

Enrolled
House Bill 2960

Sponsored by Representatives BAILEY, J SMITH, FREEMAN, READ, Senators EDWARDS, ROSENBAUM, DINGFELDER; Representatives BARNHART, BENTZ, BOONE, CANNON, CLEM, DEMBROW, KENNEMER, TOMEI, Senator DEVLIN (Presession filed.)

CHAPTER

AN ACT

Relating to energy; creating new provisions; amending ORS 470.050, 470.570, 470.575, 470.585, 470.590, 470.605, 470.655, 470.700, 470.715 and 757.612 and section 1, chapter 92, Oregon Laws 2010; appropriating money; and declaring an emergency.

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

SECTION 1. (1) **The Clean Energy Deployment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Clean Energy Deployment Fund shall be credited to the Clean Energy Deployment Fund. Moneys in the fund are continuously appropriated to the State Department of Energy for use as provided in section 2 of this 2011 Act.**

(2) **The department may accept grants, donations, contributions or gifts from any source for deposit in the Clean Energy Deployment Fund.**

SECTION 2. (1) **The State Department of Energy shall establish the clean energy deployment program to provide grants and loans to support energy efficiency or clean energy projects in this state. The department shall establish criteria for qualifications of the projects by rule.**

(2)(a) **The department may use funds from the Jobs, Energy and Schools Fund and the Clean Energy Deployment Fund to provide loans and grants to school districts that have projects to weatherize, upgrade and retrofit kindergarten through grade 12 public schools in this state, in order to improve energy efficiency.**

(b) **A school district that finances a project through the clean energy deployment program may not self-perform work constituting more than five percent of the total cost of the project being financed.**

(c) **All school projects financed pursuant to paragraph (a) of this subsection through the clean energy deployment program are deemed to be public works projects and are subject to the prevailing wage requirements of ORS 279C.800 to 279C.870.**

(3) **The department may contract for the implementation of the clean energy deployment program in all or parts of this state with a sustainable energy project manager as defined in ORS 470.050.**

SECTION 3. (1) **School districts that participate in the clean energy deployment program established in section 2 of this 2011 Act may finance projects to:**

(a) **Weatherize, upgrade and retrofit kindergarten through grade 12 public schools;**

(b) Retrofit school bus fleets to operate on compressed natural gas or other alternative fuels such as propane or to operate with high-efficiency types of engines such as hybrid electric engines; or

(c) Replace school bus fleets with school buses that operate on compressed natural gas or other alternative fuels such as propane or that operate with high-efficiency types of engines such as hybrid electric engines.

(2) The projects described in subsection (1) of this section shall be designed to improve energy efficiency, decrease fuel costs, increase use of alternative fuels and decrease emissions of air contaminants.

(3) School districts may finance the projects described in subsection (1) of this section by:

(a) Paying directly for the projects;

(b) Receiving lower interest loans from the Clean Energy Deployment Fund or the Small Scale Local Energy Project Loan Fund, supported by:

(A) Grant moneys from the Jobs, Energy and Schools Fund;

(B) Public purpose charges directed to a school district in areas served by investor-owned utilities under ORS 757.612;

(C) Qualified Energy Conservation Bonds issued under the Energy Improvement and Extension Act of 2008 or other federal loan programs; or

(D) Revenues generated by the savings in energy costs resulting from the energy efficiency improvements;

(c) Issuing general obligation bonds, subject to the bond election requirements under ORS 328.210; or

(d) Using any other source of moneys.

SECTION 4. (1) The State Department of Energy shall establish and administer a four-year high performance schools pilot program within the clean energy deployment program established in section 2 of this 2011 Act to create energy savings projects at public schools in this state. To facilitate short-term implementation of the pilot program, the department shall establish a schedule of projects, procured through a central contracting system, that will allow school districts to apply for energy efficiency projects encompassing both short-term and long-term improvements to existing public schools.

(2) The factors by which the State Department of Energy shall consider applications from school districts in this state for projects to be funded through the high performance schools pilot program shall include, but are not limited to:

(a) The comprehensiveness of the project improvements, with special attention given to improvements designed to attain compliance with standards set in the State of Oregon Structural Specialty Code and Fire and Life Safety Code and also to improve seismic safety of school buildings;

(b) The incorporation of biomass to generate onsite heat at school district facilities;

(c) Geographic diversity;

(d) The use of matching funds from other governmental and private sources;

(e) The timeliness of the projects;

(f) Whether the projects are supported by an energy management plan adopted by the school district that includes a program for monitoring and verifying energy cost savings from the projects;

(g) Whether the projects include retrofit or replacement of school bus fleets to operate:

(A) On compressed natural gas or other alternative fuels such as propane; or

(B) With high-efficiency types of engines such as hybrid electric engines;

(h) The amount of cost savings generated by the proposed improvements; and

(i) The extent to which projects incorporate ongoing measurement, verification, reporting and guarantees of actual energy use.

(3) Before approving a project under this section that includes elements unrelated to energy efficiency and that is designed to attain compliance with standards set in the State of Oregon Structural Specialty Code and Fire and Life Safety Code and to improve seismic safety of school buildings, the State Department of Energy must find that:

(a) The project showcases new or improved technologies or designs that promise cost-effective energy efficiency if adopted by the marketplace, including elements unrelated to energy efficiency that are practically inseparable from the project, and would not receive adequate financing unless those unrelated elements are also eligible for financing as part of the project; or

(b) The elements unrelated to energy efficiency are closely integrated with the energy efficiency improvements within the project, and elimination of these elements would result in significant additional expense or delays in completing the project.

SECTION 5. Section 4 of this 2011 Act is repealed on June 30, 2015.

SECTION 6. (1) The Public Utility Commission shall prepare a report on:

(a) The feasibility of energy efficiency power purchase agreements;

(b) The cost effectiveness of packaging energy efficiency investments for sale to public utilities as the equivalent of new energy generation facilities;

(c) The potential avoided costs to ratepayers of energy efficiency power purchase agreements; and

(d) The most effective means of maximizing energy efficiency achieved from energy efficiency power purchase agreements through monitoring and verification.

(2) The commission shall direct public utilities to provide necessary data on individual energy efficiency projects sufficient for the commission to complete the study.

(3) The commission shall submit the report to an appropriate interim committee of the Legislative Assembly on or before December 1, 2012.

SECTION 7. Section 6 of this 2011 Act is repealed on January 2, 2013.

SECTION 8. (1) As used in this section:

(a) "Green Globes program" means a building guidance and assessment program to advance overall environmental performance and sustainability of commercial buildings established by the Green Building Initiative.

(b) "LEED" means the Leadership in Energy and Environmental Design rating system for certification of energy efficient and environmentally sustainable buildings established by the United States Green Building Council.

(c) "LEED Silver" means the second of four tiers of standards for certification in the LEED rating system.

(d) "Two globes" means the second of four tiers of ratings for certification in the Green Globes program rating system.

(2) If general obligation bonds are issued under Article XI-P of the Oregon Constitution, and proceeds from the bonds are used for the construction, improvement, remodel, equipment, maintenance or repair of a building of a school district, the building of the school district that is constructed, improved, remodeled, equipped, maintained or repaired must qualify for, at a minimum:

(a) LEED Silver certification;

(b) A two globes rating from the Green Globes program; or

(c) An equivalent numeric rating from a nationally recognized, accepted and appropriate sustainable development rating system as determined by the State Department of Energy.

SECTION 9. ORS 470.575, as amended by section 2, chapter 92, Oregon Laws 2010, is amended to read:

470.575. (1) The [*Loan Offset Grant*] **Jobs, Energy and Schools** Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the [*Loan Offset Grant*] **Jobs, Energy and Schools** Fund shall be credited to the [*Loan Offset Grant*] **Jobs, Energy and**

Schools Fund. Moneys in the fund are continuously appropriated to the State Department of Energy for use as provided in this section.

(2) The fund shall consist of any moneys directed by law, gift, grant or donation to the fund and moneys from base efficiency package fees collected pursuant to ORS 470.655.

(3) The department shall use fund moneys:

(a) To promote energy efficiency, renewable energy and energy conservation projects, **including the clean energy deployment program established in section 2 of this 2011 Act**, that would otherwise result in a [*marginally*] higher overall cost to the applicant when energy costs and the financing and repayment costs for the project are considered, by using the fund moneys to help produce [*a monthly cost savings*] **a lower- or zero-interest cost of loans obtained through the Small Scale Local Energy Project Loan Fund established in section 1, Article XI-J of the Oregon Constitution, or the Clean Energy Deployment Fund established in section 1 of this 2011 Act** for the applicant; or

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

SECTION 10. ORS 757.612 is amended to read:

757.612. (1) There is established an annual public purpose expenditure standard for electric companies and Oregon Community Power to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Beginning on the date an electric company or Oregon Community Power offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company or Oregon Community Power shall collect a public purpose charge from all of the retail electricity consumers located within its service area until January 1, 2026. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company, Oregon Community Power or the electricity service supplier from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

(b) For an aluminum plant that averages more than 100 average megawatts of electricity use per year, beginning on March 1, 2002, the electric company or Oregon Community Power whose territory abuts the greatest percentage of the site of the aluminum plant shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this section relating to electric companies and Oregon Community Power.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company or Oregon Community Power through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation, [*and*] new market transformation.

(B) Nineteen percent for the above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less.

(C) Thirteen percent for new low-income weatherization.

(D) Five percent shall be transferred to the Housing and Community Services Department Electricity Public Purpose Charge Fund established by ORS 456.587 (1) and used for the purpose of providing grants as described in ORS 458.625 (2).

(c) The costs of administering subsections (1) to (6) of this section for an electric company or Oregon Community Power shall be paid out of the funds collected through public purpose charges. The commission may require that an electric company or Oregon Community Power direct funds collected through public purpose charges to the state agencies responsible for implementing subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company or Oregon Community Power and may require an electric company or Oregon Community Power to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company or Oregon Community Power through public purpose charges be paid to a nongovernmental entity for investment in public purposes described in subsection (1) of this section. Notwithstanding any other provision of this subsection:

(A) At least 80 percent of the funds allocated for conservation shall be spent within the service area of the electric company that collected the funds; or

(B) If Oregon Community Power collected the funds, at least 80 percent of the funds allocated for conservation shall be spent within the service area of Oregon Community Power.

(e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon Community Power under subsection (2) of this section shall be distributed to *[education service districts, as described in ORS 334.010,]* **school districts** that are located in the service territory of the electric company or Oregon Community Power. The funds shall be distributed to individual *[education service]* **school** districts according to the weighted average daily membership (ADMw) of *[the component school districts of the education service district]* **each school district** for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to *[education service]* **school** districts that are only partially located in the service territory of the electric company or Oregon Community Power.

(B) *[An education service]* **A school** district that receives funds under this paragraph shall use the funds first to pay for energy audits for *[school districts]* **schools** located within the *[education service]* **school** district. *[An education service]* **A school** district may not expend additional funds received under this paragraph on a school *[district]* facility until an energy audit has been completed for that school *[district]* **facility**. To the extent practicable, *[an education service]* **a school** district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school *[district, the education service]*, **the school** district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school *[district]* within the *[education service]* **school** district, the *[education service]* **school** district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending funds on any other purpose authorized under this paragraph unless the school district has performed an energy audit within the three years immediately prior to receiving the funds.

(ii) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.

(f) The commission may not establish a different public purpose charge than the public purpose charge described in subsection (2) of this section.

(g) If the commission directs funds collected through public purpose charges to a nongovernmental entity, the entity shall:

(A) Include on the entity's board of directors an ex officio member designated by the commission, who shall also serve on the entity's nominating committee for filling board vacancies.

(B) Require the entity's officers and directors to provide an annual disclosure of economic interest to be filed with the commission on or prior to April 15 of each calendar year for public review in a form similar to the statement of economic interest required for public officials under ORS 244.060.

(C) Require the entity's officers and directors to declare actual and potential conflicts of interest at regular meetings of the entity's governing body when such conflicts arise, and require an officer or director to abstain from participating in any discussion or vote on any item where that officer or director has an actual conflict of interest. For the purposes of this subparagraph, "actual conflict of interest" and "potential conflict of interest" have the meanings given those terms in ORS 244.020.

(D) Arrange for an independent auditor to audit the entity's financial statements annually, and direct the auditor to file an audit opinion with the commission for public review.

(E) File with the commission annually the entity's budget, action plan and quarterly and annual reports for public review.

(F) At least once every five years, contract for an independent management evaluation to review the entity's operations, efficiency and effectiveness, and direct the independent reviewer to file a report with the commission for public review.

(h) The commission may remove from the board of directors of a nongovernmental entity an officer or director who fails to provide an annual disclosure of economic interest or declare actual or potential conflict of interest, as described in paragraph (g)(B) and (C) of this subsection, in connection with the allocation or expenditure of funds collected through public purpose charges and directed to the entity.

(4)(a) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(b) Oregon Community Power, for any period during which Oregon Community Power collects a public purpose charge under subsection (2) of this section:

(A) Shall have no other obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program; and

(B) Is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company or Oregon Community Power for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, less administration costs incurred under this subsection. The credit may not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the State Department of Energy a description of the proposed conservation project or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The State Department of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the State Department of Energy verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the State Department of Energy hire an independent auditor to assess the potential for conservation investments at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment

obligation for public purpose charges related to the site. If the independent auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The State Department of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit for the public purpose expenditures of their energy suppliers. The State Department of Energy shall adopt rules to determine eligible expenditures and the methodology by which such credits are accounted for and used. The rules also shall adopt methods to account for eligible public purpose expenditures made through consortia or collaborative projects.

(7)(a) In addition to the public purpose charge provided under subsection (2) of this section, an electric company or Oregon Community Power shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The commission shall establish the amount to be collected by each electric company in calendar year 2008 from retail electricity consumers served by the company, and the rates to be charged to retail electricity consumers served by the company, so that the total anticipated collection for low-income electric bill payment assistance by all electric companies in calendar year 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not change the rates established for retail electricity consumers, but the total amount collected in a calendar year for low-income electric bill payment assistance may vary based on electricity usage by retail electricity consumers and changes in the number of retail electricity consumers in this state. In no event shall a retail electricity consumer be required to pay more than \$500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2). Moneys deposited in the fund under this paragraph shall be used by the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the fund under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company or Oregon Community Power shall be expended in the service area of the electric company or Oregon Community Power from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(e) Interest on moneys deposited in the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to provide heating bill payment and crisis assistance to electricity consumers whose primary source of heat is not electricity.

(f) Notwithstanding ORS 757.310, the commission may allow an electric company or Oregon Community Power to provide reduced rates or other payment or crisis assistance or low-income

program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

(8) For purposes of this section, “retail electricity consumers” includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

(9) For purposes of this section, amounts collected by Oregon Community Power through public purpose charges are not considered moneys received from electric utility operations.

SECTION 11. ORS 470.050 is amended to read:

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

(1) “Alternative fuel project” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A base efficiency package; and

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

(14) “Jobs, Energy and Schools Fund” means the fund established under ORS 470.575.

~~[(14)]~~ **(15) “Loan”** includes the purchase or other acquisition of evidence of indebtedness and money used for the purchase or other acquisition of evidence of indebtedness.

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

[(16)] (17) “Loan offset grant” means moneys from the [Loan Offset Grant] **Jobs, Energy and Schools** Fund that are used to help offset the initial project costs or loan payments for energy efficiency, renewable energy and energy conservation projects.

[(17) “Loan Offset Grant Fund” means the fund established under ORS 470.575.]

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

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

(20) “On-bill financing” means a mechanism for collecting the repayment of an energy efficiency and sustainable technology loan through a utility customer account billing system.

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

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

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

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

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

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

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

(25) “Small business” means:

(a) An Oregon business that is:

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

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

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

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

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

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

(27) “Small scale local energy project” means **any of the following**:

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

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

(c) A recycling project[;].

(d) An alternative fuel project[;].

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

(f) A system, mechanism or series of mechanisms installed in a facility or portions of a facility that directly or indirectly reduces the amount of energy needed for the construction and operation of the facility and that meets the sustainable building practices standard established by the State Department of Energy by rule[; *or*]. **For purposes of this paragraph, “system, mechanism or series of mechanisms” includes related and integrated upgrades to attain compliance with standards set in the State of Oregon Structural Specialty Code and Fire and Life Safety Code, and seismic safety upgrades.**

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

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

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

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

(30) “Sustainable energy project manager” means the organization responsible for promoting the energy efficiency and sustainable technology loan program **or the clean energy deployment program** and related incentives for energy efficiency and renewable energy at the neighborhood and community level.

(31) “Sustainable energy territory” means the geographic service area that a sustainable energy project manager is responsible for serving.

SECTION 12. ORS 470.570 is amended to read:

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

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

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

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

(c) The Energy Project Bond Loan Fund.

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

(e) The Energy Revenue Bond Repayment Fund.

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

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

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

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

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

SECTION 13. ORS 470.585 is amended to read:

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

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

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

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

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

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

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

SECTION 14. ORS 470.590 is amended to read:

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

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

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

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

SECTION 15. ORS 470.605 is amended to read:

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

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

SECTION 16. ORS 470.655, as amended by section 4, chapter 92, Oregon Laws 2010, is amended to read:

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

(2) The Director of the State Department of Energy may by rule establish a base efficiency package fee for energy efficiency and sustainable technology loans if the loans are not financed by moneys from the [Loan Offset Grant] **Jobs, Energy and Schools** Fund. The fee may not exceed 10 percent of the estimated economic benefit for the base efficiency package. Any fees collected by the department under this subsection shall be deposited in the fund.

SECTION 17. ORS 470.700 is amended to read:

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

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

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

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

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

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

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

SECTION 18. ORS 470.715 is amended to read:

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

(1) May be paid from the [Loan Offset Grant] **Jobs, Energy and Schools** Fund or Energy Project Bond Loan Fund; or

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

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

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

SECTION 19. Section 1, chapter 92, Oregon Laws 2010, is amended to read:

Sec. 1. (1) ORS 470.505 does not apply to the pilot programs described in sections 42 to 45, chapter 753, Oregon Laws 2009.

(2) Notwithstanding any other provision of ORS chapter 470, if the Director of the State Department of Energy determines that available financial resources in the [Loan Offset Grant] **Jobs, Energy and Schools** Fund established in ORS 470.575 are insufficient to allow operation of the pilot programs described in sections 42 to 45, chapter 753, Oregon Laws 2009, the director may delay or suspend the pilot programs.

SECTION 20. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House June 13, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Passed by Senate June 20, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State