AN ACT

Relating to energy; creating new provisions; and amending ORS 176.820, 261.151, 262.025, 267.030, 267.517, 279.729, 458.505, 469.020, 469.030, 469.040, 469.070, 469.080, 469.085, 469.120, 469.155, 469.170, 469.180, 469.200, 469.205, 469.210, 469.215, 469.225, 469.300, 469.310, 469.320, 469.421, 469.503, 469.504, 469.540, 469.550, 469.566, 469.569, 469.571, 469.579, 469.605, 469.606, 469.609, 469.611, 469.613, 469.631, 469.649, 469.673, 469.677, 469.681, 469.683, 469.752, 469.840, 469.880, 469.885, 469.890, 469.895, 469.992, 470.050, 470.070, 470.080, 470.090, 470.100, 470.110, 470.130, 470.135, 470.140, 470.150, 470.160, 470.170, 470.190, 470.210, 470.230, 470.250, 470.260, 470.270, 470.300, 470.310, 757.600 and 757.676.

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

SECTION 1. ORS 469.030 is amended to read:

469.030. (1) There is created the [Office] State Department of Energy.
   (2) The [Office] State Department of Energy shall:
      (a) Be the central repository within the state government for the collection of data on energy resources;
      (b) Endeavor to utilize all public and private sources to inform and educate the public about energy problems and ways in which the public can conserve energy resources;
      (c) Engage in research, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the [Office] State Department of Energy shall endeavor to avoid duplication of research whether completed or in progress;
      (d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 757.710 and 757.720;
      (e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;
      (f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;
      (g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720;
      (h) Maintain an inventory of energy research projects in Oregon and the results thereof;
      (i) Collect, compile and analyze energy statistics, data and information;
      (j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section; and
Upon request of the governing body of any affected jurisdiction, coordinate a public review of a proposed transmission line according to the provisions of ORS 469.442.

SECTION 2. (1) The amendments to ORS 469.030 by section 1 of this 2003 Act are intended to change the name of the Office of Energy to the State Department of Energy.

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “Office of Energy” or “office,” wherever they occur in Oregon Revised Statutes, other words designating the “State Department of Energy” or “department.”

SECTION 3. ORS 469.040 is amended to read:

469.040. (1) The [Office] State Department of Energy shall be under the supervision of the [administrator of the Office] Director of the State Department of Energy, who shall:

(a) Supervise the day-to-day functions of the [Office] State Department of Energy;

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

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

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

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

(3) The [administrator] director shall be appointed by the Governor.

SECTION 4. (1) The amendments to ORS 469.040 by section 3 of this 2003 Act are intended to change the name of the administrator of the Office of Energy to the Director of the State Department of Energy.

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “administrator of the Office of Energy” or “administrator,” wherever they occur in Oregon Revised Statutes, other words designating the “Director of the State Department of Energy” or “director.”

SECTION 5. ORS 469.571 is amended to read:

469.571. There is created an Oregon Hanford [Waste] Cleanup Board that shall consist of the following members:

(1) The [administrator of the Office] Director of the State Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) A representative of the Governor;

(4) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(5) Ten members of the public, appointed by the Governor, one of whom shall be a representative of a local emergency response organization in eastern Oregon and one of whom shall serve as chairperson; and

(6) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote.

SECTION 6. (1) The amendments to ORS 469.571 by section 5 of this 2003 Act are intended to change the name of the Oregon Hanford Waste Board to the Oregon Hanford Cleanup Board.

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “Oregon...
Hanford Waste Board,” wherever they occur in Oregon Revised Statutes, other words designating the “Oregon Hanford Cleanup Board.”

SECTION 7. ORS 469.120 is amended to read:

469.120. (1) The [Office] State Department of Energy Account is established.

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

(3) The [administrator of the Office] Director of the State Department of Energy shall keep a record of all moneys deposited in the [Office] State Department of Energy Account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged.

SECTION 8. (1) The amendments to ORS 469.120 by section 7 of this 2003 Act are intended to change the name of the Office of Energy Account to the State Department of Energy Account.

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “Office of Energy Account,” wherever they occur in Oregon Revised Statutes, other words designating the “State Department of Energy Account.”

SECTION 9. ORS 176.820 is amended to read:

176.820. There is continuously appropriated from the Motor Vehicle Division Account to the [Office] State Department of Energy, for deposit in the [Office] State Department of Energy Account, sufficient moneys for the payment of expenses incurred under chapter 606, Oregon Laws 1975[,] subject to limitations on payment of expenses as approved under legislative authority.

SECTION 10. ORS 261.151 is amended to read:

261.151. Upon certification of a petition for formation or adoption of a resolution by the county governing body for district formation, the county clerk shall submit a copy of the resolution or petition, without signatures attached, to the [administrator of the Office] Director of the State Department of Energy. Not less than 30 days after receipt of the petition or resolution copy, the [administrator] director shall hold a hearing within the proposed district for the purpose of receiving public testimony on the proposed district formation. Notice of the hearing, stating the time and place of the hearing, together with the electors’ petition, when applicable, without the signatures attached, shall be published at least two times prior to the date of the meeting. The first publication shall not be more than 25 days nor less than 15 days preceding the hearing and the last publication shall not be more than 14 days nor less than eight days preceding the hearing. Within 60 days after receipt of the petition or resolution copy, the [administrator] director, with the advice and assistance of the Public Utility Commission of Oregon, shall prepare and publish a concise report showing the availability and cost of power resources, potential tax consequences and any other information considered by the [administrator] director to be relevant to the proposed formation of the district. A copy of the report shall be mailed, upon publication, by the [administrator] director to the county governing body.

SECTION 11. ORS 262.025 is amended to read:

262.025. A joint operating agency shall be formed and come into existence by order of the [administrator of the Office] Director of the State Department of Energy in accordance with the following procedures:

(1) The legislative body of each city and people’s utility district desiring to form and be a member of a joint operating agency shall adopt an ordinance declaring their intention and authorizing formation and membership. The ordinance shall be effective only if submitted to the electors of the city or people’s utility district voting on the ordinance at any general election or at a special election called for that purpose. The ordinance shall include:

(a) A statement of the purpose or purposes for which the joint operating agency is to be formed.
(b) A finding by the legislative body that the formation of a joint operating agency is necessary or desirable in order to plan for and provide an adequate supply of electric energy to meet the needs of the customers of publicly owned utilities in Oregon.

(c) A statement of the projected energy loads and resources relied upon by the legislative body to support such finding.

(d) A general description of the means by which the joint operating agency proposes to accomplish its purposes, including a description of any specific utility properties then identified as a proposed activity of the joint operating agency.

(e) A statement of the financial contribution, if any, to be made by the city or district to the joint operating agency at the time of organization as a condition of membership.

(2) Upon such approval of such an ordinance or ordinances, each such city and district shall file with the administrator director an application to form and be a member of a joint operating agency. The application shall:

(a) State the proposed name of the operating agency, the proposed address of its principal business office, and the purpose or purposes for which it is to be formed;

(b) Contain a certified copy of the ordinance of each applicant city and district as approved by the electors; and

(c) State generally how the joint operating agency proposes to accomplish its purposes.

(3) The administrator director shall cause notice of an application to be published forthwith in the bulletin referred to in ORS 183.360. Such notice shall:

(a) Summarize fairly the contents of the application;

(b) Fix a date not less than 20 nor more than 30 days after the date of publication prior to which interested parties may submit in writing any data, views, or arguments with respect to the application; and

(c) Fix a date not less than 30 nor more than 60 days after the date of publication for the entry of an order approving or disapproving an application.

(4) In considering the application, the administrator director shall give full and fair consideration to all data, views[, and arguments submitted on behalf of the applicants or any other interested person.

(5) On or before the date fixed in subsection (3)(c) of this section, the administrator director shall enter an order establishing the joint operating agency in accordance with the application if the administrator director finds (a) that the statements set forth in the application are substantially correct; (b) that formation of the proposed joint operating agency is necessary or desirable to plan for or provide an adequate supply of electric energy to meet the needs of the customers of publicly owned utilities in Oregon; and (c) that adequate provision has been or can be made for financing the activities of the joint operating agency. The joint operating agency shall be established as of the date of such order.

(6) If the administrator director finds that the application is not in the required form or that additional data is required to support the application, the administrator director shall enter an order so finding. Such an order shall not preclude the applicants from filing a revised application based upon the same approved ordinances.

(7) If the administrator director does not enter an order as authorized under subsection (5) or (6) of this section within 60 days after the date of publication, the application shall be considered approved, and the joint operating agency shall be established as of such 60th day.

(8) A joint operating agency, organized as provided by this section shall have all of the powers and responsibilities contained in ORS 262.005 to 262.105.

(9) Any party who has joined in filing an application in accordance with this section, or who has filed timely objections to such application, and who feels aggrieved by any finding or order of the administrator director shall have the right of judicial review pursuant to ORS 183.480.

SECTION 12. ORS 267.030 is amended to read:

267.030. (1) To the maximum extent possible, motor vehicles subject to the control of a district shall use alternative fuel for operation.
(2) [After July 1, 1993.] To the extent that it is economically and technologically possible, all motor vehicles purchased or leased by the board of the district shall be capable of using alternative fuel. However, this subsection does not apply if the vehicle will be primarily used in an area that does not have and cannot reasonably be expected to establish an alternative fuel refueling station or if the district is unable to secure financing sufficient to cover additional costs resulting from the requirement of this subsection.

(3) Prior to July 1 of each year, the board of the district shall submit an annual report to the Department of Environmental Quality and the [Office] State Department of Energy. The report shall contain at a minimum:

(a) The number of purchases and leases of vehicles capable of using alternative fuel;

(b) The number of conversions of vehicles from the use of gasoline or diesel fuel to the use of alternative fuel;

(c) The quantity of each type of alternative fuel used; and

(d) Any other information required by the Department of Environmental Quality and the [Office] State Department of Energy to carry out their functions under subsection (4) of this section.

(4) [Prior to July 1, 1998, the Department of Environmental Quality and the Office of Energy shall determine whether the use of alternative fuel required by this section has been effective in reducing total annual motor vehicle emissions in the district.] If the Department of Environmental Quality and [Office] State Department of Energy determine that the use of alternative fuel required by this section has been effective in reducing total annual motor vehicle emissions in the district, the motor vehicles subject to the control of the board of the district shall be capable of using alternative fuel, to the maximum extent possible,[ prior to September 1, 2000].

(5) The board of the district shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

(6) As used in this section, “alternative fuel” means any fuel determined by the Department of Environmental Quality to be less polluting than conventional gasoline, including but not necessarily limited to reformulated gasoline, low sulphur diesel fuel, natural gas, liquified petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity.

SECTION 13. ORS 267.517 is amended to read:

267.517. (1) To the maximum extent possible, motor vehicles subject to the control of a transportation district established under ORS 267.510 to 267.650 having a city within the district with a population exceeding 30,000 shall use alternative fuel for operation.

(2) [After July 1, 1993.] To the extent that it is economically and technologically possible, all motor vehicles purchased or leased by the board of the district shall be capable of using alternative fuel. However, this subsection does not apply if the vehicle will be primarily used in an area that does not have and cannot reasonably be expected to establish an alternative fuel refueling station or if the district is unable to secure financing sufficient to cover additional costs resulting from the requirement of this subsection.

(3) Prior to July 1 of each year, the board of the district shall submit an annual report to the Department of Environmental Quality and the [Office] State Department of Energy. The report shall contain at a minimum:

(a) The number of purchases and leases of vehicles capable of using alternative fuel;

(b) The number of conversions of vehicles from the use of gasoline or diesel fuel to the use of alternative fuel;

(c) The quantity of each type of alternative fuel used; and

(d) Any other information required by the Department of Environmental Quality and the [Office] State Department of Energy to carry out their functions under subsection (4) of this section.
Prior to July 1, 1998, the Department of Environmental Quality and the Office of Energy shall determine whether the use of alternative fuel required by this section has been effective in reducing total annual motor vehicle emissions in the district. If the Department of Environmental Quality and Office of Energy determine that the use of alternative fuel required by this section has been effective in reducing total annual motor vehicle emissions in the district, the motor vehicles subject to the control of the board of the district shall be capable of using alternative fuel, to the maximum extent possible, prior to September 1, 2000.

The board of the district shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

(6) As used in this section, “alternative fuel” means any fuel determined by the Department of Environmental Quality to be less polluting than conventional gasoline, including but not necessarily limited to reformulated gasoline, low sulphur diesel fuel, natural gas, liquified petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity.

SECTION 14. ORS 279.729 is amended to read:
ORS 279.729. (1) The Oregon Department of Administrative Services may:
(a) Establish and enforce standards for all supplies, materials and equipment in common use by state agencies.
(b) Make or cause to be made any test, examination or analysis necessary therefor.
(c) Require the assistance of any and all officers and agencies therefor.
(d) Prepare or cause to be prepared proper and uniform specifications.
(e) Classify the requirements of the various agencies of the state government for the purpose of the use and application of such standard specifications.
(f) In consultation with the State Department of Energy, establish criteria relating to the selection of energy efficient equipment.

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

As used in this section, “recycled paper” has the meaning given that term by ORS 279.545.

SECTION 15. ORS 458.505 is amended to read:
ORS 458.505. (1) The community action agency network, established initially under the federal Economic Opportunity Act of 1964, shall be the delivery system for federal antipoverty programs in Oregon, including the Community Services Block Grant, Low Income Energy Assistance Program, Weatherization Program and such others as may become available.

(2) Funds for such programs shall be distributed to the community action agencies by the Housing and Community Services Department with the advice of the Community Action Directors of Oregon.

(3) In areas not served by a community action agency, funds other than federal community services funds may be distributed to and administered by organizations that are found by the Housing and Community Services Department to serve the antipoverty purpose of the community action agency network.

(4) In addition to complying with all applicable requirements of federal law, a community action agency shall:
(a) Be an office, division or agency of the designating political subdivision or a not for profit organization in compliance with ORS chapter 65.
(b) Have a community action board of at least nine but no more than 33 members, constituted so that:
(A) One-third of the members of the board are elected public officials currently serving or their designees. If the number of elected officials reasonably available and willing to serve is less than one-third of the membership, membership of appointed public officials may be counted as meeting the one-third requirement;

(B) At least one-third of the members are persons chosen through democratic selection procedures adequate to assure that they are representatives of the poor in the area served; and

(C) The remainder of the members are officials or members of business, industry, labor, religious, welfare, education or other major groups and interests in the community.

(c) If the agency is a private not for profit organization, be governed by the Community Action Board. The board shall have all duties, responsibilities and powers normally associated with such boards, including, but not limited to:

(A) Selection, appointment and dismissal of the executive director of the agency;

(B) Approval of all contracts, grant applications and budgets and operational policies of the agency;

(C) Evaluation of programs; and

(D) Securing an annual audit of the agency.

(d) If the organization is an office, division or agency of a political subdivision, be administered by the board which shall provide for the operation of the agency and be directly responsible to the governing board of the political subdivision. The administering board at a minimum, shall:

(A) Review and approve program policy;

(B) Be involved in and consulted on the hiring and firing of the agency director;

(C) Monitor and evaluate program effectiveness;

(D) Ensure the effectiveness of community involvement in the planning process; and

(E) Assume all duties delegated to it by the governing board.

(e) Have a clearly defined, specified service area. Community action service areas shall not overlap.

(f) Have an accounting system which meets generally accepted accounting principles and be so certified by an independent certified accountant.

(g) Provide assurances against the use of government funds for political activity by the community action agency.

(h) Provide assurances that no person shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through the community action program.

(i) Provide assurances the community action agency shall comply with any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified individual with disabilities as provided in section 504 of the Rehabilitation Act of 1973.

(5) For the purposes of this section, the Oregon Human Development Corporation is eligible to receive federal community service funds and low-income energy assistance funds.

(6) The State Community Services shall:

(a) Administer federal and state antipoverty programs.

(b) Apply for all available antipoverty funds on behalf of eligible entities as defined in this section.

(c) In conjunction with the Community Action Directors of Oregon, develop a collaborative role in advocating for, and addressing the needs of, all low income Oregonians.

(d) Biennially produce and make available to the public a status report on efforts by it and state agencies to reduce the incidence of poverty in Oregon. This report shall contain figures regarding the numbers and types of persons living in poverty in Oregon.

(e) On a regular basis provide information to the Community Action Directors of Oregon on the activities and expenditures of State Community Services.
(f) As resources are available, provide resources for technical assistance, training and program assistance to eligible entities.

(g) As resources are available, provide resources for the training and technical assistance needs of the Community Action Directors of Oregon.

(h) Conduct a planning process to meet the needs of low income people in Oregon. That process shall fully integrate the Oregon Human Development Corporation into the antipoverty delivery system. The planning process shall include development of a plan for minimum level of services and funding for low income migrant and seasonal farmworkers from the antipoverty programs administered by the agency.

(i) Limit its administrative budget in an effort to maximize the availability of antipoverty federal and state funds for expenditures by local eligible entities.

SECTION 16. ORS 469.020 is amended to read:

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

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

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

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

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

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

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

[(6)] “Department” means the State Department of Energy created under ORS 469.030.

[(7)] “Director” means the Director of the State Department of Energy appointed under ORS 469.040.

[(8)] “Energy facility” has the meaning given in ORS 469.300.

[(9)] “Energy generation area” means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An energy generation area for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

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

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

[(12)] “Office of Energy” means the Office of Energy created under ORS 469.030.

[(13)] “Person” means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people’s utility district, or any other entity, public or private, however organized.

[(14)] “Petroleum supplier” means a petroleum refiner in this state, or any person engaged in the wholesale distribution of crude petroleum or derivative thereof or of propane in this state.
“Related or supporting facilities” means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structure, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. “Related or supporting facilities” does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

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

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

“Utility” includes:

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

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

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

SECTION 17. ORS 469.070 is amended to read:

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

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

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

(2) The forecast shall include summary forecasts for:

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

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

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

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

(5) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the [administrator of the Office] Director of the State Department of Energy believes have an interest in the subject or who have applied to the [administrator] director therefor, shall be supplied a copy of the statement issued by the [Office of Energy] department on July 1 of each even-numbered year. The [administrator] director may charge a reasonable fee for a copy of this statement not to exceed the cost thereof.

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

(7) The forecast shall be included within the plan provided for in ORS 469.060 (1).

SECTION 18. ORS 469.080 is amended to read:

469.080. (1) The [administrator of the Office] Director of the State Department of Energy may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;
(c) Inventory of energy resources; and
(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

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

(3) In obtaining information under this section, the [administrator] director:
(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the [administrator] director for such study; and
(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

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

SECTION 19. ORS 469.085 is amended to read:

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

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

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

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

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

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

(7) In imposing a penalty under ORS 469.992, the [administrator] director or the council shall consider:
(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct or prevent any violation;
(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged violation;
(c) The impact of the violation on public health and safety or public interests in fishery, navigation and recreation;
(d) Any other factors determined by the [administrator] director or the council to be relevant; and
(e) The alleged violator’s cooperativeness and effort to correct the violation.

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

SECTION 20. ORS 469.155 is amended to read:
469.155. (1) As used in this section:
   (a) “Dwelling” means real or personal property inhabited as the principal residence of an owner or renter. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and multiple unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.
   (b) “Energy conservation standards” means standards for the efficient use of energy for space and water heating in a dwelling.

   (2) The [administrator of the Office] Director of the State Department of Energy shall establish advisory energy conservation standards for existing dwellings. The standards shall be adopted by rule in accordance with ORS 183.310 to 183.410. The standards:
   (a) Shall take cost-effectiveness into account; and
   (b) Shall be compatible with and further the state’s incentive programs for residential energy conservation.

   (3) The [administrator] director shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards.

SECTION 21. ORS 469.170 is amended to read:
469.170. (1) Any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person is a corporation) if the person:
   (a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);
   (b) Meets the requirements of ORS 469.160 to 469.180; and
   (c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative energy device.

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

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

   (4) Verification of the purchase, construction or installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall contain:
   (a) The location of the alternative energy device;
   (b) A description of the type of device;
   (c) If the device was constructed or installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and construct or install the alternative energy device;
   (d) If the device was constructed or installed by a contractor, a statement signed by the contractor that the applicant has received:
      (A) A statement of the reasonably expected energy savings of the device;
      (B) A copy of consumer information published by the [Office] State Department of Energy;
      (C) An operating manual for the alternative energy device; and
      (D) A copy of the contractor’s certification certificate or alternative energy device system certificate as appropriate;
   (e) If the device was not constructed or installed by a contractor, evidence that:
      (A) The [Office] State Department of Energy has issued an alternative energy device system certificate for the device; and
      (B) The taxpayer has obtained all building permits required for construction or installation of the device;
(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device
was constructed or installed by a contractor, that the construction or installation meets all the re-
quirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer is the
contractor, a statement signed by the contractor that the construction or installation meets all of
the requirements of ORS 469.160 to 469.180;

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

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

(i) Any other information that the [administrator of the Office] Director of the State Depart-
ment of Energy or the Department of Revenue determines is necessary.

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

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

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

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

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

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

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

(F) Any other information that the [Office] State Department of Energy determines is neces-
sary.

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

(d) The [Office] State Department of Energy may issue contractor system certificates to each
contractor who on October 3, 1989, has a valid dealer system certification, which shall authorize the
sale and installation of the same domestic water heating alternative energy devices authorized by
the dealer certification.

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

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

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

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

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

(6) To claim the tax credit, the verification form described in subsection (4) of this section shall
be submitted with the taxpayer’s tax return for the year the alternative energy device is placed in
service or the immediately succeeding tax year. A copy of the contractor’s certification certificate,
alternative energy device system certificate or alternative fuel vehicle or related equipment certif-
icate also shall be submitted.
(7) The verification form and contractor's certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

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

(9) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 or 317.115 and 469.160 to 469.180 to the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The [Office] State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection.

SECTION 22. ORS 469.180 is amended to read:

469.180. (1) Upon the Department of Revenue's own motion, or upon request of the [Office] State Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;
(b) The verification was fraudulent because of a misrepresentation by the contractor;
(c) In the case of an alternative energy device other than an alternative fuel vehicle or related equipment, the alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or
(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device by the [Office] State Department of Energy after a reasonable, written request for such an inspection by the [Office] State Department of Energy. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

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

(a) The contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder;
(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards; or
(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

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

(4) If the tax credit for the construction or installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. So long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.
(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the [Office] State Department of Energy or its representative may inspect an alternative energy device that has been purchased, constructed or installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116 or 317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the [Office] State Department of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit.

SECTION 23. ORS 469.200 is amended to read:

469.200. The total cost of a facility that receives a preliminary certification from the [administrator of the Office] Director of the State Department of Energy for tax credits in any calendar year shall not exceed $10 million. The [administrator] director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225. The [administrator] director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the determination.

SECTION 24. ORS 469.205 is amended to read:

469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any person may apply to the [Office] State Department of Energy for preliminary certification under ORS 469.210 if:

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

(b) The facility complies with the standards or rules adopted by the [administrator of the Office] Director of the State Department of Energy; and

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

(A) The applicant is a person to whom a tax credit has been transferred; or

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

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

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

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

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

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

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

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

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

(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (8);

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

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

(H) Plans to acquire transit passes for use by individuals specified by the applicant;

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

(J) Plans to acquire a sustainable building practices facility; or

(K) Plans to acquire a car sharing facility and operate a car sharing program.
A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application.

Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant or the lessee of the applicant’s facility will be reduced, and on the amount of energy that will be produced for sale, as the result of using the facility or, if applicable, information about the expected level of sustainable building practices facility performance.

The projected cost of the facility.

If applicable, a copy of the proposed qualified transit pass contract, transportation services contract or contract for lease of parking spaces for a car sharing facility.

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

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

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

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

(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225.

A preliminary certification of a sustainable building practices facility shall be applied for and issued as prescribed by the [Office of Energy] department by rule.

SECTION 25. ORS 469.210 is amended to read:

469.210. (1) The [administrator of the Office] Director of the State Department of Energy may require the submission of plans, specifications and contract terms, and after examination thereof, may request corrections and revisions of the plans, specifications and terms.

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

SECTION 26. ORS 469.215 is amended to read:

469.215. (1) No final certification shall be issued by the [administrator of the Office] Director of the State Department of Energy under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the [administrator] director.

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

(a) If the [office] department issued preliminary certification for the facility under ORS 469.210; and

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

(B) After transfer of the facility, as provided in ORS 315.354 (4).

(3) An application for final certification shall be made in writing on a form prepared by the [Office of Energy] department and shall contain:
(a) A statement that the conditions of the preliminary certification have been complied with;
(b) The actual cost of the facility certified to by a certified public accountant who is not an
employee of the applicant or, if the actual cost of the facility is less than $50,000, copies of receipts
for purchase and installation of the facility;
(c) A statement that the facility is in operation or, if not in operation, that the applicant has
made every reasonable effort to make the facility operable; and
(d) Any other information determined by the [administrator] director to be necessary prior to
issuance of a final certificate, including inspection of the facility by the [Office of Energy] depart-
ment.

(4) The [administrator] director shall act on an application for certification before the 60th day
after the filing of the application under this section. The [administrator] director, after consultation
with the Public Utility Commission, may issue the certificate together with such conditions as the
[administrator] director determines are appropriate to promote the purposes of this section and ORS
315.354, 469.185, 469.200, 469.205 and 469.878. The action of the [administrator] director shall include
certification of the actual cost of the facility. However, in no event shall the [administrator] di-
rector certify an amount for tax credit purposes which is more than 10 percent in excess of the
amount approved in the preliminary certificate issued for the facility.

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

(6) Upon approval of an application for final certification of a facility, the [administrator] di-
rector shall certify the facility. Each certificate shall bear a separate serial number for each device.
Where one or more devices constitute an operational unit, the [administrator] director may certify
the operational unit under one certificate.

SECTION 27. ORS 469.225 is amended to read:
469.225. (1) Under the procedures for a contested case under ORS 183.310 to 183.550, the [ad-
iministrator of the Office] Director of the State Department of Energy may order the revocation
of the certificate issued under ORS 469.215 if the [administrator] director finds that:
(a) The certification was obtained by fraud or misrepresentation; or
(b) The holder of the certificate has failed substantially to construct or to make every reason-
able effort to operate the facility in compliance with the plans, specifications and procedures in such
certificate.

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

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

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

SECTION 28. ORS 469.300 is amended to read:
469.300. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the
context requires otherwise:
[(1) “Administrator” means the administrator of the Office of Energy created under ORS 469.030.]
[(2) (1) “Applicant” means any person who makes application for a site certificate in the man-
ner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.]
“Application” means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

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

“Average electric generating capacity” means the peak generating capacity of the facility divided by one of the following factors:
   (a) For wind or solar energy facilities, 3.00;
   (b) For geothermal energy facilities, 1.11; or
   (c) For all other energy facilities, 1.00.

“Combustion turbine power plant” means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.

“Construction” means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds $250,000.

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

“Department” means the State Department of Energy created under ORS 469.030.

“Director” means the Director of the State Department of Energy appointed under ORS 469.040.

“Electric utility” means persons, regulated electrical companies, people’s utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, supplying, transmitting or distributing electric energy.

“Energy facility” means any of the following:
   (A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:
      (i) Thermal power; or
      (ii) Combustion turbine power plant.
   (B) A nuclear installation as defined in this section.
   (C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:
      (i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and
      (ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way.
   (D) A solar collecting facility using more than 100 acres of land.
   (E) A pipeline that is:
      (i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form in a liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;
      (ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:
         (I) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or
         (II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or
(iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.

(G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.

(H) A storage facility for liquified natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

(I) A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

(i) The underground storage reservoir;

(ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

(iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

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

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

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

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

[(13)] (14) “Facility” means an energy facility together with any related or supporting facilities.

[(14)] (15) “Geothermal reservoir” means an aquifer or aquifers containing a common geothermal fluid.

[(15)] (16) “Local government” means a city or county.

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

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

[(18)] (19) “Nuclear installation” means any power reactor[,] nuclear fuel fabrication plant[,] nuclear fuel reprocessing plant[,] waste disposal facility for radioactive waste[,] and any facility handling that quantity of fissionable materials sufficient to form a critical mass. “Nuclear installation” does not include any such facilities [which] that are part of a thermal power plant.
“Nuclear power plant” means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines.

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

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

(22) “Project order” means the order, including any amendments, issued by the [Office] State Department of Energy under ORS 469.330.

(23) “Radioactive waste” means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

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

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

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

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

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

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

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

(30) “Utility” includes:

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

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

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

(31) “Waste disposal facility” means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been

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issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, “temporary storage” includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government.

SECTION 29. ORS 469.310 is amended to read:

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

SECTION 30. ORS 469.421 is amended to read:

469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under ORS 469.373, a request for the [Office] State Department of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the [Office] State Department of Energy and the Oregon Department of Administrative Services related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate, commissioning an independent study by a contractor, state agency or local government under ORS 469.360, and changes to the rules of the council that are specifically required and related to the particular site certificate.

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

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

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

5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the [Office] State Department of Energy’s budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the [administrator of the Office] Director of the State Department of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the [administrator] director estimates is needed to fund the cost of [assuring] ensuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the [Office of Energy] department under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the [administrator] director shall include both the actual direct cost to be incurred by the council, the [Office] State Department of Energy and the Oregon Department of Administrative Services to [assure] ensure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the [Office] State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards. The fees for direct costs shall reflect the size and complexity of the facility and its certificate conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) As used in this section:

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

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

(C) “Petroleum supplier” has the meaning given that term in ORS 469.020.
(h) In determining the amount of revenues [which] that must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the administrator director shall take into account all other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Department of Administrative Services and the [Office] State Department of Energy, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

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

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

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

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

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

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The administrator director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the administrator director if the administrator director prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the administrator director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

SECTION 31. ORS 469.540 is amended to read:

469.540. (1) In instances where the administrator of the Office Director of the State Department of Energy determines either from the monitoring or surveillance of the administrator director that there is danger of violation of a safety standard adopted under ORS 469.501 from the continued operation of a plant or installation, the administrator director may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

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

(3) The administrator director may order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the administrator director believes that
ORS 469.300 to 469.619 and 469.930 or rules adopted pursuant thereto are being violated or are in danger of being violated.

SECTION 32. ORS 469.550 is amended to read:

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

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

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

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

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

(4) The Governor, in the absence of the [administrator] director, may issue orders and petition for judicial relief as provided in this section.

SECTION 33. ORS 469.566 is amended to read:

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

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

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

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

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

SECTION 34. ORS 469.569 is amended to read:

469.569. As used in ORS 469.566 to 469.583:
(1) “Board” means the Oregon Hanford Waste Cleanup Board.

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

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

SECTION 35. ORS 469.579 is amended to read:

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

SECTION 36. ORS 469.605 is amended to read:

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

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

(3) Application for a permit under this section shall be made in a form and manner prescribed by the administrator of the Office Director of the State Department of Energy and may include:
   (a) A description of the kind, quantity and radioactivity of the material to be transported;
   (b) A description of the route or routes proposed to be taken and the transport schedule;
   (c) A description of any mode of transportation; and
   (d) Other information required by the administrator director to evaluate the application.

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

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

(6) The administrator director may delegate the authority to issue permits for the transportation of radioactive material to the Department of Transportation. In exercising such authority, the Department of Transportation shall comply with the applicable provisions of ORS 469.603 to 469.619 and rules adopted by the administrator director or the Energy Facility Siting Council under ORS 469.603 to 469.619. Permits issued by the Department of Transportation under this subsection shall be enforced according to the provisions of ORS 825.258. The administrator director also may delegate other authority granted under ORS 469.605 to 469.619 to other state agencies if the delegation will maintain or enhance the quality of the transportation safety program.

SECTION 37. ORS 469.606 is amended to read:

469.606. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the Office State Department of Energy shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:
(a) The Oregon Department of Transportation, or a designee of the Oregon Department of Transporta-
tion; 
(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and 
(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Com-
mission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determi-
nation is made that the proposed route is not the best and safest route for transporting the material,
the [administrator of the Office] Director of the State Department of Energy shall deny the applica-
tion except as provided in subsection (3) of this section.

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

(a) Shall petition the United States Department of Transportation for an administrative deter-

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

SECTION 38. ORS 469.609 is amended to read:

469.609. Annually, the [administrator of the Office] Director of the State Department of Energy shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The [administrator] director’s report shall include:

(1) The type and quantity of material transported;
(2) Any mode of transportation used;
(3) The route or routes taken; and
(4) Any other information at the discretion of the [administrator] director.

SECTION 39. ORS 469.611 is amended to read:

469.611. Notwithstanding ORS chapter 401:

(1) The [administrator of the Office] Director of the State Department of Energy shall coor-
dinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to [assure] ensure that the response to a radioactive material transporta-
tion accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The [administrator] director shall:

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

(b) Request all available training and planning materials.

(3) The Department of Human Services shall maintain a trained and equipped radiation emer-
gency response team available at all times for dispatch to any radiological emergency. Before ar-
IVAL of the department at the scene of a radiological accident, the [administrator] Director of the State Department of Energy may designate other technical advisors to work with the local re-
Sponse agencies.

(4) The Department of Human Services shall assist the [administrator] Director of the State Department of Energy to [insure] ensure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper proce-
dures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Department of Human Services shall report annually to the [administrator] Director of the State Department of Energy on training of emergency response personnel.
SECTION 40. ORS 469.613 is amended to read:

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

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

(3) The [administrator] director shall provide for:
   (a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and
   (b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations.

SECTION 41. ORS 469.631 is amended to read:

469.631. As used in ORS 469.631 to 469.645:


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

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


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

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

[7] “Dwelling owner” means the person:
   (a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and
   (b) Whose dwelling receives space heating from the investor-owned utility.

[8] “Energy audit” means:
   (a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;
   (b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;
   (c) An estimate of the cost of the energy conservation measures that includes:
      (A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and
      (B) The items installed; and

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

(A) Passive solar space heating and solar domestic water heating in the dwelling; and
(B) Solar swimming pool heating, if applicable.

“Energy conservation measures” means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. “Energy conservation measures” does not include the dwelling owner’s own labor.

“Investor-owned utility” means an electric or gas utility regulated by the commission as a public utility under ORS chapter 757.

“Residential customer” means a dwelling owner or tenant who, either directly or indirectly, pays a share of the cost for service billed by an investor-owned utility for electric or natural gas service received at the dwelling.

“Space heating” means the heating of living space within a dwelling.

“Tenant” means a tenant as defined in ORS 90.100 or any other tenant.

SECTION 42. ORS 469.649 is amended to read:

469.649. As used in ORS 469.649 to 469.659:

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

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

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

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

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

(6) “Dwelling owner” means the person:

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

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

(7) “Energy audit” means:

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

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

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

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

(B) The items installed; and

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

A) Passive solar space heating and solar domestic water heating in the dwelling; and
Solar swimming pool heating, if applicable.

“Energy conservation measures” means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. “Energy conservation measures” does not include the dwelling owner’s own labor.

“Publicly owned utility” means a utility that:

(a) Is owned or operated in whole or in part, by a municipality, cooperative association or people’s utility district; and
(b) Distributes electricity.

“Residential customer” means a dwelling owner or tenant who is billed by a publicly owned utility for electric service received at the dwelling.

“Space heating” means the heating of living space within a dwelling.

“Tenant” means a tenant as defined in ORS 90.100 or any other tenant.

SECTION 43. ORS 469.673 is amended to read:

469.673. As used in ORS 469.673 to 469.683:

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

(2) “Cash payment” means a payment made by the Office Department of Energy to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

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

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

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

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

(7) “Dwelling owner” means the person:

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

(b) Whose dwelling receives space heating from a fuel oil dealer.

(8) “Energy audit” means:

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

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

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

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

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:
(A) Passive solar space heating and solar domestic water heating in the dwelling; and
(B) Solar swimming pool heating, if applicable.

(8) “Energy conservation measures” means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows, and dehumidifiers. “Energy conservation measures” does not include the dwelling owner’s own labor.

(9) “Fuel oil dealer” means a person, association, corporation or other form of organization that supplies fuel oil at retail for the space heating of dwellings.


[11] “Residential customer” means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service received at the dwelling.

(12) “Space heating” means the heating of living space within a dwelling.

(13) “Tenant” means a tenant as defined in ORS 90.100 or any other tenant.

SECTION 44. ORS 469.677 is amended to read:

469.677. (1) The [administrator of the Office] Director of the State Department of Energy shall contract and a fuel oil dealer may rely upon the [administrator] director to contract for the information, assistance and technical advice required to be provided by a fuel oil dealer under ORS 469.675.

(2) The [administrator] director shall adopt standards for energy audits required under ORS 469.675 by rule in accordance with the rulemaking provisions of ORS 183.310 to 183.550.

SECTION 45. ORS 469.681 is amended to read:

469.681. (1) Each petroleum supplier shall pay to the [Office] State Department of Energy annually its share of an assessment to fund:

(a) Information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the [administrator of the Office] Director of the State Department of Energy contracts under ORS 469.677; and

(b) Cash payments to a dwelling owner or contractor for energy conservation measures.

(2) The amount of the assessment required by subsection (1) of this section shall be determined by the [administrator] director in a manner consistent with the method prescribed in ORS 469.421. The aggregate amount of the assessment shall not exceed $400,000. In making this assessment, the [administrator] director shall exclude all gallons of distillate fuel oil sold by petroleum suppliers that are subject to the requirements of section 3, Article IX of the Oregon Constitution, or ORS 319.020 or 319.530.

(3) If any petroleum supplier fails to pay any amount assessed to it under this section within 30 days after the payment is due, the Attorney General, on behalf of the [Office] State Department of Energy, may institute a proceeding in the circuit court to collect the amount due.

(4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half percent of the payment due per month or fraction of a month from the date the payment was due to the date of payment.

(5) The assessment required by subsection (1) of this section is in addition to any assessment required by ORS 469.421 (8), and any other fee or assessment required by law.

(6) As used in this section, “petroleum supplier” means a petroleum refiner in this state or any person engaged in the wholesale distribution of distillate fuel oil in the State of Oregon.

SECTION 46. ORS 469.683 is amended to read:

469.683. (1) There is established, separate and distinct from the General Fund, the Oil-Heated Dwellings Energy Audit Account. Moneys deposited in the account under subsections (2) to (5) of this section shall be used to pay the cost of the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the [administrator of the Office] Director of the State Department of Energy contracts under ORS 469.677.
(2) The [Office] **State Department** of Energy shall pay into the State Treasury all assessment moneys received by the [Office of Energy] **department** under ORS 469.681 during the preceding calendar month. The State Treasurer shall deposit the moneys to the credit of the Oil-Heated Dwellings Energy Audit Account.

(3) The moneys in the Oil-Heated Dwellings Energy Audit Account are continuously appropriated to the [Office] **State Department** of Energy for the purpose of:
   (a) Paying the cost of information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the [administrator] **director** contracts under ORS 469.677; and
   (b) Providing cash payments to a dwelling owner or contractor for energy conservation measures.

(4) Notwithstanding ORS 293.140, any interest attributable to moneys in the Oil-Heated Dwellings Energy Audit Account shall accrue to that account.

(5) The [Office] **State Department** of Energy shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy Audit Account.

**SECTION 47.** ORS 469.752 is amended to read:

469.752. As used in ORS 469.752 to 469.756, unless the context requires otherwise:

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

(3) “Project” means a state agency’s improvement of the efficiency of energy use through conservation, development of cogeneration facilities or use of renewable resources. “Project” does not include a plan of a state agency to improve the efficiency of energy use in a state rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(4) “Savings” means any reduction in energy costs or net income derived from the sale of energy generated through a project.

**SECTION 48.** ORS 469.840 is amended to read:

469.840. (1) There is established a Northwest Regional Power and Conservation Account. Monies received pursuant to Public Law 96-501 shall be placed in the account.

(2) The account created by subsection (1) of this section is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commission, the [Office] **State Department** of Energy, the State Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action.

**SECTION 49.** ORS 469.880 is amended to read:

469.880. Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The [administrator] **Director of the State Department of Energy** shall adopt rules governing the commercial energy audit program established under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building.

**SECTION 50.** ORS 469.885 is amended to read:

469.885. (1) Within 180 days after the adoption of rules by the [administrator of the Office] **Director of the State Department of Energy** under ORS 469.880, each publicly owned utility shall present for the [administrator’s] **director’s** approval a commercial energy audit program [which] that shall, to the [administrator’s] **director’s** satisfaction:
   (a) Make information about energy conservation available to any commercial building customer of the publicly owned utility, upon request;
   (b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;
   (c) Provide to any commercial building customer of the publicly owned utility, upon request, an on-site energy audit of the customer’s commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures; and
   (d) Set a reasonable time schedule for effective implementation of the elements set forth in this section.
(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount.

SECTION 51. ORS 469.890 is amended to read:

469.890. (1) Within 365 days after November 1, 1981, the [administrator of the Office] Director of the State Department of Energy shall adopt rules governing energy conservation programs prescribed by ORS 469.895[,] and 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the [administrator] director, each covered publicly owned utility shall present for the [administrator’s] director’s approval a commercial energy conservation services program [which] that shall, to the [administrator’s] director’s satisfaction:

(a) Make information about energy conservation available to all commercial building customers of the covered publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the covered publicly owned utility, upon request, an on-site energy audit of the customer’s commercial building, including, but not limited to, an estimate of the cost of energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the covered publicly owned utility.

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount.

SECTION 52. ORS 469.895 is amended to read:

469.895. (1) ORS 469.890[,] and 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890[,] and 469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a “covered publicly owned utility.”

(2) ORS 469.890[,] and 469.900 (3) and this section shall not apply to a covered publicly owned utility if the [administrator of the Office] Director of the State Department of Energy determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the [administrator] director shall publish a list identifying each covered publicly owned utility to which ORS 469.890[,] and 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885.

SECTION 53. ORS 469.992 is amended to read:

469.992. (1) The [administrator of the Office] Director of the State Department of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of [an Office] a State Department of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than $25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of $50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than $100 per day nor more than $1,000 per day may be assessed by the [administrator] director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the [administrator] director pursuant to ORS 469.080 (2).
A civil penalty in an amount of not more than $25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 may be assessed by the circuit court upon complaint of any person injured by the violation.

SECTION 54. ORS 469.992, as amended by section 17, chapter 653, Oregon Laws 1991, section 14, chapter 385, Oregon Laws 1999, and section 310, chapter 1051, Oregon Laws 1999, is amended to read:

469.992. (1) The director of the State Department of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than $25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of $50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than $100 per day nor more than $1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than $25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 or section 14, chapter 653, Oregon Laws 1991, may be assessed by the circuit court upon complaint of any person injured by the violation.

SECTION 55. ORS 470.050 is amended to read:

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

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

[(2)(a)] (1)(a) “Alternative fuel project” means a fleet of vehicles that are modified or acquired directly from a factory and that:

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

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

(b) “Alternative fuel project” may include a facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.

[(3)] (2) “Applicant” means an applicant for a small scale local energy project loan.

[(4)] (3) “Committee” means the Small Scale Local Energy Project Advisory Committee created under ORS 470.070.

[(5)] (4) “Cooperative” means a cooperative corporation organized under ORS chapter 62.

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

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

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

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

(9) “Loan contract” means the evidence of indebtedness and all instruments used in the purchase or acquisition of the evidence of indebtedness. For eligible federal or state agencies or municipal corporations that are tax exempt entities, a loan contract may include a lease purchase agreement with respect to personal property.
(10) “Loan fund” means the Small Scale Local Energy Project Loan Fund created by Article XI-J of the Oregon Constitution.

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

[(12)] “Office of Energy” means the Office of Energy created under ORS 469.030.

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

[(14)] (13) “Recycling project” means a facility or equipment that converts solid waste, as defined in ORS 459.005, into a new and usable product.

[(15)] (14) “Small business” means:

(a) An Oregon business that is:
(A) A retail or service business employing 50 or fewer persons at the time the loan is made; or
(B) An industrial or manufacturing business employing 200 or fewer persons at the time the loan is made; or

(b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity for which the total number of employees for both the subsidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other form of business entity at the time the loan is made is:
(A) Fifty or fewer persons if the subsidiary is a retail or service business; and
(B) Two hundred or fewer if the subsidiary is an industrial or manufacturing business.

[(16)] (15) “Sinking fund” means the Small Scale Local Energy Project Administration and Bond Sinking Fund created in ORS 470.300.

[(17)(a)] (16)(a) “Small scale local energy project” means:

(A) Any system, mechanism or series of mechanisms located in Oregon that uses 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) Any system, mechanism or series of mechanisms located in Oregon that conserves energy, including energy used in transportation;

(C) A recycling project;

(D) An alternative fuel project;

(E) An improvement that increases the production or efficiency of, or extends the operating life of, a system or project otherwise described in this subsection, including but not limited to restarting a dormant project. No improvement that is a hydroelectric project shall exceed five megawatts of electric generating capacity; or

(F) Any project that falls within the items described in subparagraphs (A) to (E) of this paragraph that is added to, or becomes part of, an existing project that falls within the items described in subparagraphs (A) to (E) of this paragraph, 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.

(b) A small scale local energy project may conserve energy or produce energy by generation or by processing or collection of a renewable resource.

SECTION 56. ORS 470.070 is amended to read:

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

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

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

SECTION 57. ORS 470.080 is amended to read:

470.080. (1) After consultation with the Small Scale Local Energy Project Advisory Committee, the [administrator of the Office] Director of the State Department of Energy shall establish by rule standards and criteria for small scale local energy projects to be funded under the provisions of ORS 470.060 to 470.080 and 470.090. The standards and criteria shall operate to encourage diversity in projects funded, give preference to the maximum extent practical to projects proposed by individuals and small businesses, [ensure] assure 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 [Office] State Department of Energy. The [Office of Energy] department may request that the applicant submit additional information or revise the application. The [Office of Energy] 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 [Office of Energy] department shall refer the application and its findings and recommendation to the committee for its review. The [Office of Energy] 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 [Office of Energy] department’s findings and recommendations and advise the [administrator] director whether the proposed small scale local energy project meets the criteria established by the [administrator] director under subsection (1) of this section, whether the project should be financed with moneys from the loan fund and in what amount the loan should be made if approved.

(4) The committee may provide for direct referral of an application by the [Office of Energy] department to the [administrator] director if the application meets criteria established by the committee.

SECTION 58. ORS 470.090 is amended to read:

470.090. (1) After consideration of the recommendation of the Small Scale Local Energy Project Advisory Committee or the [Office] State Department of Energy as provided by ORS 470.080, the [administrator of the Office] 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 [administrator] director shall include a certification of the amount of the loan.

(2) The [administrator’s] 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 stand-
points;
(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 administrator director for development and repayment as provided in ORS 470.150;
(f) There is a need for the proposed small scale local energy project and the applicant’s financial resources are adequate to provide the working capital to maintain the project after completion;
(g) Moneys in the loan fund are or will be available for the development of the proposed small scale local energy project;
(h) A dwelling constructed before January 1, 1979, that will be served by a proposed space heating project is weatherized according to the standards established under ORS 469.155;
(i) Except for a proposed space heating project for a dwelling under paragraph (h) of this subsection, the loan does not finance any project or any component of a project for which the projected economic value of the energy savings of the project or the component during the first year the project or component is implemented is equal to or greater than the cost of the project or component;
(j) The loan will not preclude individuals and small businesses from access to loan funds.

3 The administrator director shall notify the applicant and the presiding officer of the committee of the administrator’s director’s action and of the reasons for that action. The administrator director shall inform the applicant of the review procedure established in ORS 470.100.

SECTION 59. ORS 470.100 is amended to read:
470.100. (1) If the administrator of the Office 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 administrator’s director’s action.
(2) The committee may review the administrator’s 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 administrator’s director’s action to the Governor.
(3) An appeal of the administrator’s 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 administrator’s 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 183.310 to 183.550, a decision of the administrator director or the Governor on an application for loan funds under ORS 470.090 or this section is not subject to judicial review.

SECTION 60. ORS 470.110 is amended to read:
470.110. The administrator of the Office Director of the State Department of Energy may accept gifts of money or other property from any source, given for the purposes of ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210. Money so received shall be paid into the loan fund. Money or other property so received shall be used for the purposes for which received.

SECTION 61. ORS 470.130 is amended to read:
470.130. All moneys in the loan fund created by Article XI-J of the Oregon Constitution hereby are appropriated continuously to the administrator of the Office State Department of Energy and shall be used for the purposes provided in this chapter.

SECTION 62. ORS 470.135 is amended to read:
470.135. 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 Office.
State Department of Energy. Notwithstanding the transfer of these fiscal functions to the [Office] State Department of Energy, in accordance with ORS 291.015 (2), the [Office] State Department of Energy’s performance of these fiscal functions shall remain subject to the control of the Oregon Department of Administrative Services.

SECTION 63. ORS 470.140 is amended to read:

470.140. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the [administrator of the Office] Director of the State Department of Energy may adopt rules considered necessary to carry out the purposes of this chapter.

(2) The [administrator] director shall submit to the Legislative Assembly and the Governor a biennial report of the transactions of the loan fund and the sinking fund in such detail as will accurately indicate the condition of the funds.

SECTION 64. ORS 470.150 is amended to read:

470.150. Except as provided in ORS 470.155, if the [administrator of the Office] Director of the State Department of Energy approves the financing of a small scale local energy project, the [administrator] 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 [Office] 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 [administrator] director, on behalf of the state, must approve the arrangements made by the applicant for the development, operation and maintenance of the small scale local energy project, using moneys in the loan fund for the project development.

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

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

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

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

(e) May set forth a procedure for formal declaration of default of payment by the [administrator] 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 [administrator] director for field inspection, the [administrator] 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 [administrator] director considers necessary to [insure] ensure expenditure of the funds for the purposes set forth in the approved application.

(6) May provide that the [administrator] 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.

SECTION 65. ORS 470.160 is amended to read:

470.160. If the [administrator of the Office] Director of the State Department of Energy approves a loan for a small scale local energy project, the State Treasurer shall pay moneys for such project from the loan fund in accordance with the terms of the loan contract, as prescribed by the [administrator] director.

SECTION 66, ORS 470.170 is amended to read:

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

(2) When a loan is made to a municipal corporation for the development of a small scale local energy project under this chapter, the loan shall be secured as the [administrator] 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 [administrator] 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 [administrator] 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 [administrator] director shall file a satisfaction or release notice that indicates repayment of the loan.

(5) The [administrator] 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 [administrator’s] director’s expenses incurred in foreclosing, into the sinking fund. In a foreclosure proceeding the [administrator] 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 [administrator] 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 [administrator] 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 [administrator’s] director’s action is consistent with the purposes of this chapter and does not impair the ability to pay the administrative expenses of the [Office] State Department of Energy or the obligations of any bonds then outstanding.

SECTION 67. ORS 470.190 is amended to read:

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

SECTION 68. ORS 470.210 is amended to read:
470.210. (1) Notwithstanding any other provision of law, a municipal corporation may enter into a loan contract for financing 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, may purchase or otherwise acquire a municipal corporation’s general obligation or revenue evidence of indebtedness including but not limited to a bond, note, certificate of participation, warrant or lease purchase agreement issued by the municipal corporation to finance the small scale local energy project.

(3) A project may be financed under subsection (1) of this section only if the director finds:

(a) The municipal corporation complies with the requirements of this chapter regarding a small scale local energy project loan; and

(b) The instrument evidencing the indebtedness complies with the requirements of ORS 470.150.

(4) Notwithstanding subsection (2) of this section, a loan obtained from the State Department of Energy by a county to finance a small scale local energy project shall be secured solely by the small scale local energy project and revenues derived from the project and shall not constitute a general obligation of the county. A county may repay any portion of a loan incurred under this chapter from any funds available to it.

SECTION 69. ORS 470.230 is amended to read:

470.230. Except as provided in ORS 470.270, all moneys obtained from the sale of bonds under ORS 470.220 to 470.290 shall be credited by the State Treasurer to the loan fund. Those moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution and ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210. Those moneys may be used to make payments of interest of bonds issued pursuant to the provisions of ORS 470.220 to 470.290 if there are insufficient funds in the sinking fund to make the payments referred to in ORS 470.300 (1). Moneys loaned to municipal corporations but withheld by the State Department of Energy for security or to pay for future project costs may remain in the loan fund. Pending the use of the moneys in the loan fund for the proper purposes, the moneys may be invested in the manner provided by law.

SECTION 70. ORS 470.250 is amended to read:

470.250. Each issue of bonds under ORS 470.220 to 470.290 shall be payable in principal installments and upon a maturity date or dates to be determined by the administrator of the Office of the State Department of Energy, with the approval of the State Treasurer, provided that the first principal installment shall fall due not later than four years after the date of the bonds and that the earliest maturity date of any of the bonds of an issue shall be not less than one year and the final maturity date not more than 30 years from the date of the bonds. The director, with the approval of the State Treasurer, may issue the bonds, as provided in ORS 286.031, with reservation of the right to redeem the bonds for retirement or refunding purposes prior to the final date or dates of maturity thereof. The bonds may be issued in registered form. The bonds and any appurtenant coupons shall be negotiable in form and shall embody an absolute and unconditional promise of the State of Oregon to pay the principal of and the interest upon the bonds, when due, in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States of America. The bonds shall be executed with the facsimile signatures of two of the three officers designated in ORS 286.061, and with the manual signature of the other of such officers, as agreed upon among them. The bonds may bear coupons evidencing the interest to become due thereon for each installment thereof. The first coupon of each issue of bonds may be for a period of more or less than six months but of not more than one year, if, in the judgment of the State Treasurer, the issuance of the bonds with such coupons is advisable. The coupons shall be executed with the facsimile signature, with the title of the office thereunder, of each of the officers designated in ORS 286.061. Bonds issued under ORS 470.220 to 470.290, and the interest coupons annexed thereto, bearing the signatures of officers in office on the date of execution of the bonds shall be valid and legally binding obligations, notwithstanding that before delivery of the bonds to the purchasers thereof any or all of the officers have ceased to be such.

SECTION 71. ORS 470.260 is amended to read:
ORS 470.260. The [administrator of the Office] Director of the State Department of Energy, with the approval of the State Treasurer, shall provide such method as the [administrator] director considers appropriate for the advertisement by newspaper of each issue of bonds under ORS 470.220 to 470.290, before the issue is sold and shall require such deposit with each bid therefor as the [administrator] director considers adequate to [insure] ensure the fulfillment thereof. Prior to advertisement of any of the bonds for sale, the State Treasurer may publish in one or more financial newspapers in the City and State of New York a statement showing the current financial condition of the State of Oregon. The advertisement of the proposed sale of the bonds shall be published once not less than 10 days before the sale date and shall contain a provision to the effect that the [administrator] director has the discretion to reject any or all bids received in pursuance of such advertisement. In the event of rejection, the [administrator] director may readvertise for bids for the bonds in the form and manner set forth in this section, as many times as, in the judgment of the [administrator] director, may be necessary to effect a satisfactory sale. The bonds, including refunding bonds, may be sold to any bidder or to the state at a price of not less than 98 percent of par value and the full amount of the accrued interest thereon.

SECTION 72. ORS 470.270 is amended to read:

ORS 470.270. (1) After consultation with the State Treasurer, the [administrator of the Office] Director of the State Department of Energy may issue refunding bonds for the purpose of refunding outstanding bonds issued under ORS 470.220 to 470.290. The refunding bonds may be sold in the same manner as other bonds are sold under ORS 470.220 to 470.290. All moneys obtained from the sale of refunding bonds shall be credited by the State Treasurer to the sinking fund. The issuance of the refunding bonds, the maturity date, and other details thereof, the rights of the holders thereof, and the duties of the Governor, Secretary of State and State Treasurer with respect thereto, shall be governed by the other provisions of ORS 470.220 to 470.290, insofar as those provisions are applicable. 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 [Office] 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 [administrator] director shall allow the loan recipient to prepay the outstanding loan balance upon the request of the recipient. The [administrator] 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 [Office of Energy] department shall pursue opportunities for refunding bonds to reduce interest sums payable by the [office] department. When the [office] department refunds a bond with tax-exempt bonds, the [office] 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 [administrator] director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300 (1). The [Office of Energy] department shall not refund tax-exempt bonds with taxable bonds, unless the [office] 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 [Office of Energy] department intends to issue refunding bonds, the [administrator] 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.

SECTION 73. ORS 470.300 is amended to read:

ORS 470.300. (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 [Office] State Department of Energy and the [administrator of the Office] Director of the State Department of Energy in processing applications, investigating
proposed loans and servicing and collecting outstanding loans made under this chapter, if the expense is not paid directly by the applicant.

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

(c) Principal and interest of all bonds issued pursuant to the provisions of ORS 470.220 to 470.290.

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

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

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

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

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

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

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

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

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

(3) The [administrator] 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 [administrator] 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 and administration costs; and

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

(4) The [administrator] 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.

SECTION 74. ORS 470.310 is amended to read:

470.310. (1) If there are insufficient funds in the sinking fund to make the payments referred to in ORS 470.300 (1), the [administrator of the Office] 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 [administrator] 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.

SECTION 75. ORS 757.600 is amended to read:

757.600. As used in ORS 757.600 to 757.687, unless the context requires otherwise:

(1) “Aggregate” means combining retail electricity consumers into a buying group for the purchase of electricity and related services.

(2) “Ancillary services” means services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, load shaping, reactive power, voltage control and energy balancing services.

(3) “Commission” means the Public Utility Commission.

(4) “Consumer-owned utility” means a municipal electric utility, a people’s utility district or an electric cooperative.

(5) “Default supplier” means an electricity service supplier or electric company that has a legal obligation to provide electricity services to a consumer, as determined by the commission.
(6) “Direct access” means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

(7) “Direct service industrial consumer” means an end user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(8) “Distribution” means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(9) “Distribution utility” means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(10) “Economic utility investment” means all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. “Economic utility investment” does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(11) “Electric company” means an entity engaged in the business of distributing electricity to retail electricity consumers in this state, but does not include a consumer-owned utility.

(12) “Electric cooperative” means an electric cooperative corporation organized under ORS chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(13) “Electric utility” means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(14) “Electricity” means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(15) “Electricity services” means electricity distribution, transmission, generation or generation-related services.

(16) “Electricity service supplier” means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. “Electricity service supplier” does not include an electric utility selling electricity to retail electricity consumers in its own service territory.

(17) “Governing body” means the board of directors or the commissioners of an electric cooperative or people’s utility district, or the council or board of a city with respect to a municipal electric utility.

(18) “Load” means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(19) “Low-income weatherization” means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(20) “Municipal electric utility” means an electric distribution utility owned and operated by or on behalf of a city.

(21) “New renewable energy resource” means a renewable energy resource project, or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that is not in operation on July 23, 1999. “New renewable energy resource” does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

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

(23) “One average megawatt” means 8,760,000 kilowatt-hours of electricity per year.

(24) “People’s utility district” has the meaning given that term in ORS 261.010.

(25) “Portfolio access” means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the governing board of a
consumer-owned utility and may include product and pricing options offered by the utility or by an
electricity service supplier.

[(26)] (25) “Power generation company” means a company engaged in the production and sale
of electricity to wholesale customers, including but not limited to independent power producers, af-
filiated generation companies, municipal and state authorities, provided the company is not regu-
lated by the commission.

[(27)] (26) “Qualifying expenditures” means those expenditures for energy conservation measures
that have a simple payback period of not less than one year and not more than 10 years, and ex-
penditures for the above-market costs of new renewable energy resources, provided that the [Office] State Department of Energy by rule may establish a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

[(28)] (27) “Renewable energy resources” means:
(a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or by
low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues.
(b) Dedicated energy crops available on a renewable basis.
(c) Landfill gas and digester gas.
(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect

[(29)] (28) “Residential electricity consumer” means an electricity consumer who resides at a
dwelling primarily used for residential purposes. “Residential electricity consumer” does not include
retail electricity consumers in a dwelling typically used for residency periods of less than 30 days,
including hotels, motels, camps, lodges and clubs. As used in this subsection, “dwelling” includes but
is not limited to single family dwellings, separately metered apartments, adult foster homes, manu-
factured dwellings, recreational vehicles and floating homes.

[(30)] (29) “Retail electricity consumer” means the end user of electricity for specific purposes
such as heating, lighting or operating equipment, and includes all end users of electricity served
through the distribution system of an electric utility on or after July 23, 1999, whether or not each
end user purchases the electricity from the electric utility.

[(31)] (30) “Site” means a single contiguous area of land containing buildings or other structures
that are separated by not more than 1,000 feet, or buildings and related structures that are inter-
connected by facilities owned by a single retail electricity consumer and that are served through a
single electric meter.

[(32)] (31) “Transition charge” means a charge or fee that recovers all or a portion of an une-
conomic utility investment.

[(33)] (32) “Transition credit” means a credit that returns to consumers all or a portion of the
benefits from an economic utility investment.

[(34)] (33) “Transmission facility” means the plant and equipment used to transmit electricity in
interstate commerce.

[(35)] (34) “Undue market power” means the unfair or improper exercise of influence to increase
or decrease the availability or price of a service or product in a manner inconsistent with compet-
itive markets.

[(36)] (35) “Uneconomic utility investment” means all electric company investments, including
plants and equipment and contractual or other legal obligations, properly dedicated to generation,
conservation and workforce commitments, that were prudent at the time the obligations were as-
sumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to
757.667, absent transition charges. “Uneconomic utility investment” does not include costs or ex-
penses disallowed by the commission in a prudence review or other proceeding, to the extent of such
disallowance, and does not include fines or penalties as authorized by state or federal law.

SECTION 76. ORS 469.320 is amended to read:

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

(2) No site certificate shall be required for:

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

(A) The site is not enlarged; and

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

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

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

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

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

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

(e) An energy facility as defined in ORS 469.300 [(10)(a)(G)] (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 [(10)(a)(G)] (11)(a)(G), if the facility:

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

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

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

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

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

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

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;
(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

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

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

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

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

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

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

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

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

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

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

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

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

(8) As used in this section:
(a) “Standby generation facility” means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.
(b) “Temporary energy generating facility” means an electric power generating facility, including a thermal power plant and a combustion turbine power plant, but not including a hydropower plant, with a nominal electric generating capacity of no more than 100 megawatts that is operated for no more than 24 months from the date of initial commercial operation.
(c) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.
(d) “Useful thermal energy” means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.
(9) Notwithstanding the definition of “energy facility” in ORS 469.300 [(11)(a)(J)] 469.320, as amended by section 8, chapter 683, Oregon Laws 2001, is amended to read:

469.320. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.
(2) No site certificate shall be required for:
(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:
(A) The site is not enlarged; and

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

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

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

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

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

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

(e) An energy facility as defined in ORS 469.300 [(10)(a)(G)] (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 [(10)(a)(G)] (11)(a)(G), if the facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) As used in this section:

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

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

(c) “Useful thermal energy” means the verifiable thermal energy used in any viable industrial
or commercial process, heating or cooling application.

(8) Notwithstanding the definition of “energy facility” in ORS 469.300 [(10)(a)(J)] (11)(a)(J), an
electric power generating plant with an average electric generating capacity of less than 35 mega-
watts produced from wind energy at a single energy facility or within a single energy generation
area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590
to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall
be final upon submission of an application for a site certificate.

SECTION 78. ORS 469.503 is amended to read:

469.503. In order to issue a site certificate, the Energy Facility Siting Council shall determine
that the preponderance of the evidence on the record supports the following conclusions:

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

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

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

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

(A) Promote facility fuel efficiency;
(B) Promote efficiency in the resource mix;
(C) Reduce net carbon dioxide emissions;
(D) Promote cogeneration that reduces net carbon dioxide emissions;
(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
(F) Minimize transaction costs;
(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
(H) Allow either the applicant or third parties to implement offsets;
(I) Be attainable and economically achievable for various types of power plants;
(J) Promote public participation in the selection and review of offsets;
(K) Promote prompt implementation of offset projects;
(L) Provide for monitoring and evaluation of the performance of offsets; and
(M) Promote reliability of the regional electric system.

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

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

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved. The council shall determine the quantity of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions.
emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

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

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

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

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

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

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

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

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

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

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

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

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

(e) As used in this subsection:

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

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

(C) “Fossil-fueled power plant” means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.
(D) “Generating facility” means those energy facilities that are defined in ORS 469.300 [(10)(a)(A) (11)(a)(A), (B) and (D)].

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

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

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

(H) “Nongenerating facility” means those energy facilities that are defined in ORS 469.300 [(10)(a)(C) (11)(a)(C) and (E) to (I)].

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

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

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

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

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

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

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

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

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

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

(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

**SECTION 79.** ORS 469.504 is amended to read:

469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

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

(b) The Energy Facility Siting Council determines that:

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

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

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

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

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

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

(c) The following standards are met:

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

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

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

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

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

(5) Upon request by the [Office] **State Department of Energy**, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory
group does not recommend applicable substantive criteria within the time established in the [Office of Energy’s] department’s request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility [described] as defined in ORS 469.300 [(10)(a)(C)] (11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

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

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

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

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

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

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

(9) The [Office] State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

SECTION 80. ORS 757.676 is amended to read:

757.676. The governing body of a consumer-owned utility is authorized to determine whether and under what terms and conditions it will offer its retail electricity consumers direct access, portfolio access or other forms of access to electric service suppliers. In making such determination, the governing body of a consumer-owned utility shall consider such factors as it deems appropriate. A consumer-owned utility shall have sole authority to determine:

(1) The quality and nature of electric service, including but not limited to different product and pricing options, which shall be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates, tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) Notwithstanding ORS 757.600 (10) and [(36)] (35), what constitutes an economic or uneconomic utility investment, the value of such investments and, in the case of uneconomic utility investments, the manner and means of mitigating such investments.
(5) Whether and on what basis a transition charge will be adopted, assessed and collected from a retail electricity consumer located within the utility’s service territory, including but not limited to a nonbypassable distribution charge, the amount and period of recovery for the charges, the allocation of the charges among retail electricity consumers located within the utility’s service territory and the method of collecting such charges including but not limited to whether to impose a nonbypassable distribution charge.

(6) The manner of collecting stranded distribution charges, systems benefit charges, franchise fees, taxes and payments made in lieu of taxes from retail electricity consumers located within the utility’s service territory for electric power transactions using transmission facilities, whether or not such transactions use distribution facilities. The governing body may assign charges on the basis of usage, demand or any combination or method it finds appropriate. Charges need not be assigned to specific facilities.

(7) The collection from retail electricity consumers located within the utility’s service territory through rates, fees or charges, including the imposition of a nonbypassable distribution charge, in amounts sufficient to recover 100 percent of stranded costs imposed by, or incurred pursuant to the purchase of cost-based electric power from, the Bonneville Power Administration. Such stranded cost charges may include the difference in cost associated with purchasing electric power from the Bonneville Power Administration and the cost of purchasing a like and similar amount of electric power at market prices.

(8) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the utility’s service territory and the consumer-owned utility in dealings with electric service suppliers.

(9) Access to or use of the utility’s transmission facilities or distribution system by retail electricity consumers or electric service suppliers.

(10) The utility’s qualification standards for energy service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service providers in a nondiscriminatory manner.