

House Bill 3328

Sponsored by Representative WITT; Representatives BUCKLEY, KOMP, MARCH, ROSENBAUM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs State Department of Energy to investigate means to reduce energy consumption in state-owned or state-funded buildings and school district buildings.

Requires department to prepare plan for submission to Seventy-fourth Legislative Assembly for making state-owned or state-funded buildings and school district buildings more energy efficient and installing renewable energy systems.

Appropriates moneys from General Fund to department for preparation of plan.

Directs department to encourage public bodies to apply for funding to implement energy efficiency and renewable energy projects.

Requires contractors and subcontractors working on certain energy efficiency and renewable energy projects to utilize apprenticeship programs and develop relationships with apprenticeship preparation programs.

Expands definition of "eligible state agency" to include all public bodies for purposes of statutes relating to small scale local energy projects.

A BILL FOR AN ACT

1
2 Relating to energy projects; creating new provisions; amending ORS 470.050, 470.060, 470.080 and
3 470.150; and appropriating money.

4 Whereas energy efficiency measures are cost-effective ways to substantially reduce the utility
5 costs of public agencies and school districts; and

6 Whereas investment in energy efficiency projects and renewable energy projects will reduce the
7 load on existing energy sources, minimizing power outages and reducing dependency on
8 nonrenewable, expensive and polluting energy sources during peak demand periods; and

9 Whereas an increase in renewable energy development will jump-start Oregon's transition to
10 renewable energy use, create local family-wage jobs, reduce emissions that lead to global warming,
11 improve public health, strengthen energy security, increase energy dependability and reduce vul-
12 nerability to price spikes due to a volatile energy market; and

13 Whereas the goal of the State of Oregon is to reduce by 15 percent the energy consumption of
14 state government buildings and school district buildings by 2015 through energy efficiency and
15 renewable energy projects; now, therefore,

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

17 **SECTION 1. (1) The State Department of Energy shall investigate cost-effective means**
18 **of reducing peak load energy consumption and overall energy use in state-owned or state-**
19 **funded buildings and facilities, including school district buildings. In conducting this investi-**
20 **gation, the department shall:**

21 **(a) Examine existing energy efficiency and renewable energy programs and identify**
22 **underutilized program strategies; and**

23 **(b) Perform comprehensive and customized energy audits on state-owned or state-funded**
24 **buildings and school district buildings that will determine where system upgrades should be**
25 **made to reduce energy use and realize energy savings. The audits shall identify energy con-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **sumption patterns, climatic factors, conditions of existing energy systems and areas needing**
 2 **energy efficiency improvement.**

3 **(2) Based on the results of the department’s investigation under subsection (1) of this**
 4 **section, the department shall prepare a revenue-neutral plan that describes:**

5 **(a) Recommendations for increasing the energy efficiency of and the use of renewable**
 6 **energy sources;**

7 **(b) The maximum amount of on-site renewable energy measures that can be taken while**
 8 **retaining the revenue-neutral nature of the plan;**

9 **(c) The types of and the estimated number of apprenticeship and apprenticeship prepa-**
 10 **ration opportunities involved in the implementation of the recommended energy efficiency**
 11 **and renewable energy measures; and**

12 **(d) A schedule for implementing the energy efficiency and renewable energy measures.**

13 **(3) The department shall present the plan to the Seventy-fourth Legislative Assembly.**

14 **SECTION 2. There is appropriated to the State Department of Energy, for the biennium**
 15 **beginning July 1, 2005, out of the General Fund, the amount of \$100,000, for the purpose of**
 16 **carrying out the provisions of section 1 of this 2005 Act.**

17 **SECTION 3. The State Department of Energy shall encourage public bodies, as defined**
 18 **in ORS 174.109, to apply for small scale local energy project loans pursuant to ORS chapter**
 19 **470 and to apply for any other state or federal funding available for projects implementing**
 20 **energy efficiency or renewable energy measures.**

21 **SECTION 4. (1) All contractors and subcontractors working on projects that cost more**
 22 **than \$100,000 and that are funded by public purpose expenditures described in ORS 757.612**
 23 **or working on projects undertaken by public bodies pursuant to section 3 of this 2005 Act**
 24 **shall utilize apprenticeship programs approved by the State Apprenticeship and Training**
 25 **Council.**

26 **(2) Contractors and subcontractors working on a project described in subsection (1) of**
 27 **this section shall employ apprentices for a minimum of 20 percent of the total number of**
 28 **hours that workers from each trade for which there is an eligible apprenticeship program**
 29 **worked on the project. Contractors and subcontractors shall fulfill this requirement without**
 30 **exceeding the apprenticeship ratios approved by the applicable apprenticeship program.**

31 **(3)(a) Apprenticeship hours used to fulfill the apprentice employment requirement under**
 32 **subsection (2) of this section must be hours worked on the project by apprentices who are**
 33 **enrolled in eligible apprenticeship programs.**

34 **(b) If a contractor or subcontractor is unable to fulfill the apprentice employment re-**
 35 **quirement under subsection (2) of this section following the guidelines in paragraph (a) of**
 36 **this subsection, the contractor or subcontractor may consider the following hours as hours**
 37 **worked on the project for the purpose of fulfilling the apprentice employment requirement**
 38 **under subsection (2) of this section:**

39 **(A) Hours worked on the project by apprentices who are required to be away from the**
 40 **job site for apprenticeship-related training during the course of the project, but only if the**
 41 **apprentices are rehired by the contractor or subcontractor after they complete the training;**
 42 **and**

43 **(B) Hours worked on the project by graduates of eligible apprenticeship programs, pro-**
 44 **vided that the hours are worked within the 12-month period following the date on which the**
 45 **graduates completed the apprenticeship program.**

1 (4) If apprentices are not available from an eligible apprenticeship program, the con-
 2 tractor or subcontractor may apply to the State Department of Energy for a waiver from the
 3 apprentice employment requirement under subsection (2) of this section.

4 (5) Prior to commencing work on projects described in subsection (1) of this section,
 5 contractors and subcontractors shall make good faith efforts to:

6 (a) Establish relationships with local apprenticeship preparation programs approved by
 7 the Apprenticeship and Training Division of the Bureau of Labor and Industries in order to
 8 offer skilled, family wage jobs in communities where projects are located; and

9 (b) Recruit graduates of apprenticeship programs in an effort to provide employment
 10 opportunities for women and minorities.

11 (6) As used in this section, “eligible apprenticeship programs” means apprenticeship
 12 programs that are approved by the State Apprenticeship and Training Council, from which
 13 50 percent of the students enrolled in the past five years have graduated.

14 **SECTION 5.** ORS 470.050 is amended to read:

15 470.050. As used in this chapter, unless the context requires otherwise:

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

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

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

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

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

26 (3) “Committee” means the Small Scale Local Energy Project Advisory Committee created under
 27 ORS 470.070.

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

29 (5) “Director” means the Director of the State Department of Energy appointed under ORS
 30 469.040.

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

35 (7) “Eligible state agency” means a [*state officer, board, commission, department, institution,*
 36 *branch or agency of the state whose costs are paid wholly or in part from funds held in the State*
 37 *Treasury*] **public body, as defined in ORS 174.109, and any federally recognized Indian tribe.**

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

40 (9) “Loan contract” means the evidence of indebtedness and all instruments used in the purchase
 41 or acquisition of the evidence of indebtedness. For eligible federal **agencies** or **eligible** state agen-
 42 cies [*or municipal corporations that are tax exempt entities*], a loan contract may include a lease
 43 purchase agreement with respect to personal property.

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

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

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

7 (13) "Recycling project" means a facility or equipment that converts solid waste, as defined in
 8 ORS 459.005, into a new and usable product.

9 (14) "Small business" means:

10 (a) An Oregon business that is:

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

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

14 (b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corpo-
 15 ration or other form of business entity for which the total number of employees for both the sub-
 16 sidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other
 17 form of business entity at the time the loan is made is:

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

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

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

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

23 (A) Any system, mechanism or series of mechanisms located in Oregon that uses renewable re-
 24 sources including, but not limited to, solar, wind, geothermal, biomass, waste heat or water re-
 25 sources to produce energy including heat, electricity and substitute fuels to meet a local community
 26 or regional energy need in this state;

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

29 (C) A recycling project;

30 (D) An alternative fuel project;

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

35 (F) Any project that falls within the items described in subparagraphs (A) to (E) of this para-
 36 graph that is added to, or becomes part of, an existing project that falls within the items described
 37 in subparagraphs (A) to (E) of this paragraph, whether or not the existing project was originally fi-
 38 nanced under this chapter, together with any refinancing necessary to remove prior liens or
 39 encumbrances against the existing project.

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

42 **SECTION 6.** ORS 470.060 is amended to read:

43 470.060. (1) Any individual who is a resident of Oregon, an Oregon business, a nonprofit or
 44 public cooperative, a nonprofit corporation, an eligible federal agency, an eligible state agency[,]
 45 **or** a public corporation created by the state [*or a municipal corporation*] may file with the State

1 Department of Energy an application to obtain loan funds for a small scale local energy project as
2 provided in this chapter.

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

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

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

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

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

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

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

18 (3) A fee of one-tenth of one percent of the amount of the loan applied for or \$2,500, whichever
19 is less, shall be submitted with each application. In addition, the applicant may be required to pay
20 for costs incurred in connection with the application that exceed the application fee and which the
21 Director of the State Department of Energy determines are incurred solely in connection with pro-
22 cessing the application. The applicant shall be advised of any additional costs the applicant must
23 pay before the costs are incurred.

24 **SECTION 7.** ORS 470.080 is amended to read:

25 470.080. (1) After consultation with the Small Scale Local Energy Project Advisory Committee,
26 the Director of the State Department of Energy shall establish by rule standards and criteria for
27 small scale local energy projects to be funded under the provisions of ORS 470.060 to 470.080 and
28 470.090. The standards and criteria shall operate to encourage diversity in projects funded, give
29 preference to the maximum extent practical to projects proposed by individuals and small busi-
30 nesses, ensure acceptability of environmental impacts and [*shall*] require consideration of the po-
31 tential contribution of a project if developed at other suitable locations to meeting the energy needs
32 of this state. **The standards and criteria shall require projects developed pursuant to section**
33 **3 of this 2005 Act to utilize eligible apprenticeship programs, as defined in section 4 of this**
34 **2005 Act, in the manner described by section 4 of this 2005 Act.** The standards and criteria shall
35 give the least preference to projects proposed by an eligible federal agency.

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

39 (a) Determine whether the application meets the standards and criteria adopted under sub-
40 section (1) of this section; and

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

43 (3) After concluding its review, unless the application meets the criteria established by the
44 committee under subsection (4) of this section, the department shall refer the application and its
45 findings and recommendation to the committee for its review. The department shall notify the ap-

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

6 (4) The committee may provide for direct referral of an application by the department to the
7 director if the application meets criteria established by the committee.

8 **SECTION 8.** ORS 470.150 is amended to read:

9 470.150. Except as provided in ORS 470.155, if the Director of the State Department of Energy
10 approves the financing of a small scale local energy project, the director, on behalf of the state, and
11 the applicant may enter into a loan contract, secured by a first lien or by other good and sufficient
12 collateral in the manner provided in ORS 470.155 to 470.210. For purposes of this section, the interest
13 of the State Department of Energy under a lease purchase contract entered into with an eligible
14 federal **agency** or **an eligible** state agency [*or a municipal corporation*] may constitute good
15 and sufficient collateral. The contract:

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

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

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

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

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

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

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

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

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

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

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

8
