

HOUSE AMENDMENTS TO HOUSE BILL 2626

By COMMITTEE ON SUSTAINABILITY AND ECONOMIC DEVELOPMENT

April 21

1 On page 1 of the printed bill, line 2, after “use;” delete the rest of the line and insert “creating
2 new provisions; amending ORS 470.050, 470.060, 470.070, 470.080, 470.090, 470.100, 470.110, 470.120,
3 470.130, 470.140, 470.150, 470.160, 470.170, 470.190, 470.230, 470.240, 470.270, 470.280, 470.300 and
4 470.310; appropriating money; and declaring an emergency.”.

5 Delete lines 4 through 21 and delete pages 2 through 4 and insert:

6 **“SECTION 1. Sections 2 to 42 of this 2009 Act are added to and made a part of ORS**
7 **chapter 470.**

“LOAN PROGRAM ADMINISTRATION

10
11 **“SECTION 2. (1) The Director of the State Department of Energy shall administer the**
12 **energy efficiency and sustainable technology loan program for the purpose of providing fi-**
13 **ancing, promotion and technical support to encourage significant investments in energy**
14 **efficiency, renewable energy and energy conservation.**

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

16 **“(a) Provide capital at the lowest possible cost for the purpose of supporting energy ef-**
17 **iciency and conservation and renewable energy projects for residential and commercial**
18 **structures;**

19 **“(b) Expand, and to simplify taking advantage of, opportunities for small scale local en-**
20 **ergy project financing;**

21 **“(c) Leverage multiple sources of public and private capital through a unified and stra-**
22 **tegic funding mechanism;**

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

24 **“(e) Foster energy savings;**

25 **“(f) Stimulate job growth; and**

26 **“(g) Help substantially reduce carbon emissions.**

27 **“SECTION 3. (1) Except as provided in subsection (3) of this section, the State Depart-**
28 **ment of Energy may enter into contracts for the issuance of energy efficiency and**
29 **sustainable technology loans. Except as provided in section 41 of this 2009 Act, the depart-**
30 **ment shall finance the loans using moneys from the Small Scale Local Energy Project Loan**
31 **Fund, the Energy Project Supplemental Fund or the Energy Project Bond Loan Fund, or**
32 **from a combination of those funds.**

33 **“(2) The sustainable energy project manager may enter into agreements with trade as-**
34 **sociations and other public and private entities for the promotion or marketing of the energy**
35 **efficiency and sustainable technology loan program.**

1 territory must be consistent with the service territory of a local electric utility.

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

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

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

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

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

21 “(5) The director shall establish a sustainable energy project manager certification pro-
22 gram. However, the Public Purpose Fund Administrator or a consumer-owned utility is not
23 required to obtain a sustainable energy project manager certificate and the Public Purpose
24 Fund Administrator is not subject to any qualifications established by the director for a
25 project manager.

26 “**SECTION 8.** (1) The Director of the State Department of Energy shall initiate the cer-
27 tification process for a sustainable energy project manager by publishing a request for pro-
28 posals.

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

31 “(a) Background information about the applicant including, but not limited to, the quali-
32 fications, relevant experience, financial status and staff of the applicant;

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

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

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

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

42 “(b) The strength of the applicant’s proposed plan for implementing the goals and re-
43 quirements of the energy efficiency and sustainable technology loan program.

44 “(c) The cost at which the applicant can conduct outreach, promotion, loan applicant
45 support and project verification services necessary to implement the energy efficiency and

1 sustainable technology loan program.

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

3 “(4) An applicant may not be certified as a project manager if the applicant has a
4 fiduciary or other obligation that creates an actual or apparent conflict of interest that may
5 interfere with achieving the goals of the energy efficiency and sustainable technology loan
6 program.

7 “SECTION 9. (1) Upon selecting a proposed sustainable energy project manager, the Di-
8 rector of the State Department of Energy shall notify all unsuccessful applicants for the
9 position that another candidate is proposed for appointment. The director shall negotiate
10 with the proposed project manager regarding any modifications to the service cost estimates
11 or other features of the applicant’s proposed plan that are necessary to ensure that the ap-
12 plicant will meet the goals and requirements of the energy efficiency and sustainable tech-
13 nology loan program and State Department of Energy rules.

14 “(2) To the extent practicable, the director shall certify a project manager not later than
15 four months after publication of the request for proposals and not later than two months
16 after the selection of the proposed project manager. However, the director may at any time
17 select a different applicant as the proposed project manager or may reinstate the certif-
18 ication process.

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

23 “(a) A request to appeal under section 10 of this 2009 Act is not filed within 15 days after
24 the date the notice is sent; and

25 “(b) The committee does not undertake a review of the proposed certification within 15
26 days after the date the notice is sent.

27 “SECTION 10. (1) A person that believes a decision of the Director of the State Depart-
28 ment of Energy to certify a sustainable energy project manager is inconsistent with appli-
29 cable rules or statutes may file a request to appeal with the Small Scale Local Energy
30 Project Advisory Committee. Unless the request for appeal is filed by a nonprofit entity, the
31 request must be accompanied by a \$2,000 appeal fee. The fee shall be waived for a nonprofit
32 entity. The committee may initiate a review on its own motion.

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

37 “(3) The decision of the Governor is final. If the Governor does not act within 30 days
38 after receiving the appeal from the presiding officer of the committee, the appeal is denied.

39 “SECTION 11. (1) Unless the sustainable energy project manager is the Public Purpose
40 Fund Administrator or a consumer-owned utility, the certification of a project manager shall
41 be for a five-year term. The Director of the State Department of Energy shall issue the
42 project manager a certification approval letter that states any conditions applicable to the
43 certification.

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

45 “(a) Failure to adequately implement an applicable plan for implementing the energy ef-

1 efficiency and sustainable technology loan program;

2 “(b) Noncompliance with the regulatory or statutory requirements of the energy effi-
3 ciency and sustainable technology loan program;

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

5 “(d) Failure to perform other certification conditions.

6 **“SECTION 12.** (1) Except as provided in subsection (2) of this section, if a sustainable
7 energy territory is all or part of the service territory for an investor-owned electric utility,
8 the Public Purpose Fund Administrator shall be the sustainable energy project manager for
9 the sustainable energy territory. The Public Purpose Fund Administrator shall inform the
10 Public Utility Commission and the State Department of Energy of the activities of the ad-
11 ministrator by filing a yearly action plan and an end-of-year report with the commission and
12 the department.

13 “(2) For a sustainable energy territory described in section 7 (3)(b) of this 2009 Act, if the
14 local gas utility is an investor-owned utility, the utility may act as the project manager for
15 the territory or may contract with the Public Purpose Fund Administrator to act as project
16 manager on behalf of the utility.

17 “(3) If a territory is served by a consumer-owned utility and is outside the service terri-
18 tory of an investor-owned electric utility, the consumer-owned utility shall be the project
19 manager if the utility agrees to promote energy efficiency and sustainable technology loans
20 as part of any energy efficiency or renewable energy program offered by the utility. A
21 consumer-owned utility may conduct energy efficiency and renewable energy programs
22 within the territory of the utility regardless of whether the territory is served by an energy
23 efficiency and sustainable technology loan program. A consumer-owned utility may decline
24 to participate in the energy efficiency and sustainable technology loan program.

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

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

34 “(a) Design a utility program;

35 “(b) Continue an existing utility program; or

36 “(c) Work with the Director of the State Department of Energy to solicit and select a
37 qualified entity to serve as the project manager as described in sections 8 and 9 of this 2009
38 Act.

39 “(6) Subject to approval by the director, a project manager may contract with a qualified
40 third party to assist the project manager in providing project manager services within the
41 territory. If a sustainable energy territory is served by a project manager, the appointment
42 of additional project managers shall be a subcontract approved by the existing project man-
43 ager. If the third party is acting as a financier, the third party is not required to comply
44 with laws regulating utilities based on the actions of the third party as a financier. The
45 project manager may enter into agreements with trade associations and other public and

1 private entities for the promotion or marketing of the energy efficiency and sustainable
2 technology loan program.

3 “(7) The Public Purpose Fund Administrator and sustainable energy project managers
4 shall cooperate with, and coordinate their outreach and promotional efforts with, local utili-
5 ties and other stakeholders to promote energy efficiency and renewable energy and to use
6 the customer contacts, resources and capacity of utilities to engage and inform utility cus-
7 tomers about the energy efficiency and sustainable technology loan program.

8
9 “CONTRACTORS

10
11 “SECTION 13. (1) The State Department of Energy shall adopt rules establishing certif-
12 ication standards for contractors participating in the construction of small scale local energy
13 projects financed through the energy efficiency and sustainable technology loan program.
14 The department shall design the standards to ensure that the project work performed by a
15 contractor holding the certification is of high quality and will result in a high degree of
16 customer satisfaction.

17 “(2) The certification standards established by the department must, at a minimum, re-
18 quire that the contractor:

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

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

23 “(c) Be an equal opportunity employer or small business or be a minority or women
24 business enterprise or disadvantaged business enterprise as those terms are defined in ORS
25 200.005.

26 “(d) Demonstrate a history of compliance with the rules and other requirements of the
27 Construction Contractors Board and of the Workers’ Compensation Division and the Occu-
28 pational Safety and Health Division of the Department of Consumer and Business Services.

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

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

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

35 “(3) The State Department of Energy shall consult with the Public Purpose Fund Ad-
36 ministrator and utilities when developing contractor certification standards.

37 “(4) The Construction Contractors Board may issue a qualifying contractor a certif-
38 ication authorizing the contractor to participate in the construction of small scale local en-
39 ergy projects financed through the energy efficiency and sustainable technology loan
40 program. A contractor seeking certification shall apply to the board as provided under sec-
41 tion 53 of this 2009 Act.

42 “(5) The State Department of Energy shall identify certified contractors that provide
43 employees with health insurance benefits as preferred service providers and may take other
44 actions as practicable to encourage certified contractors to provide employees with health
45 insurance benefits.

1 **propriated to the State Department of Energy for use as provided in this section.**

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

4 **“(3) The department shall use fund moneys:**

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

9 **“(b) To transfer to an appropriate fund for carrying out any purpose under this chapter**
10 **specified as a condition of a gift, grant or donation.**

11 **“SECTION 17. (1) The Energy Project Bond Loan Fund is established in the State**
12 **Treasury, separate and distinct from the General Fund. Interest earned by the Energy**
13 **Project Bond Loan Fund shall be credited to the fund.**

14 **“(2) The fund shall consist of net proceeds from the issuance of revenue bonds under**
15 **section 22 of this 2009 Act that are deposited to the fund.**

16 **“(3) Moneys in the fund are continuously appropriated to the State Department of Energy**
17 **for the purpose of:**

18 **“(a) Making small scale local energy program loans and energy efficiency and sustainable**
19 **technology loans; and**

20 **“(b) Transferring moneys to the Energy Revenue Bond Fund to pay the costs of issuing**
21 **bonds described in subsection (2) of this section and paying the costs of administering the**
22 **revenue bond program.**

23 **“SECTION 18. (1) The Energy Revenue Bond Fund is established in the State Treasury,**
24 **separate and distinct from the General Fund. Interest earned by the Energy Revenue Bond**
25 **Fund shall be credited to the fund. Moneys in the fund may be invested as provided in ORS**
26 **293.701 to 293.820. Moneys in the fund are continuously appropriated to the State Department**
27 **of Energy for the payment of:**

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

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

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

35 **“(d) Net investment earnings on moneys loaned to municipal corporations from energy**
36 **project revenue bonds under section 22 of this 2009 Act but withheld as provided in ORS**
37 **470.230; and**

38 **“(e) Costs of issuing revenue bonds and obtaining credit enhancement for those revenue**
39 **bonds.**

40 **“(2) The fund shall consist of:**

41 **“(a) Moneys from project initiation fees under section 31 of this 2009 Act;**

42 **“(b) Repayments of any moneys loaned from the fund and interest earned on those**
43 **moneys;**

44 **“(c) Any moneys appropriated to the fund;**

45 **“(d) Moneys from the sale of refunding bonds under section 22 of this 2009 Act and any**

1 accrued interest on those bonds;

2 “(e) Interest earned on cash balances invested under section 20 of this 2009 Act; and

3 “(f) Moneys transferred to the fund from the Energy Project Bond Loan Fund.

4 “SECTION 19. The State Department of Energy may request proposals for and select one
5 or more financial managers for the energy efficiency and sustainable technology loan pro-
6 gram. The function of a financial manager is:

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

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

11 “(3) To provide a platform for the blending of private and public capital from various
12 sources including, but not limited to, small scale local energy project financing, moneys from
13 the Energy Project Bond Loan Fund, the Loan Offset Grant Fund and the Energy Project
14 Supplemental Fund, private activity bonds and grant moneys.

15 “SECTION 20. Private utilities and other private entities may invest capital with an en-
16 ergy efficiency and sustainable technology loan program financial manager for use in carry-
17 ing out the loan program. The Public Utility Commission may establish a reasonable rate of
18 return that a financial manager may pay to a utility investing capital under this section. In
19 establishing the rate of return, the commission shall consider the risk to the utility in pro-
20 viding the investment capital.

21 “SECTION 21. To achieve the energy efficiency and sustainable technology loan program
22 goals described in section 2 of this 2009 Act, the Director of the State Department of Energy
23 may enter into agreements to disburse supplemental capital funds through the Small Scale
24 Local Energy Project Loan Fund and the Energy Project Supplemental Fund if:

25 “(1) Interest rates and total costs to program applicants that would result from the use
26 of the supplemental capital funds are lower than the interest rates and total costs that would
27 be incurred by a borrower from a loan of bond proceeds under market conditions; and

28 “(2) The supplemental capital funds are made subject to any requirements adopted by the
29 director by rule to ensure adequate protection of project moneys.

30
31 “BONDS
32

33 “SECTION 22. (1) The State Treasurer, at the request of the Director of the State De-
34 partment of Energy, from time to time may issue and sell revenue bonds in the name of and
35 on behalf of the State of Oregon in compliance with the applicable provisions of ORS chapter
36 286A in the principal amount the director considers necessary to carry out the purposes of
37 sections 2 to 42 of this 2009 Act, or for paying or refunding any revenue bonds previously
38 issued on behalf of the State Department of Energy for those purposes.

39 “(2) All bonds shall be special revenue obligations of the State of Oregon, and, unless paid
40 from the proceeds of other bonds, shall be payable as to principal, redemption premium, if
41 any, and interest, solely from the revenues, assets or funds in the Energy Revenue Bond
42 Fund and the Energy Project Supplemental Fund that may be pledged for that payment.

43 “(3) Prior to an issuance of revenue bonds under this section, the Director of the State
44 Department of Energy shall prepare and sign a written declaration setting forth the amount
45 of the bonds to be issued and the terms and conditions for issuance. If the State Treasurer

1 approves the declaration, the State Treasurer shall certify the approval on the declaration.
2 The approved declaration shall be known as an 'energy revenue bond declaration.' Each bond
3 declaration shall be deemed to be and shall constitute conclusive proof of the authorization
4 to issue the bonds described in the bond declaration and may contain further pledges and
5 provisions concerning bonds as determined by the director or the State Treasurer.

6 **"SECTION 23.** (1) Revenue bonds issued under section 22 of this 2009 Act do not consti-
7 tute a debt, liability or general obligation of this state or any political subdivision of the state
8 or a pledge of the faith and credit of this state or any political subdivision of the state, but
9 shall be payable solely from the revenues or assets of the State Department of Energy that
10 are pledged to the repayment in the energy revenue bond declaration.

11 **"(2)** Each revenue bond issued under section 22 of this 2009 Act shall contain on the face
12 of the bond a statement that the department is not obligated to pay the bond or the interest
13 on the bond except from the revenues or assets pledged for those payments and that neither
14 the faith and credit nor the taxing power of this state or any political subdivision of the state
15 is pledged to the payment of the principal of or the interest on the bond.

16 **"(3)** A utility or sustainable energy project manager is not liable for the payment of the
17 principal of or the interest on any bond issued under this section.

18 **"SECTION 24.** The bonds issued by the State Treasurer under section 22 of this 2009 Act
19 and the energy revenue bond declaration may:

20 **"(1)** Pledge all or any part of the fees received by the State Department of Energy under
21 section 31 of this 2009 Act and all or any part of the moneys received in payment of energy
22 efficiency and sustainable technology loans, small scale local energy program loans, interest
23 on those loans and other moneys received or to be received by the department under this
24 chapter to secure payment of the bonds, subject to the provisions of the energy revenue bond
25 declaration and to ORS 470.280 and 470.300 and any pledges or agreements pertaining to
26 bonds issued under Article XI-J of the Oregon Constitution.

27 **"(2)** Pledge all or any part of the assets of the Energy Revenue Bond Fund.

28 **"(3)** Pledge any moneys, loans or grants received from the federal government, the state
29 or any city, county or political subdivision of this state for any small scale local energy
30 project financed in whole or in part from the sale proceeds of revenue bonds under section
31 22 of this 2009 Act.

32 **"(4)** Vest in a trustee appointed by the Director of the State Department of Energy and
33 approved by the State Treasurer such property, rights, powers and duties in trust as the
34 director may determine.

35
36 **"LOCAL GOVERNMENTS**

37
38 **"SECTION 25.** (1) Subject to the approval of the Director of the State Department of
39 Energy, a local government, public utility or other legally organized entity may direct mon-
40 eys to the Energy Project Supplemental Fund or Loan Offset Grant Fund for use within a
41 limited geographic area of the state as a source of capital for financing energy efficiency and
42 sustainable technology loans, small scale local energy program loans or loan offset grants.

43 **"(2)** Any moneys deposited under this section shall be separately accounted for and shall
44 be managed consistently with small scale local energy project goals and any agreement be-
45 tween the State Department of Energy and the entity providing the moneys. The moneys

1 may be disbursed only for use as designated by, and in the geographic area designated by,
2 the entity providing the moneys.

3
4 **“PROGRAM LOANS**

5
6 **“SECTION 26. (1) The State Department of Energy may disburse energy efficiency and**
7 **sustainable technology loan and small scale local energy program loan moneys by providing**
8 **the loan moneys through a sustainable energy project manager or providing the loan moneys**
9 **to or through an entity described in ORS 470.060. Loan moneys may be disbursed through a**
10 **project manager only for the purpose of enabling the project manager to issue energy effi-**
11 **ciency and sustainable technology loans and small scale local energy program loans to ap-**
12 **plicants in the sustainable energy territory served by the project manager.**

13 **“(2) The project manager may issue a loan from moneys disbursed under this section only**
14 **if adequate security exists to ensure repayment of the loan. An energy efficiency and**
15 **sustainable technology loan from a project manager to an applicant located in the sustainable**
16 **energy territory served by the project manager must have the features described in section**
17 **29 of this 2009 Act and ORS 470.150 and is subject to the requirements and processes imposed**
18 **under sections 2 to 42 of this 2009 Act for energy efficiency and sustainable technology loans**
19 **issued by the Director of the State Department of Energy. A project manager that issues**
20 **an energy efficiency and sustainable technology loan to support a small scale local energy**
21 **project may record a lien on the property that benefits from the project as provided in sec-**
22 **tion 37 of this 2009 Act.**

23 **“SECTION 27. (1) The State Department of Energy may not complete an agreement for**
24 **the issuance of an energy efficiency and sustainable technology loan unless the sustainable**
25 **energy project manager, a contractor designated by the project manager or a person ap-**
26 **proved by the department completes an energy savings projection or similar evaluation for**
27 **the property that will benefit from the small scale local energy project. The projection or**
28 **other evaluation shall be in writing and shall, at a minimum, identify the following:**

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

31 **“(b) Any optional package recommended for the structure.**

32 **“(c) The estimated net monthly cost to the applicant when energy savings, project re-**
33 **payment costs, tax or other incentives, loan offset grants and other relevant economic fac-**
34 **tors are considered.**

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

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

38 **“(2) The projection or other evaluation shall state in a clear and conspicuous manner:**

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

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

44 **“(3) If the base efficiency package or recommended optional package includes the use of**
45 **nontraditional technology, the projection or other evaluation shall include a statement that**

1 the technology is nontraditional, initialed by the prospective loan applicant.

2 “(4) An energy efficiency and sustainable technology loan may be used only for a project
3 constructed by a contractor certified under section 53 of this 2009 Act.

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

11 “(6) The department shall periodically consult with contractors certified under section
12 53 of this 2009 Act for the purpose of updating average cost and projected savings figures
13 used for energy savings projections or other evaluations under this section. The department
14 shall encourage the use of methods for conducting energy savings projections or other eval-
15 uations under this section that are cost-effective and time-effective, take advantage of
16 economies of scale and produce results that are accurate and are replicable for equivalent
17 base energy packages.

18 “SECTION 28. (1) Except as provide in subsection (2) of this section, the amount of an
19 energy efficiency and sustainable technology loan may not exceed \$40,000.

20 “(2) The loan amount limit described in subsection (1) of this section shall increase an-
21 nually on January 1 of each year, beginning January 1, 2011. The loan amount limit shall
22 increase from the most recently established loan amount limit by a percentage equal to the
23 percentage increase in the Portland-Salem Consumer Price Index for All Urban Consumers
24 for All Items as reported by the Bureau of Labor Statistics of the United States Department
25 of Labor.

26 “SECTION 29. If an energy efficiency and sustainable technology loan will rely on a util-
27 ity customer meter assessment or a real property assessment as security for repayment:

28 “(1) The loan application must contain information sufficient to demonstrate that the
29 loan will be secured by a utility customer meter assessment or real property assessment
30 having a term of between five and 30 years as determined by the State Department of En-
31 ergy;

32 “(2) The loan application must contain a clear and conspicuous disclosure:

33 “(a) That an assessment, lien or other repayment or security mechanism for the energy
34 efficiency and sustainable technology loan need not be paid in full upon a sale of the prop-
35 erty, but all amounts due under the repayment plan as of the sale date must be paid before
36 the sale closes; and

37 “(b) That some lenders may be unwilling to make a mortgage on a property that is sub-
38 ject to an assessment, lien or other repayment or security mechanism for the energy effi-
39 ciency and sustainable technology loan;

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

42 “(4) The department must be satisfied that all conditions required under ORS 470.090 to
43 support the loan have been satisfied.

44 “SECTION 30. (1) If an applicant for a loan to construct a residential small scale local
45 energy project has household income that may qualify the person for a weatherization pro-

1 **gram operated by the Housing and Community Services Department, the sustainable energy**
2 **project manager shall refer the applicant to the department. This subsection does not pro-**
3 **hibit a project manager from accepting an application from a person who has been denied**
4 **assistance under a department weatherization program.**

5 **“(2) If an applicant for a loan to construct a residential small scale local energy project**
6 **has household income that is less than 250 percent of the federal poverty guidelines, upon**
7 **request by the applicant, the State Department of Energy may waive all or part of an appli-**
8 **cation fee for the loan and may waive all or part of the project initiation fee or add all or**
9 **part of the project initiation fee to the principal of an issued loan.**

10
11 **“FEES**

12
13 **“SECTION 31. Except as provided in section 30 of this 2009 Act, an applicant for an en-**
14 **ergy efficiency and sustainable technology loan approved by the State Department of Energy**
15 **shall pay the department a project initiation fee. The department may establish the fee**
16 **amount by rule, not to exceed four percent of the approved loan amount. If the department**
17 **does not establish the fee amount, the fee shall be two percent of the approved loan amount.**

18
19 **“ON-BILL FINANCING**

20
21 **“SECTION 32. (1) If an investor-owned utility serving a sustainable energy territory has**
22 **established an on-bill financing system, an energy efficiency and sustainable technology loan**
23 **shall be repaid by on-bill financing unless the loan agreement specifies a different repayment**
24 **mechanism.**

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

27 **“(a) Attach an assessment to the utility customer meter that serves the property bene-**
28 **fited by the energy efficiency and sustainable technology loan for which the on-bill financing**
29 **is obtaining repayment;**

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

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

34 **“(d) Direct energy efficiency and sustainable technology loan repayment amounts col-**
35 **lected by the utility to the appropriate sustainable energy project manager or to the Small**
36 **Scale Local Energy Project Loan Fund, Energy Project Bond Loan Fund or Energy Project**
37 **Supplemental Fund, as instructed by the State Department of Energy.**

38 **“(3) The Public Utility Commission may adopt rules for the use of on-bill financing by**
39 **investor-owned utilities. The rules may include, but need not be limited to, rules regarding**
40 **nonpayment, insufficient payment, delinquency notices, meter charge transfers, processing**
41 **fees, late fees and refunds.**

42 **“(4) The commission may waive the requirement that an investor-owned utility provide**
43 **on-bill financing for one or more loans if the commission determines that providing the on-**
44 **bill financing is not practicable. If the commission grants a utility a waiver under this sub-**
45 **section, the utility shall bill the affected customers for loan repayment separately from any**

1 utility customer meter billings.

2 **“SECTION 33.** (1) If a customer-owned utility serving a sustainable energy territory has
3 established an on-bill financing system, an energy efficiency and sustainable technology loan
4 shall be repaid by on-bill financing unless the loan agreement specifies a different repayment
5 mechanism.

6 **“(2)** Unless the Director of the State Department of Energy, after consultation with the
7 Bonneville Power Administration, grants a customer-owned utility a waiver under subsection
8 (4) of this section, the on-bill financing system of the utility must:

9 **“(a)** Attach an assessment to the utility customer meter that serves the property bene-
10 fitted by the energy efficiency and sustainable technology loan for which the on-bill financing
11 is obtaining repayment;

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

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

16 **“(d)** Direct energy efficiency and sustainable technology loan repayment amounts col-
17 lected by the utility to the appropriate sustainable energy project manager or to the Small
18 Scale Local Energy Project Loan Fund, Energy Project Bond Loan Fund or Energy Project
19 Supplemental Fund, as instructed by the State Department of Energy.

20 **“(3)** The director, after consultation with the Bonneville Power Administration, may
21 adopt rules for the use of on-bill financing by customer-owned utilities. The rules may in-
22 clude, but need not be limited to, rules regarding nonpayment, insufficient payment, delin-
23 quency notices, meter charge transfers, processing fees, late fees and refunds.

24 **“(4)** The director may waive the requirement that a customer-owned utility provide on-
25 bill financing for one or more loans if the director determines, after consultation with the
26 Bonneville Power Administration, that providing the on-bill financing is not practicable. If
27 the director grants a waiver under this subsection, the utility shall bill the affected cus-
28 tomers for loan repayment separately from any utility customer account or customer meter
29 billings.

30 **“SECTION 34.** (1) If a customer is served by both an electric utility and a gas utility that
31 both have an on-bill financing system, a loan repaid through on-bill financing shall be repaid
32 through the on-bill financing system of the utility that supplies the customer’s primary
33 source of heat for the property.

34 **“(2)** A utility that operates an on-bill financing system may disclose to any person the
35 monthly repayment amount, remaining term and repayment status for an energy efficiency
36 and sustainable technology loan benefiting a property.

37 **“SECTION 35.** (1) If a utility incurs reasonable costs in implementing an on-bill financing
38 system that exceed any moneys received by the utility to assist in the implementation, the
39 costs are legitimate costs for ratemaking purposes.

40 **“(2)** A utility customer meter assessment may include, but need not be limited to, the
41 amount of the loan, interest on the loan and the cost incurred by the State Department of
42 Energy to implement, promote and administer the energy efficiency and sustainable tech-
43 nology loan program. The debt represented by an assessment on the utility customer meter
44 runs with the property benefited by the energy efficiency and sustainable technology loan
45 and may be levied as an assessment against the utility customer meter of a subsequent

1 owner of the property.

2 “(3) The amount of an energy efficiency and sustainable technology loan repayment and
3 any moneys received by a utility to assist in the implementation of an on-bill financing sys-
4 tem are not revenue for purposes of calculating franchise fees or other regulatory assess-
5 ments.

6
7 “ASSESSMENTS AND LIENS
8

9 “SECTION 36. (1) The State Department of Energy may develop repayment or security
10 mechanisms for energy efficiency and sustainable technology loans that the department de-
11 termines will achieve the goals and requirements of the energy efficiency and sustainable
12 technology loan program and that provide adequate security for repayment of the loans.

13 “(2) The department may issue assessments and liens against a utility customer meter
14 or against real property for the repayment of amounts owed under an energy efficiency and
15 sustainable technology loan that benefits a property. The assessment and lien amounts may
16 include the amount of any moneys borrowed through the energy efficiency and sustainable
17 technology loan program and interest payments on those loan moneys that are related to
18 underlying bonds or other sources of capital.

19 “(3) An assessment may be levied under this section only against a property for which
20 the property owner has agreed to the installation of a base efficiency package or optional
21 package benefiting the property. For purposes of calculating maximum allowable taxes for
22 the property under section 11b, Article XI of the Oregon Constitution, an assessment against
23 real property shall be treated as an incurred charge.

24 “(4) A utility customer meter assessment applies for utilities supplied to the benefited
25 property regardless of any changes in ownership or other interests in the benefited property.
26 The assessment is valid for the term of an energy efficiency and sustainable technology loan
27 agreement or until paid.

28 “SECTION 37. (1) Upon the State Department of Energy or a sustainable energy project
29 manager executing an energy efficiency and sustainable technology loan agreement, the de-
30 partment or the project manager shall record a lien against the benefited property in the
31 county deed records. The lien information recorded in the deed records must include, but
32 need not be limited to, a description of the property benefited, the name of the property
33 owner and the amount of the lien.

34 “(2) The county deed record shall stand as a lien docket in favor of the state against the
35 benefited property, until paid, for the following:

36 “(a) The principal of the energy efficiency and sustainable technology loan docketed in
37 the lien record;

38 “(b) Interest on the loan principal at the rate contained in the loan agreement; and

39 “(c) Fees, costs related to loan collection and any penalties imposed by the department.

40 “(3) A lien described in this section attaches to the property and is perfected upon re-
41 cording in the county deed records. Except as provided in this subsection, the lien is superior
42 in right to any subsequent lien, mortgage or encumbrance against the property. The lien
43 described in this section is subordinate to, and does not have priority over:

44 “(a) A property tax lien on the property; or

45 “(b) A lien created by a mortgage or trust deed given to finance or refinance the pur-

1 chase of the property.

2 “(4) Unless the loan agreement parties agree to extend the duration of the lien, if an
3 action to foreclose the lien is not filed as provided in ORS chapter 88 within five years after
4 the date the lien is perfected the lien shall expire.

5 “(5) In an action to foreclose a lien created under this section, the court shall include in
6 the lien amount all costs for filing and recording the lien. The court shall award a prevailing
7 party in the foreclosure action reasonable attorney fees and costs.

8 “SECTION 38. (1) A person that acquired an interest in a property in good faith and for
9 a valuable consideration before the date a lien created under section 37 of this 2009 Act at-
10 tached to the property may avoid foreclosure of the lien by paying any delinquencies and
11 collection costs on the underlying utility customer meter assessment and assuming normal
12 payments in compliance with the energy efficiency and sustainable technology loan agree-
13 ment repayment provisions.

14 “(2) A lien created under section 37 of this 2009 Act is a judgment for purposes of ORS
15 93.645.

16 “SECTION 39. (1) The county in which an energy efficiency and sustainable technology
17 loan is docketed shall include the amount of an energy efficiency and sustainable technology
18 loan assessment for a property as an incurred charge on the property tax bill for that
19 property. The county shall forward any amounts collected on the assessments to the State
20 Department of Energy, along with information identifying the properties for which the
21 amounts were collected. The moneys shall be directed to the State Treasury for deposit to
22 the Small Scale Local Energy Project Loan Fund, Energy Project Bond Loan Fund or Energy
23 Project Supplemental Fund as instructed by the State Department of Energy.

24 “(2) A county may place on the property tax bill as an incurred charge a reasonable fee
25 for collecting and forwarding the assessments to the department. The fee amount may not
26 exceed the actual cost to the county of providing the services. The fee amount is subject to
27 prior approval by the department.

28 “SECTION 40. A person entering into an agreement to sell, rent, lease or otherwise
29 confer a right in the person’s real property that is benefited by an energy efficiency and
30 sustainable technology loan for which a utility customer meter assessment applies or for
31 which a lien or other repayment or security mechanism described under section 36 or 37 of
32 this 2009 Act exists shall, prior to any party signing the agreement, give notice of the utility
33 customer meter assessment, lien or mechanism, and of any on-bill financing obligation af-
34 fecting the property, to the other parties to the agreement.

35
36 “LOAN OFFSET GRANTS

37
38 “SECTION 41. (1) The State Department of Energy may use loan offset grant moneys for
39 any of the following if, in the absence of the grant moneys, a utility customer would incur
40 higher overall monthly costs when energy costs and small scale local energy project costs
41 are considered:

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

43 “(b) Reducing the loan repayment burden of an energy efficiency and sustainable tech-
44 nology loan borrower.

45 “(c) Creating a financial incentive for energy efficiency, renewable energy and energy

1 conservation projects that may not result in significant energy cost savings.

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

5 “(2) If a small scale local energy program loan applicant is a person with an income
6 limited as described in section 30 (2) of this 2009 Act, the department may use loan offset
7 grant moneys for an optional package or to offset reasonable costs associated with structural
8 improvements that are not included in the base efficiency package, but that are necessary
9 to the proper installation of the base efficiency package.

10 “(3) The Director of the State Department of Energy may investigate and test the feasi-
11 bility of using mechanisms other than the disbursing of Loan Offset Grant Fund moneys for
12 accomplishing the purposes described in subsection (1) of this section.

13
14 “APPRENTICESHIP AND JOB TRAINING

15
16 “SECTION 42. (1) The State Department of Energy shall collaborate with the State
17 Workforce Investment Board and other interested parties to identify opportunities for ap-
18 prenticeship and for job training and development that would further the goals of sections 2
19 to 42 of this 2009 Act and provide valuable skills to Oregon workers.

20 “(2) In adopting any rules for carrying out apprenticeship and job training and develop-
21 ment under the energy efficiency and sustainable technology loan program, the department
22 and the board shall consult with representatives from:

23 “(a) State workforce programs;

24 “(b) Organized labor;

25 “(c) The State Apprenticeship and Training Council;

26 “(d) The Bureau of Labor and Industries; and

27 “(e) Consumer advocacy organizations.

28 “(3) In addition to consulting with entities described in subsection (2) of this section, in
29 adopting any rules for carrying out apprenticeship and job training and development under
30 the energy efficiency and sustainable technology loan program, the department and the board
31 may seek input from organizations representing construction contractors.

32
33 “PILOT PROGRAMS

34
35 “SECTION 43. (1) The Director of the State Department of Energy shall initiate the en-
36 ergy efficiency and sustainable technology loan program described in sections 2 to 42 of this
37 2009 Act in phases through a series of pilot programs, limiting the geographic availability and
38 other features of the program as the director considers necessary to facilitate an orderly and
39 successful implementation of the program. The director shall initiate the program as quickly
40 as the director considers practicable to achieve the benefits of the program while ensuring
41 high participant satisfaction and program integrity.

42 “(2) The director shall endeavor to establish pilot programs initially in sustainable energy
43 territories that reflect a variety of population densities. The director may give preference to
44 territories that request to participate in the pilot program.

45 “SECTION 44. (1) The Public Purpose Fund Administrator shall initiate pilot programs

1 in investor-owned utility service territories to demonstrate the feasibility of innovative ap-
2 proaches to financing and installing energy efficiency and sustainable technology measures
3 as described in sections 2 to 42 of this 2009 Act in residences and commercial buildings in
4 urban and rural communities. The pilot programs shall test:

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

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

14 “(c) Ways to assist program participants in understanding and accessing small scale local
15 energy project funding and making informed decisions in selecting appropriate energy effi-
16 ciency and renewable energy projects;

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

19 “(e) The effectiveness of on-billing financing and other long-term financing measures that
20 allow participants to secure and repay loans through a voluntary assessment on a utility
21 customer meter or on real property or through another repayment and security mechanism;

22 “(f) The feasibility and effectiveness of coordinated installations of residential and com-
23 mercial structure energy packages overseen by a single project manager;

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

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

29 “(i) Other strategies and measures identified by the State Department of Energy or the
30 Public Utility Commission.

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

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

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

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

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

42 “(3) The commission shall review the report and:

43 “(a) Order full implementation of the successful energy efficiency and sustainable tech-
44 nology loan program measures and strategies in investor-owned utility service territories;
45 or

1 “(b) Order the partial implementation of energy efficiency and sustainable technology
2 loan program measures and strategies and make recommendations to the Legislative As-
3 sembly for appropriate statutory modification of the program.

4 “(4) When carrying out pilot programs under this section, the administrator and
5 sustainable energy project managers shall cooperate and coordinate their efforts with the
6 efforts of local utilities and encourage utilities to promote energy efficiency and renewable
7 energy and to engage in outreach and promotional efforts to inform customers of the utility
8 about the energy efficiency and sustainable technology loan program.

9 “SECTION 45. (1) The Director of the State Department of Energy shall consult with the
10 Bonneville Power Administration, consumer-owned utilities and other interested parties to
11 develop a pilot program for energy efficiency and sustainable technology as described in
12 sections 2 to 42 of this 2009 Act for use in the consumer-owned utility service territories.
13 The director shall solicit one or more consumer-owned utilities to act as sustainable energy
14 project managers for the pilot program. The director shall solicit utilities to act as project
15 managers for the developed pilot program no later than 180 days after the effective date of
16 this 2009 Act.

17 “(2) The pilot program shall test:

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

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

27 “(c) Ways to assist program participants in understanding and accessing small scale local
28 energy project funding and making informed decisions in selecting appropriate energy effi-
29 ciency and renewable energy projects;

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

32 “(e) The effectiveness of on-billing financing and other long-term financing measures that
33 allow participants to secure and repay loans through a voluntary assessment on a utility
34 customer meter or on real property or through another repayment and security mechanism;

35 “(f) The feasibility and effectiveness of coordinated installations of residential and com-
36 mercial structure energy packages overseen by a single project manager;

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

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

42 “(i) Other strategies and measures identified by the director in consultation with the
43 Bonneville Power Administration.

44 “(3) The sustainable energy project managers in the consumer-owned utility service areas
45 shall report to the director no later than October 1, 2010. The report shall evaluate the ef-

1 **fectiveness of the pilot program and shall include an evaluation of the extent to which vari-**
2 **ous program strategies and measures:**

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

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

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

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

10 **“(4) When carrying out pilot programs under this section, the director and the**
11 **sustainable energy project managers shall cooperate and coordinate their efforts with the**
12 **efforts of local utilities and encourage utilities to promote energy efficiency and renewable**
13 **energy and to engage in outreach and promotional efforts to inform customers of the utility**
14 **about the energy efficiency and sustainable technology loan program.**

15 **“SECTION 46. A contractor may construct small scale local energy projects financed**
16 **under a pilot program described in sections 43 to 45 of this 2009 Act without being certified**
17 **under section 53 of this 2009 Act if:**

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

19 **“(2) The Public Purpose Fund Administrator or the sustainable energy project manager**
20 **has approved allowing the contractor to implement projects financed under the energy effi-**
21 **ciency and sustainable technology loan program; and**

22 **“(3) The contractor pays wages to employees used for energy efficiency and sustainable**
23 **technology loan program projects at a rate equal to at least 180 percent of the state mini-**
24 **imum wage or, if the project is for a commercial structure or is subject to prevailing wage**
25 **laws, the prevailing wage for each trade or occupation employed. As used in this subsection,**
26 **‘commercial structure’ means a structure other than a residential structure as defined in**
27 **ORS 701.005.**

28 **“SECTION 47. (1) Notwithstanding sections 29, 32, 33, 35, 36, 38 and 40 of this 2009 Act,**
29 **an energy efficiency and sustainable technology loan issued before January 1, 2011, may be**
30 **secured initially through an assessment on the utility customer account.**

31 **“(2) If an energy efficiency and sustainable technology loan is initially secured by an as-**
32 **essment on a utility customer account, and the loan is not paid in full before January 1,**
33 **2011, the assessment on the utility customer account shall be replaced as security for the**
34 **loan on January 1, 2011, by an assessment on the utility meter for the property benefitted**
35 **by the project financed by the loan. An application for an energy efficiency and sustainable**
36 **technology loan that is to be initially secured by a utility customer account assessment shall**
37 **provide for the utility customer account assessment to be replaced as security for the loan**
38 **on January 1, 2011, by a utility meter assessment on the property to be benefitted by the**
39 **project financed by the loan.**

40 **“(3) The State Department of Energy may issue assessments against a utility customer**
41 **account for the repayment of amounts owed under an energy efficiency and sustainable**
42 **technology loan described in this section. The assessment amount may include the amount**
43 **of any moneys borrowed through the energy efficiency and sustainable technology loan pro-**
44 **gram and interest payments on those loan moneys that are related to underlying bonds or**
45 **other sources of capital. The assessment is valid until replaced by a utility meter assessment**

1 or until paid.

2 “(4) If there is a change in ownership or other interest in benefited property described
3 in this section before January 1, 2011, and the loan is not paid off in connection with the
4 change in ownership or interest, a utility customer account assessment shall attach to the
5 utility customer account of a person succeeding to the ownership or interest in the benefited
6 property and shall be replaced on January 1, 2011, by a utility meter assessment.

7 “(5) For purposes of calculating the period of time that a utility meter assessment de-
8 scribed in this section may be imposed or may be a basis for lien foreclosure, the utility
9 meter assessment shall be considered to have been created on the issue date for the loan
10 secured by the assessment.

11
12 “MISCELLANEOUS PROVISIONS

13
14 “SECTION 48. The cost of adopting rules under ORS 470.140 to carry out sections 2 to
15 42 of this 2009 Act may be paid from the Loan Offset Grant Fund or Energy Revenue Bond
16 Fund, or may be paid from the Small Scale Local Energy Project Administration and Bond
17 Sinking Fund created under ORS 470.300 if:

18 “(1) A cash flow projection for the sinking fund shows that, for the term of the sinking
19 fund bonds outstanding at the time the Director of the State Department of Energy transfers
20 the moneys, remaining moneys in the sinking fund, together with expected loan contract
21 payments and fund earnings, will improve the financial basis of the program and will con-
22 tinue to be adequate to pay bond principal, interest, redemption premiums, if any, and ad-
23 ministration costs; and

24 “(2) The transfer will not create the need for issuance of any bonds.

25 “SECTION 49. The State Department of Energy shall adopt rules establishing contractor
26 certification standards required under section 13 of this 2009 Act no later than December 1,
27 2010. The Construction Contractors Board shall implement a certification system for con-
28 tractors under section 53 of this 2009 Act no later than January 1, 2011.

29 “SECTION 50. (1) An investor-owned utility shall implement an on-bill financing system
30 that complies with section 33 of this 2009 Act no later than January 1, 2011.

31 “(2) If the service territory of an investor-owned utility is a sustainable energy territory
32 that is established before January 1, 2011, except as provided in this subsection the utility
33 shall implement an on-bill financing system no later than 30 days after the sustainable en-
34 ergy territory is established. If the cost of implementing the on-bill financing system would
35 exceed \$100,000, for the period prior to January 1, 2011, a utility described in this subsection
36 may bill a customer for energy efficiency and sustainable technology loan repayment sepa-
37 rately from the utility customer account or customer meter billing.

38 “SECTION 51. Sections 43, 44, 45, 46 and 47 of this 2009 Act are repealed January 2, 2016.

39 “SECTION 52. Sections 53 and 54 of this 2009 Act are added to and made a part of ORS
40 chapter 701.

41 “SECTION 53. (1) A licensed contractor that possesses an appropriate endorsement may
42 apply to the Construction Contractors Board for certification to participate in the con-
43 struction of small scale local energy projects financed through the energy efficiency and
44 sustainable technology loan program. The board may issue the certification to a contractor
45 that meets the standards established by the State Department of Energy under section 13

1 of this 2009 Act. The board may charge a reasonable fee for certifying a contractor.

2 “(2) If the board receives information that the contractor has failed to comply with the
3 certification standards established by the department or has violated a wage and hours
4 standard described in section 54 of this 2009 Act, the board shall hold a hearing and may
5 revoke the certification.

6 “(3) The board shall give the department notice of the issuance or revocation of a cer-
7 tification under this section.

8 “**SECTION 54.** (1) If a project financed under the energy efficiency and sustainable tech-
9 nology loan program is to be constructed for a commercial structure, the State Department
10 of Energy shall require that the certified contractor pay the employees used for the project
11 at the prevailing wage rate determined by the Commissioner of the Bureau of Labor and
12 Industries for each trade or occupation employed. If a project is not to be constructed for a
13 commercial structure, but the department is uncertain whether prevailing wage require-
14 ments apply to the project, the department shall consult with the Bureau of Labor and In-
15 dustries. As used in this subsection, ‘commercial structure’ means a structure that is not
16 a residential structure.

17 “(2) If the Construction Contractors Board receives a complaint that a contractor certi-
18 fied under section 53 of this 2009 Act has failed to comply with a wage and hours standard
19 for work on a project financed under the energy efficiency and sustainable technology loan
20 program, the board shall forward the complaint to the Bureau of Labor and Industries. If the
21 bureau determines that the contractor has violated a wage and hours standard for work on
22 a project financed under the loan program, the bureau shall notify the board of the deter-
23 mination.

24 “**SECTION 55.** Section 14 of this 2009 Act becomes operative January 1, 2011.

25
26 “AMENDMENTS TO OREGON REVISED STATUTES
27

28 “**SECTION 56.** ORS 470.050 is amended to read:

29 “470.050. As used in this chapter, unless the context requires otherwise:

30 “(1) ‘Alternative fuel project’ means:

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

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

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

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

38 “(2) ‘Applicant’ means an applicant for a **loan to construct** a small scale local energy project
39 [*loan*].

40 “(3) ‘**Base efficiency package**’ means the package of energy efficiency upgrades or
41 renewable energy projects for a property that, when energy savings, project repayment costs,
42 tax or other incentives, loan offset grants and other relevant economic factors are consid-
43 ered, is estimated to not increase the utility bill of the customer over the loan repayment
44 term.

45 “[3] (4) ‘Committee’ means the Small Scale Local Energy Project Advisory Committee created

1 under ORS 470.070.

2 “[4] (5) ‘Cooperative’ means a cooperative corporation organized under ORS chapter 62.

3 “[5] (6) ‘Director’ means the Director of the State Department of Energy appointed under ORS
4 469.040.

5 “[6] (7) ‘Eligible federal agency’ means a federal agency or public corporation created by the
6 federal government that proposes to use a loan for a small scale **local** energy project. ‘Eligible
7 federal agency’ does not include a federal agency or public corporation created by the federal gov-
8 ernment that proposes to use a loan for a small scale **local** energy project to generate electricity
9 for sale.

10 “[7] (8) ‘Eligible state agency’ means a state officer, board, commission, department, institution,
11 branch or agency of the state whose costs are paid wholly or in part from funds held in the State
12 Treasury.

13 **“(9) ‘Energy efficiency and sustainable technology loan’ means a loan for a small scale
14 local energy project that the participant voluntarily elects to secure and repay by means of:**

15 **“(a) A charge on the participant’s utility bill;**

16 **“(b) A real property assessment; or**

17 **“(c) A repayment or security mechanism developed by the State Department of Energy
18 under section 36 of this 2009 Act.**

19 **“(10) ‘Energy Project Bond Loan Fund’ means the fund established under section 17 of
20 this 2009 Act.**

21 **“(11) ‘Energy Project Supplemental Fund’ means the fund established under section 15
22 of this 2009 Act.**

23 **“(12) ‘Energy Revenue Bond Fund’ means the fund established under section 18 of this
24 2009 Act.**

25 **“(13) ‘Energy savings projection’ means an examination of the energy performance and
26 site characteristics of a property that, at a minimum, identifies:**

27 **“(a) A base efficiency package; and**

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

30 “[8] (14) ‘Loan’ includes the purchase or other acquisition of evidence of indebtedness and
31 money used for the purchase or other acquisition of evidence of indebtedness.

32 “[9] (15) ‘Loan contract’ means the evidence of indebtedness and all instruments used in the
33 purchase or acquisition of the evidence of indebtedness. For eligible federal or state agencies or
34 municipal corporations that are tax exempt entities, a loan contract may include a lease purchase
35 agreement with respect to personal property.

36 *“(10) ‘Loan fund’ means the Small Scale Local Energy Project Loan Fund created by Article XI-J
37 of the Oregon Constitution.]*

38 **“(16) ‘Loan offset grant’ means moneys from the Loan Offset Grant Fund that are used
39 to help offset the initial project costs or loan payments for energy efficiency, renewable en-
40 ergy and energy conservation projects.**

41 **“(17) ‘Loan Offset Grant Fund’ means the fund established under section 16 of this 2009
42 Act.**

43 “[11] (18) ‘Municipal corporation’ has the meaning given in ORS 297.405 and also includes any
44 Indian tribe or authorized Indian tribal organization or any combination of two or more of these
45 tribes or organizations acting jointly in connection with a small scale local energy project.

1 “(19) ‘On-bill financing’ means a mechanism for collecting the repayment of an energy
2 efficiency and sustainable technology loan through a utility customer meter assessment sent
3 to a utility customer in conjunction with utility service billing.

4 “(20) ‘Optional package’ means measures for promoting energy efficiency or the use of
5 renewable energy:

6 “(a) That are in addition to the measures described in the customer’s base efficiency
7 package;

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

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

10 “[(12)] (21) ‘Oregon business’ means a sole proprietorship, partnership, company, cooperative,
11 corporation or other form of business entity that is organized or authorized to do business under
12 Oregon law for profit.

13 “(22) ‘Public Purpose Fund Administrator’ means the entity designated by the Public
14 Utility Commission to administer moneys collected by a company through the public purpose
15 charge described under ORS 757.612.

16 “[(13)] (23) ‘Recycling project’ means a facility or equipment that converts waste into a new and
17 usable product.

18 “[(14)] (24) ‘Small business’ means:

19 “(a) An Oregon business that is:

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

21 or

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

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

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

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

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

32 “(25) ‘Small scale local energy program loan’ means a loan for a small scale local energy
33 project that is not designated as an energy efficiency and sustainable technology loan.

34 “[(16)] (26) ‘Small scale local energy project’ means:

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

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

43 “(c) A recycling project;

44 “(d) An alternative fuel project;

45 “(e) An improvement that increases the production or efficiency, or extends the operating life,

1 of a system, mechanism, series of mechanisms or project otherwise described in this subsection, in-
2 cluding but not limited to restarting a dormant project;

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

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

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

12 “(27) ‘Small Scale Local Energy Project Administration and Bond Sinking Fund’ means
13 the fund created under ORS 470.300.

14 “(28) ‘Small Scale Local Energy Project Loan Fund’ means the loan fund created by Ar-
15 ticle XI-J of the Oregon Constitution and appropriated to the State Department of Energy
16 under ORS 470.130.

17 “(29) ‘Sustainable energy project manager’ means the organization responsible for pro-
18 moting the energy efficiency and sustainable technology loan program and related incentives
19 for energy efficiency and renewable energy at the neighborhood and community level.

20 “(30) ‘Sustainable energy territory’ means the geographic service area that a sustainable
21 energy project manager is responsible for serving.

22 “(31) ‘Utility customer meter assessment’ means an amount charged to a utility cus-
23 tomer meter in conjunction with a utility bill as a mechanism for repayment of an energy
24 efficiency and sustainable technology loan.

25 “SECTION 57. ORS 470.060 is amended to read:

26 “470.060. [(1) Any individual who is a resident of Oregon, an Oregon business, a nonprofit or
27 public cooperative, a nonprofit corporation, an eligible federal agency, an eligible state agency, a public
28 corporation created by the state, an intergovernmental entity created pursuant to an intergovernmental
29 agreement under ORS 190.003 to 190.130, or a municipal corporation may file with the State Depart-
30 ment of Energy an application to obtain loan funds for a small scale local energy project as provided
31 in this chapter.]

32 “(1) The following may file with the State Department of Energy an application to obtain
33 moneys for a small scale local energy project as provided in this chapter:

34 “(a) An individual who is an Oregon resident;

35 “(b) An Oregon business;

36 “(c) A nonprofit or public cooperative;

37 “(d) A nonprofit corporation;

38 “(e) An eligible federal agency;

39 “(f) An eligible state agency;

40 “(g) A public corporation created by the state;

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

43 “(i) A special district;

44 “(j) A local improvement district; or

45 “(k) A municipal corporation.

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

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

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

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

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

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

15 “(f) Describe the source of [*funds*] **moneys** for repayment of the loan applied for.

16 “(3) **If the application is for a loan other than an energy efficiency and sustainable tech-**
17 **nology loan to an individual**, a fee of one-tenth of one percent of the amount of the loan applied
18 for or \$2,500, whichever is less, shall be submitted with each application. In addition, the applicant
19 may be required to pay for costs incurred in connection with the application that exceed the appli-
20 cation fee and which the Director of the State Department of Energy determines are incurred solely
21 in connection with processing the application. The applicant shall be advised of any additional costs
22 the applicant must pay before the costs are incurred.

23 “**SECTION 58.** ORS 470.070 is amended to read:

24 “470.070. (1) The Director of the State Department of Energy shall appoint a Small Scale Local
25 Energy Project Advisory Committee. [*to*] **Except as provided in this subsection, the committee**
26 **shall** review applications made under ORS 470.060 and rules adopted under ORS 470.080, and make
27 recommendations [*thereon*] **regarding those applications** to the director. **The review of an appli-**
28 **cation for an energy efficiency and sustainable technology loan of less than \$500,000, other**
29 **than a loan to a sustainable energy project manager under section 26 of this 2009 Act, shall**
30 **be reviewed by the director or a delegatee of the director.**

31 “(2) [*Seven*] **Nine** members shall be appointed to the Small Scale Local Energy Project Advisory
32 Committee. Each member shall be appointed to serve a two-year term, commencing on the date of
33 appointment, and until a successor is appointed and qualified. The members shall represent the in-
34 terest of the citizens of this state and shall be knowledgeable in the areas of small scale energy
35 technology, natural resource development, environmental protection, finance, agriculture, local gov-
36 ernment operations and utility operations. At least three members shall reside outside the
37 Willamette Valley.

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

42 “(4) Members of the Small Scale Local Energy Project Advisory Committee shall be entitled to
43 expenses as provided by ORS 292.495.

44 “**SECTION 59.** ORS 470.080 is amended to read:

45 “470.080. (1) After consultation with the Small Scale Local Energy Project Advisory Committee,

1 the Director of the State Department of Energy shall establish by rule standards and criteria for
2 small scale local energy projects to be funded under the provisions of ORS 470.060 to 470.080 and
3 470.090. The standards and criteria shall operate to encourage diversity in projects funded, give
4 preference to the maximum extent practical to projects proposed by individuals and small busi-
5 nesses, ensure acceptability of environmental impacts and shall require consideration of the poten-
6 tial contribution of a project if developed at other suitable locations to meeting the energy needs
7 of this state. The standards and criteria shall give the least preference to projects proposed by an
8 eligible federal agency.

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

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

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

16 “(3) After concluding its review, unless the application meets the criteria established by the
17 committee under subsection (4) of this section, the department shall refer the application and its
18 findings and recommendation to the committee for its review. The department shall notify the ap-
19 plicant of the date, time and place of any oral presentation to the committee on the application. The
20 committee shall review the application and the department’s findings and recommendations and ad-
21 vise the director whether the proposed small scale local energy project meets the criteria estab-
22 lished by the director under subsection (1) of this section, whether the project should be financed
23 with moneys from the **Small Scale Local Energy Project** Loan Fund and in what amount the loan
24 should be made if approved.

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

27 “**SECTION 60.** ORS 470.090 is amended to read:

28 “470.090. (1) After consideration of the recommendation of the Small Scale Local Energy Project
29 Advisory Committee or the State Department of Energy as provided by ORS 470.080, the Director
30 of the State Department of Energy may approve or reject the financing of a small scale local energy
31 project described in an application filed as provided in ORS 470.060, using moneys in the Small Scale
32 Local Energy Project Loan Fund. Approval of a loan by the director shall include a certification
33 of the amount of the loan.

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

36 “(a) The proposed small scale local energy project meets established standards and criteria un-
37 der ORS 470.080;

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

40 “(c) The proposed project is feasible and a reasonable risk from practical and economic stand-
41 points;

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

43 “(e) The applicant is qualified, creditworthy and responsible and is willing and able to enter into
44 a contract with the director for development and repayment as provided in ORS 470.150 **or section**
45 **29 of this 2009 Act;**

1 “(f) There is a need for the proposed small scale local energy project and the applicant’s finan-
2 cial resources are adequate to provide the working capital to maintain the project after completion;

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

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

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

11 “(j) The loan will not preclude individuals and small businesses from access to loan [*funds*]
12 **moneys.**

13 “(3) The director shall notify the applicant and the presiding officer of the committee of the di-
14 rector’s action and of the reasons for that action. The director shall inform the applicant of the re-
15 view procedure established in ORS 470.100.

16 “**SECTION 61.** ORS 470.100 is amended to read:

17 “470.100. (1) If the Director of the State Department of Energy rejects a loan application or
18 approves a loan amount different than that requested by the applicant, the applicant may request
19 that the Small Scale Local Energy Project Advisory Committee review the director’s action.

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

23 “(3) An appeal of the director’s action may be initiated by the presiding officer of the committee
24 no later than 45 days after the date the applicant receives notice of the director’s action under ORS
25 470.090.

26 “(4) The decision of the Governor is final. If the Governor fails to act within 30 days after re-
27 ceiving the appeal, the appeal shall be considered to be denied.

28 “(5) Notwithstanding ORS chapter 183, a decision of the director or the Governor on an appli-
29 cation for [*loan funds*] **financing** under ORS 470.090 or this section is not subject to judicial review.

30 “**SECTION 62.** ORS 470.110 is amended to read:

31 “470.110. The Director of the State Department of Energy may accept gifts of money or other
32 property from any source, given for the purposes of ORS 470.050 to 470.120, 470.140 (1) and 470.150
33 to 470.210. Money so received shall be paid into the **Small Scale Local Energy Project Loan Fund**.
34 Money or other property so received shall be used for the purposes for which received.

35 “**SECTION 63.** ORS 470.120 is amended to read:

36 “470.120. If the applicant receives from any source other than the [*loan*] **Small Scale Local**
37 **Energy Project Loan Fund, the Energy Project Supplemental Fund or the Energy Project**
38 **Bond Loan Fund** any [*funds*] **moneys** to assist in the development of the project, the amount of the
39 loan to the applicant from the [*loan*] **Small Scale Local Energy Project Loan Fund, Energy**
40 **Project Supplemental Fund or Energy Project Bond Loan Fund** shall be limited to that amount
41 necessary for the development of those portions of the project not funded by other sources.

42 “**SECTION 64.** ORS 470.130 is amended to read:

43 “470.130. All moneys in the **Small Scale Local Energy Project Loan Fund** created by Article
44 XI-J of the Oregon Constitution are appropriated continuously to the State Department of Energy
45 and shall be used for the purposes [*provided in*] **authorized under** this chapter.

1 “**SECTION 65.** ORS 470.140 is amended to read:

2 “470.140. (1) In accordance with the applicable provisions of ORS chapter 183, the Director of
3 the State Department of Energy may adopt rules considered necessary to carry out the purposes of
4 this chapter.

5 “(2) The director shall submit to the Legislative Assembly and the Governor a biennial report
6 of the transactions of the **Small Scale Local Energy Project** Loan Fund and the **Small Scale**
7 **Local Energy Project Administration and Bond** Sinking Fund in such detail as will accurately
8 indicate the condition of the funds.

9 “**SECTION 66.** ORS 470.150 is amended to read:

10 “470.150. Except as provided in ORS 470.155, if the Director of the State Department of Energy
11 approves the financing of a small scale local energy project, the director, on behalf of the state, and
12 the applicant may enter into a loan contract, secured by a first lien or by other good and sufficient
13 collateral in the manner provided in ORS 470.155 to 470.210. **If the project is financed by an en-**
14 **ergy efficiency and sustainable technology loan or by a small scale local energy program**
15 **loan, the loan may also be secured by a utility customer meter assessment or a special**
16 **property assessment as described in section 36 of this 2009 Act or by a combination of**
17 **available security mechanisms.** For purposes of this section, the interest of the State Department
18 of Energy under a lease purchase contract entered into with an eligible federal or state agency or
19 a municipal corporation may constitute good and sufficient collateral. The contract:

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

24 “(2) Shall provide a plan for repayment by the applicant to the **Small Scale Local Energy**
25 **Project Administration and Bond** Sinking Fund of moneys borrowed from the loan fund used for
26 the development of the small scale local energy project and interest on those moneys used at a rate
27 of interest the director determines is necessary to provide adequate funds to recover the adminis-
28 trative expenses incurred [*under this chapter*] **in connection with the loan.** The director shall set
29 the interest rate at an incremental rate above the interest rate on the underlying bonds **in an**
30 **amount sufficient to recover all program-related costs including, but not limited to, imple-**
31 **mentation, financing, administration and promotional costs for the program.** The incremental
32 rate for projects proposed by an eligible federal agency shall be greater than the incremental rate
33 charged to any other governmental borrower. The repayment plan, among other matters:

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

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

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

1 “(d) Shall set forth the period of loan **and of any related assessment.** [*which shall*] **A loan**
2 **or assessment period may** not exceed the usable life of the completed project, or 30 years from
3 the date of the loan contract, whichever is less.

4 “(e) May set forth a procedure for formal declaration of default of payment by the director, in-
5 cluding formal notification of all relevant federal, state and local agencies; and further, a procedure
6 for notification of all relevant federal, state and local agencies that declaration of default has been
7 rescinded when appropriate.

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

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

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

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

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

20 **“(a) An irrevocable agreement by the applicant to place, in addition to any other loan**
21 **security required under this chapter, a utility meter assessment, real property assessment**
22 **or a combination of security mechanisms on the property to be benefited by the project, for**
23 **a term of not less than five or more than 30 years as specified in the contract;**

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

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

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

30 **“(B) A small scale local energy project;**

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

32 **“(D) This chapter; or**

33 **“(E) Department rules that relate in any way to the utility meter assessment, real**
34 **property assessment or other combination of security mechanisms or the requirement to**
35 **satisfy the loan obligation;**

36 **“(d) If the applicant is not the owner of the property to be burdened by the utility cus-**
37 **tomers meter assessment or real property assessment, provision for participation by the**
38 **property owner as a party to the contract or a notarized authorization by the owner for the**
39 **assessment; and**

40 **“(e) A description of any other conditions required by the department.**

41 **“SECTION 67.** ORS 470.160 is amended to read:

42 “470.160. If the Director of the State Department of Energy approves a loan for a small scale
43 local energy project, the State Treasurer shall pay moneys for such project from the **Small Scale**
44 **Local Energy Project Loan Fund or Energy Project Revenue Bond Loan Fund** in accordance
45 with the terms of the loan contract, as prescribed by the director.

1 “**SECTION 68.** ORS 470.170 is amended to read:

2 “470.170. (1) When a loan is made under this chapter to an applicant other than a municipal
3 corporation, the loan shall be secured pursuant to a mortgage, trust deed, security agreement,
4 pledge, assignment or similar instrument, by a security interest or lien on real or personal property
5 in the full amount of the loan or as the Director of the State Department of Energy shall require
6 for adequate security, including but not limited to long-term leasehold interests or equitable inter-
7 ests in real property or personal property. **If the loan is an energy efficiency and sustainable**
8 **technology loan, the loan may also be secured by a utility customer meter assessment, an**
9 **assessment on real property or repayment or security mechanisms developed under section**
10 **36 of this 2009 Act.** In lieu of, or in addition to, any of the collateral otherwise described in this
11 subsection, the applicant may secure the loan by providing credit enhancement, including but not
12 limited to a letter of credit or payment bond, or a guaranty acceptable to the director.

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

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

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

21 “(5) The director may cause to be instituted appropriate proceedings to foreclose liens for de-
22 linquent loan payments, and shall pay the proceeds of any such foreclosure, less the director’s ex-
23 penses incurred in foreclosing, into the **Small Scale Local Energy Project Administration and**
24 **Bond Sinking Fund if the loan was issued from the Small Scale Local Energy Project Loan**
25 **Fund, or into the Energy Project Bond Loan Fund if the loan was an energy efficiency and**
26 **sustainable technology loan.** In a foreclosure proceeding the director may bid on property offered
27 for sale in the proceedings and may acquire title to the property on behalf of the state.

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

30 “(7) The director may settle, compromise or release, for reasons other than uncollectibility as
31 provided in ORS 293.240, all or part of any loan obligation so long as the director’s action is con-
32 sistent with the purposes of this chapter and does not impair the ability to pay the administrative
33 expenses of the State Department of Energy or the obligations of any bonds then outstanding.

34 “**SECTION 69.** ORS 470.190 is amended to read:

35 “470.190. If an applicant fails to comply with a contract entered into with the Director of the
36 State Department of Energy for development and repayment as provided in ORS 470.150 **or section**
37 **29 of this 2009 Act,** the director, in addition to remedies provided in ORS 470.170 and 470.180, may
38 seek other appropriate legal remedies to secure the loan and may contract as provided in ORS
39 470.150 with any other person for continuance of development and for repayment of moneys from the
40 **Small Scale Local Energy Project Loan Fund or from the Energy Project Bond Loan Fund**
41 used therefor and interest thereon.

42 “**SECTION 70.** ORS 470.230 is amended to read:

43 “470.230. Except as provided in ORS 470.270, all moneys obtained from the sale of **general ob-**
44 **ligation** bonds under ORS 470.220 to 470.290 **and Article XI-J of the Oregon Constitution** shall
45 be credited by the State Treasurer to the **Small Scale Local Energy Project Loan Fund.** Those

1 moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution, [and
2 *ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210,*] including payment of the costs of issuing
3 the bonds and of obtaining credit enhancement for the bonds, and making payments of interest on
4 bonds issued pursuant to the provisions of ORS 470.220 to 470.290 if there are insufficient funds in
5 the **Small Scale Local Energy Project Administration and Bond Sinking Fund** to make the pay-
6 ments referred to in ORS 470.300 (1). Moneys loaned to municipal corporations but withheld by the
7 State Department of Energy for security or to pay for future project costs may remain in the loan
8 fund. Pending the use of the moneys in the loan fund for the proper purposes, the moneys may be
9 invested in the manner provided by law.

10 “**SECTION 71.** ORS 470.240 is amended to read:

11 “470.240. All **general obligation** bonds issued under ORS 470.220 to 470.290 **and Article XI-J**
12 **of the Oregon Constitution** shall contain a direct promise of the State of Oregon to pay the prin-
13 cipal amount of the bonds, plus any accrued interest and any redemption premium. The principal
14 of and the interest and redemption premium, if any, upon the bonds, when due, shall be paid at the
15 fiscal agency of the State of Oregon. The charges imposed by that agency for its services shall be
16 paid, upon approval by the State Treasurer, from the **Small Scale Local Energy Project Admin-**
17 **istration and Bond Sinking Fund.**

18 “**SECTION 72.** ORS 470.270 is amended to read:

19 “470.270. (1) After consultation with the State Treasurer, the Director of the State Department
20 of Energy may issue **general obligation** refunding bonds for the purpose of refunding outstanding
21 bonds issued under ORS 470.220 to 470.290 **and Article XI-J of the Oregon Constitution.** The re-
22 funding bonds may be sold in the same manner as other bonds are sold under ORS 470.220 to
23 470.290. All moneys obtained from the sale of refunding bonds shall be credited by the State Treas-
24 urer to the **Small Scale Local Energy Project Administration and Bond Sinking Fund.** [*The is-*
25 *suance of the refunding bonds, the maturity date, and other details thereof, the rights of the holders*
26 *thereof, and the duties of the Governor, Secretary of State and State Treasurer with respect thereto,*
27 *shall be governed by the provisions of ORS 470.220 to 470.290.*] The refunding bonds may be issued
28 to refund bonds previously issued for refunding purposes. Pending the use of moneys obtained from
29 the sale of refunding bonds for proper purposes, such moneys may be invested in the manner pro-
30 vided by law.

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

38 “(3) The department shall pursue opportunities for refunding bonds to reduce interest sums
39 payable by the department. When the department refunds a bond with tax-exempt bonds, the de-
40 partment shall share, on an equitable basis, the savings from any refunding with the borrowers
41 whose loans were made with the proceeds of the refunded bonds in an amount consistent with a
42 finding by the director that the sinking fund has, and will continue to have, sufficient funds to make
43 payments required under ORS 470.300 (1). The department may not refund tax-exempt bonds with
44 taxable bonds, unless the department is able to share the savings associated with such a refunding
45 with the borrowers whose loans are linked to such bonds. At least 120 days before the date on which

1 the department intends to issue refunding bonds, the director shall notify each borrower whose loan
2 was made from the proceeds of the bonds being refunded and shall offer the borrower the opportu-
3 nity to prepay the borrower's loan. A borrower shall respond within 60 days of the date of the notice
4 described in this subsection if the borrower intends to prepay the borrower's loan.

5 "**SECTION 73.** ORS 470.280 is amended to read:

6 "470.280. (1) The State Treasurer shall make payment of the principal of and the interest and
7 redemption premium, if any, on any **general obligation** bond issued under ORS 470.220 to 470.290
8 from the **Small Scale Local Energy Project Administration and Bond** Sinking Fund.

9 "(2) The State Treasurer shall compute and determine in January of each year, after the sale
10 of bonds under ORS 470.220 to 470.290 **and Article XI-J of the Oregon Constitution**, the amount
11 of principal, interest and redemption premiums that will fall due during the year on bonds then
12 outstanding and unpaid and shall maintain or hold in the sinking fund sufficient moneys to pay such
13 maturing obligations.

14 "**SECTION 74.** ORS 470.300 is amended to read:

15 "470.300. (1) There hereby is created the Small Scale Local Energy Project Administration and
16 Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

17 "(a) Administrative expenses of the State Department of Energy and the Director of the State
18 Department of Energy in processing applications, investigating potential small scale local energy
19 projects and proposed loans and servicing and collecting outstanding loans made [*under this*
20 *chapter*] **from the Small Scale Local Energy Project Loan Fund**, if the expense is not paid di-
21 rectly by the applicant.

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

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

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

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

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

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

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

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

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

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

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

40 "(g) Moneys transferred from the [*Small Scale Local Energy Project*] loan fund.

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

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

45 "(a) A cash flow projection shows that, for the term of the bonds outstanding at the time the

1 director transfers the moneys, remaining moneys in the sinking fund, together with expected loan
2 contract payments and fund earnings, will improve the financial basis of the program and will con-
3 tinue to be adequate to pay bond principal, interest, redemption premiums, if any, and administration
4 costs; and

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

6 “(4) The director, with the approval of the State Treasurer, may establish separate and distinct
7 accounts within the sinking fund to accomplish the purpose of this section.

8 “**SECTION 75.** ORS 470.310 is amended to read:

9 “470.310. (1) If there are insufficient funds in the **Small Scale Local Energy Project Admin-**
10 **istration and Bond** Sinking Fund to make the payments referred to in ORS 470.300 (1), the Director
11 of the State Department of Energy may request the funds necessary for such payments from the
12 Legislative Assembly or the Emergency Board.

13 “(2) When the director determines that moneys in sufficient amount are available in the sinking
14 fund, the State Treasurer shall reimburse the General Fund without interest, in an amount equal to
15 the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection
16 (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not
17 be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition
18 to any specific appropriations or amounts authorized to be expended from continually appropriated
19 moneys.

20
21 “**CAPTIONS**

22
23 “**SECTION 76.** The unit captions used in this 2009 Act are provided only for the conven-
24 ience of the reader and do not become part of the statutory law of this state or express any
25 legislative intent in the enactment of this 2009 Act.

26
27 “**EMERGENCY**

28
29 “**SECTION 77.** This 2009 Act being necessary for the immediate preservation of the public
30 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
31 on its passage.”.
32
