide for achieving energy efficiency upgrades through the use of appliances or other equipment that lack suf-

ficient relationship to the structure to be subject to a fixture filing or real property lien.

(3) The projection or other evaluation shall state in a clear and conspicuous manner:

(a) That the estimated net monthly cost to the applicant contained in the projection or other evaluation does not represent a guarantee of project performance or results; and

(b) That no liability attaches to the department, any state agency or officer, the project managers or any utility if actual energy savings are less than the estimated savings or if the construction process or constructed project is unsatisfactory in any way.

(4) If the base efficiency package or recommended optional package includes the use of nontraditional technology, the projection or other evaluation shall include a statement that the technology is nontraditional, initialed by the prospective loan applicant.

(5) An energy efficiency and sustainable technology loan may be used only for a project constructed by a contractor certified under ORS 701.119.

(6) Prior to the disbursement of the loan moneys to the contractor, a project manager or other person approved by the department shall verify that the small scale local energy project has been completed in a manner consistent with energy efficiency and sustainable technology loan program requirements. If this state or any agency of this state adopts or recognizes an energy efficiency scoring system for buildings, the department may require that the verification described in this subsection include the determination of an energy efficiency score for the property benefited by the project.

(7) The department shall periodically consult with contractors certified under ORS 701.119 for the purpose of updating average cost and projected savings figures used for energy savings projections or other evaluations under this section. The department shall encourage the use of methods for conducting energy savings projections or other evaluations under this section that are cost-effective and time-effective, take advantage of economies of scale and produce results that are accurate and are replicable for equivalent base energy packages. [2009 c.753 §27]

470.640 Amount of loans. (1) Except as provide in subsection (2) of this section, the amount of an energy efficiency and sustainable technology loan may not exceed $40,000.

(2) The loan amount limit described in subsection (1) of this section shall increase annually on January 1 of each year, beginning January 1, 2011. The loan amount limit shall increase from the most recently established loan amount limit by a percentage equal to the percentage increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as reported by the Bureau of Labor Statistics of the United States Department of Labor. [2009 c.753 §28]

470.645 Application for loan; contents. An application for an energy efficiency and sustainable technology loan must contain:

(1) Information sufficient to identify real or personal property located within this state against which a fixture filing and lien may be filed under ORS 470.680 or 470.685 to secure the loan and sufficient to allow verification that the property owner is the applicant or has consented to the fixture filing and lien;

(2) A clear and conspicuous disclosure:

(a) That a lien or other form of security for the energy efficiency and sustainable technology loan need not be paid in full upon a sale of the property, but all amounts due under the repayment plan as of the sale date must be paid before the sale closes; and

(b) That some lenders may be unwilling to make a mortgage on a property that is subject to a lien or other form of security for the energy efficiency and sustainable technology loan;

(3) The loan applicant must sign a loan contract that recites all terms and conditions required under this chapter for an energy efficiency and sustainable technology loan; and

(4) The State Department of Energy must be satisfied that all conditions required under ORS 470.090 to support the loan have been satisfied. [2009 c.753 §29]

470.650 Residential small scale local energy projects; weatherization program. (1) If an applicant for a loan to construct a residential small scale local energy project has household income that may qualify the person for a weatherization program operated by the Housing and Community Services Department, the sustainable energy project manager shall refer the applicant to the department. This subsection does not prohibit a project manager from accepting an application from a person who has been denied, or is receiving, assistance under a department weatherization program.

(2) If an applicant for a loan to construct a residential small scale local energy project has household income that is less than 250 percent of the federal poverty guidelines, upon request by the applicant, the State De-

partment of Energy may waive all or part of an application fee for the loan and may waive all or part of the project initiation fee. [2009 c.753 §30]

(Fees)

470.655 Project initiation fee; rules. Except as provided in ORS 470.650, an applicant for an energy efficiency and sustainable technology loan approved by the State Department of Energy shall pay the department a project initiation fee. Upon request of the loan applicant, the department may add all or part of a project initiation fee to the principal of an issued loan. The department may establish the fee amount by rule, not to exceed four percent of the approved loan amount. If the department does not establish the fee amount, the fee shall be two percent of the approved loan amount. [2009 c.753 §31]

(On-Bill Financing)

470.660 Investor-owned utilities; requirements of system; rules; waiver. (1) If an investor-owned utility serving a sustainable energy territory has established an on-bill financing system, an energy efficiency and sustainable technology loan shall be repaid by on-bill financing unless the loan agreement specifies that the State Department of Energy and the borrower have agreed to an alternative method for ensuring repayment of the loan.

(2) Unless the Public Utility Commission grants an investor-owned utility a waiver under subsection (4) of this section, the on-bill financing system of the utility must:

(a) Enable a customer to make a single payment to satisfy the periodic utility charges and repayment on an energy efficiency and sustainable technology loan;

(b) Provide a clearly identifiable line item or separate statement in the utility bill that shows the energy efficiency and sustainable technology loan repayment amount; and

(c) Direct energy efficiency and sustainable technology loan repayment amounts collected by the utility to the appropriate sustainable energy project manager or to the department for deposit to the credit of the Small Scale Local Energy Project Administration and Bond Sinking Fund, Energy Project Bond Loan Fund or Energy Project Supplemental Fund.

(3) The Public Utility Commission shall adopt rules for the use of on-bill financing by investor-owned utilities. The rules may include, but need not be limited to, rules regarding nonpayment, insufficient payment, delinquency notices, repayment charge transfers, processing fees, late fees and refunds. The commission may not adopt any rule that imposes responsibility for the repayment of an energy efficiency and sustainable technology loan on the utility.

(4) The commission may waive the requirement that an investor-owned utility provide on-bill financing for one or more loans if the commission determines that providing the on-bill financing is not practicable. If the commission grants a utility a waiver under this subsection, the utility shall bill the affected customers for loan repayment separately from any utility customer meter billings. [2009 c.753 §32]

470.665 Consumer-owned utilities; requirements of system; rules; waiver. (1) If a consumer-owned utility serving a sustainable energy territory has established an on-bill financing system, an energy efficiency and sustainable technology loan shall be repaid by on-bill financing unless the loan agreement specifies that the State Department of Energy and the borrower have agreed to an alternative method for ensuring repayment of the loan.

(2) Unless the Director of the State Department of Energy grants a consumer-owned utility a waiver under subsection (4) of this section, the on-bill financing system of the utility must:

(a) Enable a customer to make a single payment to satisfy the periodic utility charges and repayment on an energy efficiency and sustainable technology loan;

(b) Provide a clearly identifiable line item or separate statement in the utility bill that shows the energy efficiency and sustainable technology loan repayment amount; and

(c) Direct energy efficiency and sustainable technology loan repayment amounts collected by the utility to the appropriate sustainable energy project manager or to the department for deposit to the credit of the Small Scale Local Energy Project Administration and Bond Sinking Fund, Energy Project Bond Loan Fund or Energy Project Supplemental Fund.

(3) The director may not adopt any rule that imposes responsibility for the repayment of an energy efficiency and sustainable technology loan on the utility.

(4) The director may waive the requirement that a consumer-owned utility provide on-bill financing for one or more loans if the director determines, after consultation with the Bonneville Power Administration, that providing the on-bill financing is not practicable. If the director grants a waiver under this subsection, the utility shall bill the affected customers for loan repayment separately from any utility customer account or customer meter billings. [2009 c.753 §33]

470.670 Repayment requirement for customer served by electric utility and gas utility. If a customer is served by both an electric utility and a gas utility that both have an on-bill financing system, a loan repaid through on-bill financing shall be repaid through the on-bill financing system of the utility that supplies the customer's primary source of heat for the property. [2009 c.753 §34]

470.675 Cost eligibility for ratemaking purposes; loan repayment charges; change in property ownership benefited by loan. (1) If a utility incurs reasonable costs in implementing an on-bill financing system that exceed any moneys received by the utility to assist in the implementation, the costs are legitimate costs for ratemaking purposes.

(2) A loan repayment charge for an energy efficiency and sustainable technology loan may include, but need not be limited to, the amount of the loan, interest on the loan and the cost incurred by the State Department of Energy to implement, promote and administer the energy efficiency and sustainable technology loan program.

(3) The amount of an energy efficiency and sustainable technology loan repayment and any moneys received by a utility to assist in the implementation of an on-bill financing system are not gross revenue for purposes of calculating franchise fees or other regulatory assessments.

(4) If there is a change in ownership or other interest in property benefited by an energy efficiency and sustainable technology loan, and the loan relies on an on-bill financing system for collection of the loan repayment charge, the utility shall transfer the loan repayment charge to the utility customer account of the person acquiring the ownership or other interest in the property. [2009 c.753 §35]

(Repayment and Liens)

470.680 State Department of Energy to identify forms of acceptable security. (1) Subject to ORS 470.170, the State Department of Energy may identify forms of acceptable security for energy efficiency and sustainable technology loans that the department determines will achieve the goals and requirements of the energy efficiency and sustainable technology loan program and that provide adequate security for repayment of the loans.

(2) For loans from the Small Scale Local Energy Project Loan Fund, the department may record a fixture filing as defined in ORS 79.0102 covering those building materials to be attached to the real property pursuant to an energy efficiency and sustainable technology loan that remain easily detachable from the property and are not essential to a structure or the use of a structure. The department shall record a lien on the real property benefited by the loan for those indebtedness amounts that are not secured by a fixture filing. The department may record a filing or lien under this section only on a property for which the property owner has agreed to the installation of a base efficiency package or optional package benefiting the property.

(3) An energy efficiency and sustainable technology loan must provide for repayment through an on-bill financing system unless the department finds that an alternative method for repaying the loan would provide suitable security for the loan and the department and the borrower specify the alternative repayment method in the loan agreement. [2009 c.753 §36]

470.685 Recording liens; foreclosure of liens; attorney fees and costs. (1) The State Department of Energy or a sustainable energy project manager may act on behalf of the Director of the State Department of Energy for the purpose of recording a lien in favor of the director as required by ORS 470.170 (3) against property benefited by an energy efficiency and sustainable technology loan.

(2) A lien described in this section attaches to the property and is perfected upon recording in the county deed records.

(3) In an action to foreclose a lien created under this section, the court shall include in the lien amount all costs for filing and recording the lien. The court shall award a prevailing party in the foreclosure action reasonable attorney fees and costs. [2009 c.753 §37]

470.690 Avoidance of foreclosure. A person that acquired an interest in a property in good faith and for a valuable consideration before the date a lien described in ORS 470.680 or 470.685 attached to the property under ORS 470.170 may avoid foreclosure of the lien by paying any delinquencies and collection costs associated with the underlying loan repayment charge and assuming normal payments in compliance with the energy efficiency and sustainable technology loan agreement repayment provisions. [2009 c.753 §38]

470.695 Sale of real property; notice of loan repayment charge required. A person entering into an agreement to sell, rent, lease or otherwise confer a right in the person's real property that is benefited by an energy efficiency and sustainable technology loan for which a loan repayment charge or other repayment obligation applies or for which a fixture filing, lien or other form of

security exists shall, prior to any party signing the agreement, give notice of the loan repayment charge, repayment obligation, filing, lien or other security affecting the property to the other parties to the agreement. [2009 c.753 §39]

(Loan Offset Grants)

470.700 Use of loan offset grant moneys; alternate mechanisms. (1) The State Department of Energy may use loan offset grant moneys for any of the following if, in the absence of the grant moneys, a utility customer would incur higher overall monthly costs when energy costs and small scale local energy project costs are considered:

(a) Offsetting the cost of an approved small scale local energy project.

(b) Reducing the loan repayment burden of an energy efficiency and sustainable technology loan borrower.

(c) Creating a financial incentive for energy efficiency, renewable energy and energy conservation projects that may not result in significant energy cost savings.

(d) Providing support, in coordination with the Oregon Innovation Council or other sustainable energy technology research bodies or companies, for small scale local energy projects that use nontraditional technology.

(2) If a small scale local energy program loan applicant is a person with an income limited as described in ORS 470.650 (2), the department may use loan offset grant moneys for an optional package or to offset reasonable costs associated with structural improvements that are not included in the base efficiency package, but that are necessary to the proper installation of the base efficiency package.

(3) The Director of the State Department of Energy may investigate and test the feasibility of using mechanisms other than the disbursing of Loan Offset Grant Fund moneys for accomplishing the purposes described in subsection (1) of this section. [2009 c.753 §40]

(Miscellaneous)

470.710 Apprenticeship and job training. (1) The State Department of Energy shall collaborate with the State Workforce Investment Board and other interested parties to identify opportunities for apprenticeship and for job training and development that would further the goals of ORS 470.500 to 470.710 and provide valuable skills to Oregon workers.

(2) In adopting any rules for carrying out apprenticeship and job training and development under the energy efficiency and sustainable technology loan program, the department and the board shall consult with representatives from:

(a) State workforce programs;

(b) Organized labor;

(c) The State Apprenticeship and Training Council;

(d) The Bureau of Labor and Industries; and

(e) Consumer advocacy organizations.

(3) In addition to consulting with entities described in subsection (2) of this section, in adopting any rules for carrying out apprenticeship and job training and development under the energy efficiency and sustainable technology loan program, the department and the board may seek input from organizations representing construction contractors. [2009 c.753 §41]

470.715 Costs of adopting rules. The cost of adopting rules under ORS 470.140 to carry out ORS 470.500 to 470.710:

(1) May be paid from the Loan Offset Grant Fund or Energy Project Bond Loan Fund; or

(2) May be paid from the Small Scale Local Energy Project Administration and Bond Sinking Fund created under ORS 470.300 if the Director of the State Department of Energy and the State Treasurer find that:

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

(b) The transfer will not create the need for issuance of any bonds. [2009 c.753 §47]

Note: 470.715 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 470 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Temporary provisions relating to pilot programs, on-bill financing and delay of energy efficiency and sustainable technology loan program)

Note: Sections 42 to 46a and 49, chapter 753, Oregon Laws 2009, provide:

Sec. 42. (1) The Director of the State Department of Energy shall initiate the energy efficiency and sustainable technology loan program described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] in phases through a series of pilot programs, limiting the geographic availability and other features of the program as the director considers necessary to facilitate

an orderly and successful implementation of the program. The director shall initiate the program as quickly as the director considers practicable to achieve the benefits of the program while ensuring high participant satisfaction and program integrity.

(2) The director shall endeavor to establish pilot programs initially in sustainable energy territories that reflect a variety of population densities. The director may give preference to territories that request to participate in the pilot program. [2009 c.753 §42]

Sec. 43. (1) The Public Purpose Fund Administrator shall initiate pilot programs in investor-owned utility service territories to demonstrate the feasibility of innovative approaches to financing and installing energy efficiency and sustainable technology measures as described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] in residences and commercial buildings in urban and rural communities. The pilot programs shall test:

(a) The effectiveness of direct contact, door-to-door, media outlet and other community-focused outreach and solicitation strategies designed to provide potential energy efficiency and sustainable technology loan program participants with information about energy efficiency and renewable energy opportunities under the program and under similar local, state and federal incentive programs;

(b) The costs and benefits of taking alternative approaches to energy audits, including but not limited to, the identification of measures that are cost-effective and time-effective, take advantage of economies of scale and produce results that are accurate and are replicable for equivalent base efficiency packages;

(c) Ways to assist program participants in understanding and accessing small scale local energy project funding and making informed decisions in selecting appropriate energy efficiency and renewable energy projects;

(d) The effectiveness of various levels of loan offset grants as an incentive to program participation;

(e) The effectiveness of on-billing financing as a means of loan repayment and the effectiveness of fixture filings, liens or other forms of security for loans;

(f) The feasibility and effectiveness of coordinated installations of residential and commercial structure energy packages overseen by a single project manager;

(g) The manner in which the program interacts or conflicts with existing consumer-owned utility loan programs and other utility and regional energy efficiency programs;

(h) The relative demand for loan program services among residential and commercial properties and between low-income and other households, and factors that influence that relative demand;

(i) The administrative costs and participation rates associated with various forms of loan security; and

(j) Other strategies and measures identified by the State Department of Energy or the Public Utility Commission.

(2) The Public Purpose Fund Administrator shall report to the commission no later than October 1, 2010. The administrator shall provide a copy of the report to the State Department of Energy. The report shall evaluate the effectiveness of the pilot programs, and shall include an evaluation of the extent to which various strategies and measures:

(a) Help to produce significantly higher rates of energy savings or renewable energy production;

(b) Increase participation in energy efficiency and renewable energy programs;

(c) Increase the number of energy efficiency and renewable energy measures installed per building; and

(d) Reduce the administrative cost per building of providing energy efficiency and renewable energy services.

(3) The commission shall review the report and:

(a) Order full implementation of the successful energy efficiency and sustainable technology loan program measures and strategies in investor-owned utility service territories; or

(b) Order the partial implementation of energy efficiency and sustainable technology loan program measures and strategies and make recommendations to the Legislative Assembly for appropriate statutory modification of the program.

(4) When carrying out pilot programs under this section, the Public Purpose Fund Administrator and sustainable energy project managers shall cooperate and coordinate their efforts with the efforts of local utilities and encourage utilities to promote energy efficiency and renewable energy and to engage in outreach and promotional efforts to inform customers of the utility about the energy efficiency and sustainable technology loan program. The Public Purpose Fund Administrator and project managers shall coordinate with gas utilities regarding any changes to a gas pipeline and with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure. The Public Purpose Fund Administrator and project managers shall coordinate with a gas utility regarding the installation of appliances used for space heating, water heating and compressed natural gas refueling. [2009 c.753 §43]

Sec. 44. (1) The Director of the State Department of Energy shall consult with consumer-owned utilities and other interested parties to develop a pilot program for energy efficiency and sustainable technology as described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] for use in the consumer-owned utility service territories. The director shall solicit one or more consumer-owned utilities to act as sustainable energy project managers for the pilot program. The director shall solicit utilities to act as project managers for the developed pilot program no later than 180 days after the effective date of this 2009 Act [July 22, 2009].

(2) The pilot program shall test:

(a) The effectiveness of direct contact, door-to-door, media outlet and other community-focused outreach and solicitation strategies designed to provide potential energy efficiency and sustainable technology loan program participants with information about energy efficiency and renewable energy opportunities under the program and under similar local, state and federal incentive programs;

(b) The costs and benefits of taking alternative approaches to energy audits, including but not limited to identifying measures that are cost-effective and time-effective, taking advantage of economies of scale and producing results that are accurate and are replicable for equivalent base efficiency packages;

(c) Ways to assist program participants in understanding and accessing small scale local energy project funding and making informed decisions in selecting appropriate energy efficiency and renewable energy projects;

(d) The effectiveness of various levels of loan offset grants as incentives to program participation;

(e) The effectiveness of on-billing financing as a means of loan repayment and the effectiveness of fixture filings, liens or other forms of security for loans;

(f) The feasibility and effectiveness of coordinated installations of residential and commercial structure energy packages overseen by a single project manager;

(g) The manner in which the program interacts or conflicts with existing consumer-owned utility loan pro-

grams and other utility and regional energy efficiency programs;

(h) The relative demand for loan program services among residential and commercial properties and between low-income and other households, and factors that influence that relative demand;

(i) The administrative costs and participation rates associated with various forms of loan security; and

(j) Other strategies and measures identified by the director.

(3) The sustainable energy project managers in the consumer-owned utility service areas shall report to the director no later than October 1, 2010. The report shall evaluate the effectiveness of the pilot program and shall include an evaluation of the extent to which various program strategies and measures:

(a) Help to produce significantly higher rates of energy savings or renewable energy production;

(b) Increase participation in energy efficiency and renewable energy programs;

(c) Increase the number of energy efficiency and renewable energy measures installed per building; and

(d) Reduce the administrative cost per building of providing energy efficiency and renewable energy services.

(4) When carrying out pilot programs under this section, the director and the sustainable energy project managers shall cooperate and coordinate their efforts with the efforts of local utilities and encourage utilities to promote energy efficiency and renewable energy and to engage in outreach and promotional efforts to inform customers of the utility about the energy efficiency and sustainable technology loan program. [2009 c.753 §44]

Sec. 45. A contractor may construct small scale local energy projects financed under a pilot program described in sections 42 to 44 of this 2009 Act without being certified under section 51 of this 2009 Act [701.119] if:

(1) No certified contractor is available to construct the project;

(2) The Public Purpose Fund Administrator or the sustainable energy project manager has approved allowing the contractor to implement projects financed under the energy efficiency and sustainable technology loan program; and

(3) The contractor pays wages to employees used for energy efficiency and sustainable technology loan program projects at a rate equal to at least 180 percent of the state minimum wage or, if the project is for a commercial structure or is subject to prevailing wage laws, the prevailing wage for each trade or occupation employed. As used in this subsection, "commercial structure" means a structure other than a residential structure as defined in ORS 701.005. [2009 c.753 §45]

Sec. 46. If there is a change in ownership or other interest in property benefited by an energy efficiency and sustainable technology loan, and the loan relies on an on-bill financing system for collection of the loan repayment charge, the utility shall transfer the loan repayment charge to the utility customer account of the person acquiring the ownership or other interest in the property. [2009 c.753 §46]

Sec. 46a. Notwithstanding any other provision of sections 42 to 48, 51 [701.119] and 52 [701.108] of this 2009 Act, if the Director of the State Department of Energy determines that the State Department of Energy is unable to issue a sufficient number of energy efficiency and sustainable technology loans to offset the reasonable cost to the department of operating the loan program, the director may delay or suspend the energy efficiency and sustainable technology loan program in one or more pilot program areas or may delay or suspend any feature of the energy efficiency and sustainable technology loan program. [2009 c.753 §46a]

Sec. 49. Sections 42, 43, 44, 45, 46, 46a and 47a of this 2009 Act are repealed January 2, 2016. [2009 c.753 §49]