

Senate Bill 164

Sponsored by Senator DINGFELDER (Pre-session filed.)

SUMMARY

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

Creates State Energy Commission. Transfers duties, functions and powers of Director of State Department of Energy and officers of State Department of Energy relating to adoption of rules to commission.

Becomes operative January 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the State Energy Commission; creating new provisions; amending ORS 183.530, 276.910, 276.915, 279C.528, 286A.630, 286A.718, 315.141, 315.144, 317.112, 469.030, 469.040, 469.050, 469.060, 469.070, 469.085, 469.150, 469.155, 469.160, 469.165, 469.170, 469.171, 469.172, 469.185, 469.195, 469.197, 469.205, 469.206, 469.208, 469.210, 469.215, 469.217, 469.255, 469.261, 469.410, 469.533, 469.534, 469.536, 469.605, 469.677, 469.754, 469.756, 469.785, 469.880, 469.885, 469.890, 469A.020, 469A.025, 470.050, 470.080, 470.140, 470.150, 470.535, 470.540, 470.560, 470.600, 470.655, 470.665, 470.710, 701.119, 757.528, 757.533, 757.538, 757.600 and 757.612 and section 10, chapter 92, Oregon Laws 2010; and declaring an emergency.

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

ESTABLISHING STATE ENERGY COMMISSION

(Establishment)

SECTION 1. Sections 2 and 4 to 8 of this 2011 Act are added to and made a part of ORS chapter 469.

SECTION 2. (1) There is established within the State Department of Energy the State Energy Commission, consisting of five members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment, but a member may not serve for more than two consecutive terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of a member of the commission is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 3. Notwithstanding the term of office specified by section 2 of this 2011 Act,

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

1 of the members first appointed to the State Energy Commission:

- 2 (1) One shall serve for a term ending January 1, 2013.
- 3 (2) One shall serve for a term ending January 1, 2014.
- 4 (3) One shall serve for a term ending January 1, 2015.
- 5 (4) Two shall serve for terms ending January 1, 2016.

6
7 (Qualification of Members)

8
9 **SECTION 4.** The members of the State Energy Commission must be residents of this
10 state who are well informed on the laws of this state that pertain to:

- 11 (1) Energy and energy conservation; and
- 12 (2) The certification processes of ORS 469.160 to 469.180 and 469.185 to 469.225.

13
14 (Officers, Quorum, Meetings)

15
16 **SECTION 5.** (1) The State Energy Commission shall select one of its members as chair-
17 person and another as vice chairperson, for such terms and with duties and powers neces-
18 sary for the performance of the functions of such offices as the commission determines.

19 (2) A majority of the members of the commission constitutes a quorum for the trans-
20 action of business.

21 (3) The commission shall meet at least once every month at a place, day and hour de-
22 termined by the commission. The commission may also meet at other times and places
23 specified by the call of the chairperson or of a majority of the members of the commission.

24
25 (Authority to Adopt Rules)

26
27 **SECTION 6.** In accordance with applicable provisions of ORS chapter 183 and the policy
28 stated in ORS 469.010, the State Energy Commission may adopt rules necessary for the ad-
29 ministration of the laws that the commission is charged with administering.

30
31 (Advisory and Technical Committees)

32
33 **SECTION 7.** (1) The State Energy Commission may establish such advisory and technical
34 committees as the commission considers necessary to aid and advise the commission in the
35 performance of its functions. These committees may be continuing or temporary commit-
36 tees. The commission shall determine the representation, membership, terms and organiza-
37 tion of the committees and shall appoint their members.

38 (2) Members of the advisory and technical committees are not entitled to compensation,
39 but at the discretion of the commission may be reimbursed from funds available to the
40 commission for actual and necessary travel and other expenses incurred by the members in
41 the performance of their official duties, in the manner and amount provided in ORS 292.495.

42
43 (Collaboration with Energy Related Entities)

44
45 **SECTION 8.** (1) As used in this section, "entity" includes the Public Utility Commission

1 of Oregon, the Oregon Global Warming Commission, the Citizens' Utility Board and
2 consumer-owned utilities, as defined in ORS 757.270.

3 (2) At the request of a state or local entity for which the laws of this state prescribe a
4 duty, function or power related to energy use and planning, the State Energy Commission
5 may instigate a collaborative policy-making or problem-solving process under which the
6 commission and the entity may resolve distinct energy related issues.

7 (3) An entity making a request under subsection (2) of this section must submit a pro-
8 posal to the commission that:

9 (a) Identifies the issue or issues to be addressed;

10 (b) Identifies potential resolutions;

11 (c) Describes the scope of work;

12 (d) Proposes a work schedule that does not exceed three years; and

13 (e) Proposes participants for inclusion in the process.

14 (4) The commission shall review the proposal to determine whether:

15 (a) The commission has the authority to resolve the issue or issues;

16 (b) The issue or issues can be resolved under the proposed scope of work;

17 (c) The issue or issues can be resolved in the proposed amount of time; and

18 (d) The identified participants include all stakeholders that are necessary to resolve the
19 issue or issues.

20 (5) After reviewing the proposal, the commission may:

21 (a) Modify the scope of work;

22 (b) Extend the work schedule by not more than one year; and

23 (c) Require the addition or removal of one or more participants.

24 (6) The decision of an entity to submit a proposal under this section, and the decision of
25 the commission to approve a proposal, are not final actions subject to judicial review.

26 (7) In accordance with ORS chapter 183, the commission shall adopt rules to implement
27 this section.

28
29 **TRANSFER OF AUTHORITY TO ADOPT RULES**

30
31 (Transfer)

32
33 **SECTION 9.** (1) As used in this section, "rule" has the meaning given that term in ORS
34 183.310.

35 (2) The duties, functions and powers of the Director of the State Department of Energy
36 or an officer of the State Department of Energy relating to the adoption of rules under ORS
37 183.530, 276.910, 276.915, 279C.528, 286A.630, 286A.718, 315.141, 315.144, 317.112, 469.040, 469.085,
38 469.150, 469.155, 469.160, 469.165, 469.170, 469.171, 469.172, 469.185, 469.195, 469.197, 469.205,
39 469.206, 469.208, 469.215, 469.217, 469.255, 469.261, 469.410, 469.533, 469.534, 469.536, 469.605,
40 469.677, 469.754, 469.756, 469.785, 469.880, 469.885, 469.890, 469A.020, 469A.025, 470.050, 470.080,
41 470.140, 470.150, 470.535, 470.540, 470.560, 470.600, 470.655, 470.665, 470.710, 757.528, 757.533,
42 757.538, 757.600 and 757.612 are imposed upon, transferred to and vested in the State Energy
43 Commission.

44
45 (Actions, Proceedings, Prosecutions)

(Agency Name Change)

SECTION 14. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Director of the State Department of Energy,” the “State Department of Energy” or the officers of the department, wherever they grant the director, the department or an officer of the department the power to adopt rules, other words designating the “State Energy Commission.”

CONFORMING AMENDMENTS

SECTION 15. ORS 183.530 is amended to read:

183.530. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The [*State Department of Energy*] **State Energy Commission**.

SECTION 16. ORS 276.910 is amended to read:

276.910. (1) Before constructing or renovating a major facility, an authorized state agency shall, after comparing various equipment options and to the greatest extent practicable, use fuel cell power systems for emergency backup power applications and for critical power applications in lieu of other equipment options.

(2)(a) The [*State Department of Energy*] **State Energy Commission** shall, in consultation with the Oregon Department of Administrative Services, adopt rules establishing criteria for the comparison of fuel cell power systems and other equipment options required by subsection (1) of this section.

(b) Criteria to be established under this subsection must address:

(A) The impact of emissions, including but not limited to nitrous oxide, sulfur oxide, carbon monoxide, carbon dioxide and particulates, from various equipment options, on the environment, regardless of whether the equipment is installed indoors or installed outdoors;

(B) Life cycle costs, including but not limited to acquisition costs, installation and commissioning costs, siting and permitting costs, maintenance costs and fueling and decommissioning costs; and

(C) The complexity of equipment options and any ancillary equipment.

SECTION 17. ORS 276.915 is amended to read:

276.915. (1) An authorized state agency may construct or renovate a facility only if the authorized state agency determines that the design incorporates all reasonable cost-effective energy conservation measures and alternative energy systems. The determination by the authorized state agency shall include consideration of indoor air quality issues and operation and maintenance costs.

(2) Whenever an authorized state agency determines that a major facility is to be constructed or renovated, the authorized state agency shall cause to be included in the design phase of the

1 construction or renovation a provision that requires an energy consumption analysis to be prepared
2 for the facility under the direction of a professional engineer or licensed architect or under the di-
3 rection of a person that is prequalified in accordance with this section. The authorized state agency
4 and the State Department of Energy shall agree to the list of energy conservation measures and
5 alternative energy systems that the energy consumption analysis will include. The energy consump-
6 tion analysis and facility design shall be delivered to the State Department of Energy during the
7 design development phase of the facility design. The State Department of Energy shall review the
8 energy consumption analysis and forward its findings to the authorized state agency within 10
9 working days after receiving the energy consumption analysis, if practicable.

10 (3) The [*State Department of Energy*] **State Energy Commission**, in consultation with author-
11 ized state agencies, shall adopt rules to carry out the provisions of ORS 276.900 to 276.915. These
12 rules shall:

13 (a) Include a simplified and usable method for determining which energy conservation measures
14 and alternative energy systems are cost-effective. The method shall reflect the energy costs of the
15 utility serving the facility.

16 (b) Prescribe procedures for determining if a facility design incorporates all reasonable cost-
17 effective energy conservation measures and alternative energy systems.

18 (c) Establish fees through which an authorized state agency will reimburse the State Department
19 of Energy for the department's review of energy consumption analyses and facility designs and the
20 department's reporting tasks. The fees imposed may not exceed 0.2 percent of the capital con-
21 struction cost of the facility and must be included in the energy consumption analysis required in
22 subsection (2) of this section. The State Department of Energy may provide for a waiver of fees and
23 reviews if the authorized state agency demonstrates that the facility will be designed and con-
24 structed in a manner that incorporates only cost-effective energy conservation measures or in a
25 manner that exceeds the energy conservation provisions of the state building code by 20 percent or
26 more.

27 (d) Periodically define highly efficient facilities. A facility constructed or renovated after June
28 30, 2001, shall exceed the energy conservation provisions of the state building code by 20 percent
29 or more, unless otherwise required by rules adopted under this section.

30 (e) Establish guidelines for implementing subsection (4) of this section.

31 (f) Establish guidelines for incorporating energy efficiency requirements into lease agreements
32 of 10 or more years to be phased in as current lease agreements expire or as new lease agreements
33 are entered into, allowing reasonable time for the owner to implement the requirements of this
34 section.

35 (g) Establish criteria by which the State Department of Energy determines that a person is
36 prequalified to perform work in accordance with this section.

37 (4) Before June 30, 2015, an authorized state agency shall reduce the total amount of energy the
38 authorized state agency uses in the authorized state agency's owned facilities by at least 20 percent
39 from a baseline amount the [*State Department of Energy*] **State Energy Commission** determines by
40 rule based on usage in calendar year 2000.

41 (5) An authorized state agency shall report annually to the State Department of Energy con-
42 cerning energy use in the authorized state agency's facilities. The [*State Department of Energy*]
43 **State Energy Commission** shall specify by rule the form and content of and deadlines for the re-
44 ports.

45 (6) An authorized state agency that fails to achieve and maintain a 20 percent reduction in en-

1 ergy use on and after June 30, 2015, shall submit biennial energy conservation plans to the State
 2 Department of Energy. The [*State Department of Energy*] **State Energy Commission** shall specify
 3 by rule the form and content of and deadlines for the energy conservation plans.

4 (7) The [*State Department of Energy*] **State Energy Commission** by rule may require mandatory
 5 prequalification as a condition for a person to submit a bid or proposal to perform the following
 6 work for an authorized state agency:

7 (a) Direct an energy consumption analysis for an authorized state agency under subsection (2)
 8 of this section, unless the person is a professional engineer or architect;

9 (b) Enter into an energy savings performance contract; or

10 (c) Perform energy audits, building commissioning, monitoring and verification services and
 11 other services related to the operation and management of a facility's energy systems, except for
 12 architectural, engineering and land surveying services as defined in ORS 279C.100.

13 (8) The State Department of Energy may recover from authorized state agencies the costs as-
 14 sociated with administering the provisions of this section, including costs associated with [*adopting*
 15 *rules*] **the adoption of rules by the State Energy Commission**, maintaining a state energy use
 16 database and prequalifying a person under this section.

17 (9) The State Department of Energy, the Oregon Department of Administrative Services and the
 18 Oregon University System shall jointly prepare a biennial report summarizing the progress toward
 19 achieving the goals of this section. The biennial report shall be made available to the public.

20 **SECTION 18.** ORS 279C.528 is amended to read:

21 279C.528. Public improvement contracts subject to ORS 279C.527 are also subject to rules
 22 adopted by the [*State Department of Energy*] **State Energy Commission** that include, but are not
 23 limited to, requirements and specifications for:

24 (1) Using particular solar energy systems or technologies in public improvements;

25 (2) Determining the cost-effectiveness of solar energy systems or technologies;

26 (3) Reporting the use of solar energy systems or technologies in public improvements or sub-
 27 mitting documents to the [*department*] **State Department of Energy** for review, as appropriate; and

28 (4) Determining whether a structure is a public building subject to the requirements of ORS
 29 279C.527.

30 **SECTION 19.** ORS 286A.630 is amended to read:

31 286A.630. (1) The Legislative Assembly finds that the American Recovery and Reinvestment Act
 32 of 2009 (P.L. 111-5) provides that the State of Oregon may receive, allocate and reallocate the au-
 33 thority to issue certain kinds of state and local government bonds that qualify for tax credits, fed-
 34 eral subsidies or exclusion of bond interest from gross income under the United States Internal
 35 Revenue Code of 1986, as amended.

36 (2) As described in subsections (3) to (6) of this section, state agencies and the Private Activity
 37 Bond Committee may allocate and reallocate or take any additional actions that are desirable to
 38 maximize the benefits of bonding programs created or expanded by the American Recovery and Re-
 39 investment Act of 2009 (P.L. 111-5).

40 (3) The Department of Education, with the approval of the Governor, may allocate, reallocate
 41 and otherwise manage this state's qualified school construction bonding authority.

42 (4) The Oregon Business Development Department may allocate, reallocate and otherwise man-
 43 age this state's recovery zone economic development bonding authority and this state's recovery
 44 zone facility bonding authority.

45 (5) The State Department of Energy may allocate, reallocate and otherwise manage this state's

1 qualified energy conservation bonding authority.

2 (6) The Private Activity Bond Committee may allocate, reallocate and otherwise manage any
3 bonding authority that is created or expanded by the American Recovery and Reinvestment Act of
4 2009 (P.L. 111-5) if that responsibility is not assigned to a state agency by this section, or if an
5 agency that is assigned that responsibility requests the Private Activity Bond Committee to allocate
6 that authority on behalf of that agency.

7 (7) The Department of Education, the Oregon Business Development Department, the [*State De-*
8 *partment of Energy*] **State Energy Commission** and the Private Activity Bond Committee may
9 adopt rules to implement the provisions of this section including, but not limited to, rules prescrib-
10 ing:

11 (a) Application processes and requirements to receive a subsequent allocation or reallocation;

12 (b) Standards upon which an allocation or reallocation may be based; and

13 (c) Any conditions that must be met to receive an allocation or reallocation of the bonding au-
14 thority or to receive the benefits of such bonding authority.

15 **SECTION 20.** ORS 286A.718 is amended to read:

16 286A.718. (1) The Renewable Energy Fund is established in the State Treasury, separate and
17 distinct from the General Fund. Amounts in the fund may be invested as provided in ORS 293.701
18 to 293.820, and interest earned on the fund must be credited to the fund. Amounts credited to the
19 fund are continuously appropriated to the State Department of Energy for the purpose described in
20 ORS 286A.712 (2)(a) and for the purpose of paying bond-related costs. The department shall deposit
21 in the fund:

22 (a) The net proceeds of Article XI-D bonds transferred pursuant to ORS 286A.712 (4);

23 (b) Amounts appropriated or otherwise provided by the Legislative Assembly for deposit in the
24 fund; and

25 (c) Gifts, grants or contributions received by the department for the purpose described in ORS
26 286A.712 (2)(a).

27 (2) The State Department of Energy may create separate accounts in the Renewable Energy
28 Fund as appropriate for the management of moneys in the fund.

29 (3) The State Department of Energy and any other state agency or other entity receiving or
30 holding net proceeds of Article XI-D bonds shall, at the direction of the Oregon Department of Ad-
31 ministrative Services, take action necessary to maintain the excludability of interest on Article XI-D
32 bonds from gross income under the Internal Revenue Code.

33 (4) If at any time the Oregon Department of Administrative Services or the State Department
34 of Energy determines that there are moneys in the Renewable Energy Fund in excess of the amounts
35 necessary for the purpose described in ORS 286A.712 (2)(a), the Oregon Department of Administra-
36 tive Services or the State Department of Energy may transfer the excess amounts to the Article
37 XI-D Bond Fund or to the Article XI-D Bond Administration Fund.

38 (5) The [*State Department of Energy*] **State Energy Commission** may adopt rules to carry out
39 this section, including procedures for distributing and monitoring the use of moneys from the
40 Renewable Energy Fund.

41 **SECTION 21.** ORS 315.141 is amended to read:

42 315.141. (1) As used in this section:

43 (a) "Agricultural producer" means a person that produces biomass in Oregon that is used, in
44 Oregon, as biofuel or to produce biofuel.

45 (b) "Biofuel" means liquid, gaseous or solid fuels, derived from biomass, that have been con-

1 verted into a processed fuel ready for use as energy by a biofuel producer's customers or for direct
2 biomass energy use at the biofuel producer's site.

3 (c) "Biofuel producer" means a person that through activities in Oregon:

4 (A) Alters the physical makeup of biomass to convert it into biofuel;

5 (B) Changes one biofuel into another type of biofuel; or

6 (C) Uses biomass in Oregon to produce energy.

7 (d) "Biomass" means organic matter that is available on a renewable or recurring basis and that
8 is derived from:

9 (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
10 or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

11 (B) Wood material from hardwood timber described in ORS 321.267 (3);

12 (C) Agricultural residues;

13 (D) Offal and tallow from animal rendering;

14 (E) Food wastes collected as provided under ORS chapter 459 or 459A;

15 (F) Yard or wood debris collected as provided under ORS chapter 459 or 459A;

16 (G) Wastewater solids; or

17 (H) Crops grown solely to be used for energy.

18 (e) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, in-
19 organic arsenic or other inorganic chemical compounds or waste, other than matter described in
20 paragraph (d) of this subsection.

21 (f) "Biomass collector" means a person that collects biomass in Oregon to be used, in Oregon,
22 as biofuel or to produce biofuel.

23 (2) The [*Director of the State Department of Energy*] **State Energy Commission** may adopt rules
24 to define criteria, only as the criteria apply to organic biomass, to determine additional character-
25 istics of biomass for purposes of this section.

26 (3)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes
27 that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
28 chapter 317 or 318 for:

29 (A) The production of biomass in Oregon that is used, in Oregon, as biofuel or to produce
30 biofuel; or

31 (B) The collection of biomass in Oregon that is used, in Oregon, as biofuel or to produce biofuel.

32 (b) A credit under this section may be claimed in the tax year in which the credit is certified
33 under subsection (5) of this section.

34 (c) A taxpayer may be allowed a credit under this section for more than one of the roles defined
35 in subsection (1) of this section, but a biofuel producer that is not also an agricultural producer or
36 a biomass collector may not claim a credit under this section.

37 (d) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain corn,
38 but a tax credit shall be allowed for other corn material.

39 (4) The amount of the credit shall equal the amount certified under subsection (5) of this section.

40 (5)(a) The [*State Department of Energy*] **commission** may establish by rule procedures and cri-
41 teria for determining the amount of the tax credit to be certified under this section, consistent with
42 ORS 469.790. The [*department*] **State Department of Energy** shall provide written certification to
43 taxpayers that are eligible to claim the credit under this section.

44 (b) The State Department of Energy may charge and collect a fee from taxpayers for certif-
45 ication of credits under this section. The fee may not exceed the cost to the department of deter-

1 mining the amount of certified cost.

2 (c) The State Department of Energy shall provide to the Department of Revenue a list, by tax
3 year, of taxpayers for which a credit is certified under this section, upon request of the Department
4 of Revenue.

5 (6) The amount of the credit claimed under this section for any tax year may not exceed the tax
6 liability of the taxpayer.

7 (7) Each agricultural producer or biomass collector shall maintain the written documentation
8 of the amount certified for tax credit under this section in its records for a period of at least five
9 years after the tax year in which the credit is claimed and provide the written documentation to the
10 Department of Revenue upon request.

11 (8) The credit shall be claimed on a form prescribed by the Department of Revenue that contains
12 the information required by the department.

13 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
14 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
15 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
16 forward and used in the second succeeding tax year, and likewise any credit not used in that second
17 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
18 credit not used in that third succeeding tax year may be carried forward and used in the fourth
19 succeeding tax year, but may not be carried forward for any tax year thereafter.

20 (10) In the case of a credit allowed under this section:

21 (a) A nonresident shall be allowed the credit under this section in the proportion provided in
22 ORS 316.117.

23 (b) If a change in the status of the taxpayer from resident to nonresident or from nonresident
24 to resident occurs, the credit allowed by this section shall be determined in a manner consistent
25 with ORS 316.117.

26 (c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the
27 department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this
28 section shall be prorated or computed in a manner consistent with ORS 314.085.

29 **SECTION 22.** ORS 315.144 is amended to read:

30 315.144. (1) A person that has obtained a tax credit under ORS 315.141 may transfer the credit
31 to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

32 (2) A tax credit allowed under ORS 315.141 may be transferred on or before the date on which
33 the return is due for the tax year in which the credit may first be claimed. After that date, no
34 portion of a credit allowed under ORS 315.141 may be transferred.

35 (3) To transfer the tax credit, the taxpayer earning the credit and the taxpayer that will claim
36 the credit shall, on or before the date prescribed in subsection (2) of this section, jointly file a notice
37 of tax credit transfer with the Department of Revenue. The notice shall be given on a form pre-
38 scribed by the department that contains all of the following:

39 (a) The name and address of the transferor and transferee;

40 (b) The amount of the tax credit that is being transferred;

41 (c) The amount of the tax credit that is being retained by the transferor; and

42 (d) Any other information required by the department.

43 (4) The [*State Department of Energy*] **State Energy Commission** may establish by rule a mini-
44 mum discounted value of a tax credit under this section.

45 (5) The Department of Revenue, in consultation with the [*State Department of Energy*] **com-**

1 **mission**, may by rule establish procedures for the transfer of tax credits provided by this section.

2 **SECTION 23.** ORS 317.112 is amended to read:

3 317.112. (1) A credit against taxes otherwise due under this chapter for the taxable year shall
4 be allowed to a commercial lending institution in an amount equal to the difference between:

5 (a) The amount of finance charge charged during the taxable year including interest on the loan
6 and interest on any loan fee financed at an annual rate of six and one-half percent, by the lending
7 institution to a dwelling owner who is or who rents to a residential fuel oil customer, or who is or
8 who rents to a wood heating resident for the purpose of financing energy conservation measures;
9 and

10 (b) The amount of finance charge that would have been charged during the taxable year, in-
11 cluding interest on the loan and interest on any loan fee financed by the lending institution for the
12 loan for energy conservation measures at an annual rate that is the lesser of the following:

13 (A) The annual rate charged by the commercial lending institution for nonsubsidized loans made
14 under like terms and conditions at the time the loan for energy conservation measures is made; or

15 (B) An upper limit established by rule by the [*Director of the State Department of Energy*] **State**
16 **Energy Commission**.

17 (2) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
18 particular year may be carried forward and offset against the taxpayer's tax liability for the next
19 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
20 forward and used in the second succeeding tax year, and likewise until the 15th succeeding tax year.
21 The credit may not be carried forward beyond the 15th succeeding tax year.

22 (3) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan
23 shall:

24 (a) Be made only to an owner of an oil-heated or wood-heated dwelling who presents the results
25 of an energy audit pursuant to ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683 or
26 469.685 that is conducted by a fuel oil dealer, investor-owned utility or publicly owned utility or
27 through the State Department of Energy, regardless of whether that fuel oil dealer or utility pro-
28 vides the dwelling's space heating energy.

29 (b) Be subject to an annual rate not to exceed six and one-half percent and have a term not
30 exceeding 10 years.

31 (c) Not finance any materials installed in the construction of a new dwelling, additions to ex-
32 isting structures or remodeling that adds living space.

33 (d) Finance only those energy conservation measures that are recommended as cost-effective in
34 the energy audit, and any loan fee that is included in the body of the loan.

35 (4) The credit allowed under this section may not be allowed to the extent that the loan exceeds
36 \$5,000 for a single dwelling unit, or, if the dwelling owner is a corporation described in ORS 307.375,
37 to the extent that the loan exceeds \$2,000 for a single dwelling unit.

38 (5) A commercial lending institution may charge, finance and collect a nonrefundable front-end
39 loan fee, and such a fee does not affect the eligibility of the loan for a tax credit under this section.
40 The fee, if any, may not exceed that charged by the lending institution for nonsubsidized loans made
41 under like terms and conditions at the time the loan for energy conservation measures is made.

42 (6) Nothing in this section or in rules adopted under this section shall be construed to cause a
43 loan to violate the usury laws of this state.

44 (7) As used in this section, "annual rate," "commercial lending institution," "cost-effective,"
45 "dwelling," "dwelling owner," "energy audit," "energy conservation measures," "finance charge,"

1 “fuel oil dealer,” “residential fuel oil customer,” “space heating” and “wood heating resident” have
2 the meaning given those terms in ORS 469.710.

3 **SECTION 24.** ORS 469.030 is amended to read:

4 469.030. (1) There is created the State Department of Energy.

5 (2) [*The State Department of Energy*] **Subject to the rules adopted by the State Energy**
6 **Commission, the department** shall:

7 (a) Be the central repository within the state government for the collection of data on energy
8 resources;

9 (b) Endeavor to utilize all public and private sources to inform and educate the public about
10 energy problems and ways in which the public can conserve energy resources;

11 (c) Engage in research, but whenever possible, contract with appropriate public or private
12 agencies and dispense funds for research projects and other services related to energy resources,
13 except that the [*State*] department [*of Energy*] shall endeavor to avoid duplication of research
14 whether completed or in progress;

15 (d) Qualify for, accept and disburse or utilize any private or federal moneys or services available
16 for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to
17 469.563, 469.990, 757.710 and 757.720;

18 (e) Administer federal and state energy allocation and conservation programs and energy re-
19 search and development programs and apply for and receive available funds therefor;

20 (f) Be a clearinghouse for energy research to which all agencies shall send information on all
21 energy related research;

22 (g) Prepare contingent energy programs to include all forms of energy not otherwise provided
23 pursuant to ORS 757.710 and 757.720;

24 (h) Maintain an inventory of energy research projects in Oregon and the results thereof;

25 (i) Collect, compile and analyze energy statistics, data and information;

26 (j) Contract with public and private agencies for energy activities consistent with ORS 469.010
27 and this section; and

28 (k) Upon request of the governing body of any affected jurisdiction, coordinate a public review
29 of a proposed transmission line according to the provisions of ORS 469.442.

30 **SECTION 25.** ORS 469.040 is amended to read:

31 469.040. (1) The State Department of Energy shall be under the supervision of the Director of
32 the State Department of Energy[, *who shall*:].

33 **(2) Subject to the rules adopted by the State Energy Commission, the director shall:**

34 (a) Supervise the day-to-day functions of the State Department of Energy;

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

37 (c) Hire, assign, reassign and coordinate personnel of the [*State Department of Energy*], **depart-**
38 **ment**, prescribe their duties and fix their compensation, subject to the State Personnel Relations
39 Law[; *and*].

40 [*(d) Adopt rules and issue orders to carry out the duties of the director and the State Department*
41 *of Energy in accordance with ORS chapter 183 and the policy stated in ORS 469.010.*]

42 [(2)] **(3)** The director may delegate to any officer or employee the exercise and discharge in the
43 director’s name of any power, duty or function of whatever character vested in the director by law.
44 The official act of any person acting in the director’s name and by the director’s authority shall be
45 considered an official act of the director.

1 [(3)] (4) The director shall be appointed by the Governor.

2 **SECTION 26.** ORS 469.050 is amended to read:

3 469.050. [(1)] A person who has been the Director of the State Department of Energy *[shall]* **or**
4 **a member of the State Energy Commission may** not, within two years after the person ceases
5 to be the director **or a commissioner**, be an employee of:

6 [(a)] (1) An owner or operator of an energy facility;

7 [(b)] (2) An applicant for a site certificate; or

8 [(c)] (3) Any person who engages in the sale or manufacture of any energy resource or of any
9 major component of an energy facility in Oregon.

10 [(2) *Employment of any individual in violation of subsection (1)(a) or (b) of this section shall be*
11 *grounds for the revocation of any license issued by this state or any agency thereof and held by the*
12 *person that employs such individual.*]

13 **SECTION 27.** ORS 469.060 is amended to read:

14 469.060. (1) Every odd-numbered year, the *[State Department of Energy]* **State Energy Com-**
15 **mission** shall transmit to the Governor and the Legislative Assembly a comprehensive plan includ-
16 ing comments on the energy forecasts of the utilities and on the *[department's]* **commission's**
17 independent analysis and evaluation. The plan shall be designed to identify emerging trends related
18 to energy supply, need and conservation and public health and safety factors, to estimate the level
19 of statewide energy need for each year in the forthcoming five-year period and for the 10th and 20th
20 year following issuance of the plan.

21 (2) *[Notwithstanding ORS 469.030 (2)(c),]* The *[department]* **commission** shall conduct research
22 into all energy pricing structures, relating price to consumption and considering the interchange-
23 ability of the various energy forms. In conducting the research, the *[department]* **State Energy**
24 **Commission** shall consider matters including, but not limited to, price elasticity, cross elasticity
25 of demand and energy rate structures, as well as the rate structure studies of the Public Utility
26 Commission. This research shall be submitted biennially to the Legislative Assembly and the Gov-
27 ernor as a part of the plan described in subsection (1) of this section.

28 (3) Consistent with the legislatively approved budget, the plan described in subsections (1) and
29 (2) of this section shall include, but not be limited to:

30 (a) An inventory of existing energy resources available to Oregon.

31 (b) An estimation of the potential contribution that various energy resources could make in
32 satisfying Oregon's future energy needs consistent with the policy stated in ORS 469.010 and where
33 appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric
34 Power and Conservation Planning Council pursuant to P.L. 96-501.

35 (c) Recommendations for state and local governments to assist in the development and maximum
36 use of cost-effective conservation and renewable resources, consistent with the policy stated in ORS
37 469.010 and, where appropriate, the energy plan and fish and wildlife program adopted by the Pacific
38 Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

39 (d) Recommendations for proposed research, development and demonstration projects and pro-
40 grams necessary to evaluate the availability and cost-effectiveness of conservation and renewable
41 resources in Oregon.

42 (4) The plan described in this section shall be compiled by organizing and refining data acquired
43 by the *[department]* **State Department of Energy** in the performance of its existing duties.

44 **SECTION 28.** ORS 469.070 is amended to read:

45 469.070. (1) *[At least biennially the State Department of Energy shall issue a]* **The State Energy**

1 **Commission biennially shall issue a** forecast on the energy situation as it affects Oregon. The
 2 forecast shall include, but *[not be]* **is not** limited to, an estimate of:

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

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

7 (2) The forecast shall include summary forecasts for:

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

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

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

12 (4) The *[State Department of Energy]* **commission**, by July 1 of each even-numbered year, shall
 13 issue a statement setting forth the methodology and assumptions it intends to employ in preparing
 14 the forthcoming forecast, any changes in the preceding forecast, and an outline of the contents of
 15 the *[biennial plan to be published by the department on the following January 1, and not later than*
 16 *the 45th day thereafter, commence public hearings thereon.] comprehensive plan transmitted to the*
 17 **Governor and the Legislative Assembly under ORS 469.060. No later than 45 days after issu-**
 18 **ing the statement, the commission shall commence public hearings on the plan.**

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

24 **(5) The commission shall supply a copy of the statement issued under subsection (4) of**
 25 **this section to any state agency, energy supplier, owner of an energy facility or other person**
 26 **that applies to the commission for a copy of the statement. The commission may charge a**
 27 **fee for the copy of the statement that does not exceed the cost of making the copy.**

28 (6) After the public hearings required by subsection (4) of this section, but not later than Janu-
 29 ary 1 following the issuance of its statement, the *[department]* **commission** shall issue the forecast
 30 required by subsection (1) of this section.

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

32 **SECTION 29.** ORS 469.085 is amended to read:

33 469.085. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall
 34 be imposed as provided in ORS 183.745.

35 (2) Notwithstanding ORS 183.745 (2), the notice to the person against whom a civil penalty is
 36 to be imposed shall reflect a complete statement of the consideration given to the factors listed in
 37 subsection (7) of this section. The notice may be served by either the Director of the State Depart-
 38 ment of Energy or the Energy Facility Siting Council.

39 (3) Notwithstanding ORS 183.745, if a hearing is not requested or if the person requesting a
 40 hearing fails to appear, a final order shall be entered upon a prima facie case made on the record
 41 of the agency.

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

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

2 (6) The [*director*] **State Energy Commission** or the council shall adopt by rule a schedule [of]
3 **that prescribes** the amount of civil penalty that may be imposed for a particular violation.

4 (7) In imposing a penalty under ORS 469.992, the director or the council shall consider:

5 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures
6 necessary or appropriate to correct or prevent any violation;

7 (b) Any prior violations of [*ORS chapter 469*] **this chapter** or rules, orders or permits relating
8 to the alleged violation;

9 (c) The impact of the violation on public health and safety or public interests in fishery, navi-
10 gation and recreation;

11 (d) Any other factors determined by the director or the council to be relevant; and

12 (e) The alleged violator's cooperativeness and effort to correct the violation.

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

17 **SECTION 30.** ORS 469.150 is amended to read:

18 469.150. (1) As used in this section "energy conservation services" means services provided by
19 energy suppliers to educate and inform customers and the public about energy conservation. Such
20 services include but are not limited to providing answers to questions concerning energy saving
21 devices and providing inspections and making suggestions concerning the construction and siting
22 of buildings and residences.

23 (2) Energy suppliers other than public utilities as defined in ORS 757.005, that produce, transmit,
24 deliver or furnish heat, light or power shall establish energy conservation services and shall provide
25 energy conservation information to customers and to the public. The services shall be performed in
26 accordance with such guidelines as the [*Director of the State Department of Energy may by rule*]
27 **State Energy Commission by rule may** prescribe.

28 (3) As used in this section "energy supplier" means a publicly owned utility or fuel oil dealer
29 which supplies electricity or fuel oil for the space heating of dwellings.

30 **SECTION 31.** ORS 469.155 is amended to read:

31 469.155. (1) As used in this section:

32 (a) "Dwelling" means real or personal property inhabited as the principal residence of an owner
33 or renter. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home
34 as defined in ORS 830.700 and multiple unit residential housing. "Dwelling" does not include a rec-
35 reational vehicle as defined in ORS 446.003.

36 (b) "Energy conservation standards" means standards for the efficient use of energy for space
37 and water heating in a dwelling.

38 (2) The [*Director of the State Department of Energy*] **State Energy Commission** shall establish
39 advisory energy conservation standards for existing dwellings. The standards shall be adopted by
40 rule in accordance with ORS 183.310 to 183.410. The standards:

41 (a) Shall take cost-effectiveness into account; and

42 (b) Shall be compatible with and further the state's incentive programs for residential energy
43 conservation.

44 (3) The [*director*] **State Department of Energy** shall publicize the energy conservation stan-
45 dards and encourage home owners to voluntarily comply with the standards.

SECTION 32. ORS 469.160 is amended to read:

469.160. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

(1) “Alternative energy device” means a category one alternative energy device or a category two alternative energy device.

(2) “Alternative fuel device” means any of the following:

- (a) An alternative fuel vehicle;
- (b) Related equipment; or
- (c) A fueling station necessary to operate an alternative fuel vehicle.

(3) “Alternative fuel vehicle” means a motor vehicle as defined in ORS 801.360 that is:

- (a) Registered in this state; and
- (b) Manufactured or modified to use an alternative fuel, including but not limited to electricity, natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the *Director of the State Department of Energy* **State Energy Commission** that produces less exhaust emissions than vehicles fueled by gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without regard to energy consumption savings.

(4) “Category one alternative energy device” means:

- (a) Any system, mechanism or series of mechanisms that uses solar radiation for space heating or cooling for one or more dwellings;
- (b) Any system that uses solar radiation for:
 - (A) Domestic water heating; or
 - (B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;
- (c) A ground water heat pump and ground loop system;
- (d) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;
- (e) Equipment used in the production of alternative fuels;
- (f) A generator powered by alternative fuels and used to produce electricity;
- (g) An energy efficient appliance;
- (h) An alternative fuel device; or
- (i) A premium efficiency biomass combustion device that includes a dedicated outside combustion air source and that meets minimum performance standards that are established by the *State Department of Energy* **State Energy Commission**.

(5) “Category two alternative energy device” means a fuel cell system, solar electric system or wind electric system.

(6) “Coefficient of performance” means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(7) “Contractor” means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(8)(a) “Cost” means the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer for the alternative energy device.

(b) For an alternative fuel vehicle, “cost” means the difference between the cost of the alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification. “Cost” does not include any amounts paid for remodification of the same vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, “cost” means the cost

1 to the contractor of constructing or installing the fueling station in a dwelling and of making the
 2 fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180
 3 and any rules adopted by the [*Director of the State Department of Energy*] **State Energy Commis-**
 4 **sion.**

5 (d) For related equipment, “cost” means the cost of the related equipment and any modifications
 6 or additions to the related equipment necessary to prepare the related equipment for use in con-
 7 verting a vehicle to alternative fuel use.

8 (9) “Domestic water heating” means the heating of water used in a dwelling for bathing, clothes
 9 washing, dishwashing and other related functions.

10 (10) “Dwelling” means real or personal property ordinarily inhabited as a principal or secondary
 11 residence and located within this state. “Dwelling” includes, but is not limited to, an individual unit
 12 within multiple unit residential housing.

13 (11) “Energy efficient appliance” means a clothes washer, clothes dryer, water heater,
 14 refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major
 15 household appliance that has been certified by the State Department of Energy to have premium
 16 energy efficiency characteristics.

17 (12) “First year energy yield” of an alternative energy device is the usable energy produced
 18 under average environmental conditions in one year.

19 (13) “Fuel cell system” means any system, mechanism or series of mechanisms that uses fuel
 20 cells or fuel cell technology to generate electrical energy for a dwelling.

21 (14) “Fueling station” includes but is not limited to a compressed natural gas compressor fueling
 22 system or an electric charging system for vehicle power battery charging.

23 (15) “Placed in service” means:

24 (a) The date an alternative energy device is ready and available to produce usable energy or
 25 save energy.

26 (b) For an alternative fuel vehicle:

27 (A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an
 28 alternative fuel vehicle ready and available for use.

29 (B) In the case of modification, the date that the modification is completed and the vehicle is
 30 ready and available for use as an alternative fuel vehicle.

31 (c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fu-
 32 eling station is first operational.

33 (d) For related equipment, the date that the equipment is first operational.

34 (16) “Related equipment” means equipment necessary to convert a vehicle to use an alternative
 35 fuel.

36 (17) “Solar electric system” means any system, mechanism or series of mechanisms, including
 37 photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

38 (18) “Wind electric system” means any system, mechanism or series of mechanisms that uses
 39 wind to generate electrical energy for a dwelling.

40 **SECTION 33.** ORS 469.165 is amended to read:

41 469.165. (1) For the purposes of carrying out ORS 469.160 to 469.180, the [*State Department of*
 42 *Energy*] **State Energy Commission** may adopt rules prescribing minimum performance criteria for
 43 alternative energy devices for dwellings.

44 (2) The [*department,*] **commission**, in adopting rules under this section for solar heating and
 45 cooling systems, shall take into consideration applicable standards of federal performance criteria

1 prescribed pursuant to the provisions of section 5506, title 42, United States Code (Solar Heating
2 and Cooling Act of 1974).

3 (3) The [*Director of the State Department of Energy*] **commission** shall adopt rules governing the
4 determination of eligibility, verification and certification of an alternative fuel device for purposes
5 of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that
6 further define an alternative fuel vehicle, related equipment or fueling station necessary to operate
7 an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require
8 equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel
9 vehicle as a condition of tax credit eligibility.

10 **SECTION 34.** ORS 469.170 is amended to read:

11 469.170. (1) Any person may claim a tax credit under ORS 316.116 (or ORS 317.115, if the person
12 is a corporation) if the person:

13 (a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

14 (b) Meets the requirements of ORS 469.160 to 469.180; and

15 (c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative
16 energy device.

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

19 (3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming a
20 tax credit for construction or installation of an alternative energy device (including a fueling sta-
21 tion) shall have the device certified by the State Department of Energy or constructed or installed
22 by a contractor certified by the department under subsection (5) of this section. This paragraph does
23 not apply to an alternative fuel vehicle or to related equipment.

24 (b) Certification of an alternative fuel vehicle or related equipment shall be accomplished under
25 rules that shall be adopted by the [*Director of the State Department of Energy*] **State Energy Com-**
26 **mission.**

27 (4) Verification of the purchase, construction or installation of an alternative energy device
28 shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall
29 contain:

30 (a) The location of the alternative energy device;

31 (b) A description of the type of device;

32 (c) If the device was constructed or installed by a contractor, evidence that the contractor has
33 any license, bond, insurance and permit required to sell and construct or install the alternative en-
34 ergy device;

35 (d) If the device was constructed or installed by a contractor, a statement signed by the con-
36 tractor that the applicant has received:

37 (A) A statement of the reasonably expected energy savings of the device;

38 (B) A copy of consumer information published by the State Department of Energy;

39 (C) An operating manual for the alternative energy device; and

40 (D) A copy of the contractor's certification certificate or alternative energy device system cer-
41 tificate for the alternative energy device, as appropriate;

42 (e) If the device was not constructed or installed by a contractor, evidence that:

43 (A) The State Department of Energy has issued an alternative energy device system certificate
44 for the alternative energy device; and

45 (B) The taxpayer has obtained all building permits required for construction or installation of

1 the device;

2 (f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device
3 was constructed or installed by a contractor, that the construction or installation meets all the re-
4 quirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer is the
5 contractor, a statement signed by the contractor that the construction or installation meets all of
6 the requirements of ORS 469.160 to 469.180;

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

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

9 (i) Any other information that the Director of the State Department of Energy or the Depart-
10 ment of Revenue determines is necessary.

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

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

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

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

23 (C) The addresses of three installations of the device that are available for inspection by the
24 State Department of Energy;

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

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

27 (F) Any other information that the State Department of Energy determines is necessary.

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

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

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

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

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

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

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

1 (6) To claim the tax credit, the verification form described in subsection (4) of this section shall
2 be submitted with the taxpayer's tax return for the year the alternative energy device is placed in
3 service or the immediately succeeding tax year. A copy of the contractor's certification certificate,
4 alternative energy device system certificate or alternative fuel vehicle or related equipment certifi-
5 cate also shall be submitted.

6 (7) The verification form and contractor's certificate, alternative energy device system certifi-
7 cate or alternative fuel vehicle or related equipment certificate described under this section shall
8 be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

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

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

19 **SECTION 35.** ORS 469.171 is amended to read:

20 469.171. (1) The owner of an alternative fuel vehicle as defined in ORS 469.160 may transfer a
21 tax credit otherwise allowed under ORS 316.116 for cost of the vehicle in exchange for a cash pay-
22 ment equal to the present value of the tax credit.

23 (2) The [State Department of Energy] **State Energy Commission** may establish by rule uniform
24 discount rates to be used in calculating the present value of a tax credit under this section.

25 **SECTION 36.** ORS 469.172 is amended to read:

26 469.172. The following devices are not eligible for the tax credit under ORS 316.116:

27 (1) Standard efficiency furnaces;

28 (2) Standard back-up heating systems;

29 (3) Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the
30 woodstove, furnace or system constitutes a premium efficiency biomass combustion device described
31 in ORS 469.160 (4)(i);

32 (4) Heat pump water heaters that are part of a geothermal heat pump space heating system;

33 (5) Structures that cover or enclose a swimming pool;

34 (6) Swimming pools, hot tubs or spas used to store heat;

35 (7) Above ground, uninsulated swimming pools, hot tubs or spas;

36 (8) Photovoltaic systems installed on recreational vehicles;

37 (9) Conversion of an existing alternative energy device to another type of alternative energy
38 device;

39 (10) Repair or replacement of an existing alternative energy device;

40 (11) A category two alternative energy device, if the equipment or other property that comprises
41 the category two alternative energy device is the basis for an allowed credit for a category one al-
42 ternative energy device under ORS 316.116;

43 (12) A category one alternative energy device, if the equipment or other property that comprises
44 the category one alternative energy device is also the basis for an allowed credit for a category two
45 alternative energy device under ORS 316.116; or

1 (13) Any other device identified by the [*State Department of Energy. The department*] **State En-**
 2 **ergy Commission. The commission** may adopt rules defining standards for eligible and ineligible
 3 devices under this section.

4 **SECTION 37.** ORS 469.185, as amended by section 4, chapter 76, Oregon Laws 2010, is amended
 5 to read:

6 469.185. As used in ORS 469.185 to 469.225 and 469.878:

7 (1) “Alternative fuel vehicle” means a vehicle as defined by the [*Director of the State Department*
 8 *of Energy*] **State Energy Commission** by rule that is used primarily in connection with the conduct
 9 of a trade or business and that is manufactured or modified to use an alternative fuel, including but
 10 not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of en-
 11 ergy consumption savings.

12 (2) “Car sharing facility” means the expenses of operating a car sharing program, including but
 13 not limited to the fair market value of parking spaces used to store the fleet of cars available for
 14 a car sharing program, but does not include the costs of the fleet of cars.

15 (3) “Car sharing program” means a program in which drivers pay to become members in order
 16 to have joint access to a fleet of cars from a common parking area on an hourly basis. “Car sharing
 17 program” does not include operations conducted by car rental agencies.

18 (4) “Cost” means the capital costs and expenses necessarily incurred in the acquisition, erection,
 19 construction and installation of a facility, including site development costs and expenses for a
 20 sustainable building practices facility.

21 (5) “Energy facility” means any capital investment for which the first year energy savings yields
 22 a simple payback period of greater than one year. An energy facility includes:

23 (a) Any land, structure, building, installation, excavation, machinery, equipment or device, or
 24 any addition to, reconstruction of or improvement of, land or an existing structure, building, instal-
 25 lation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or in-
 26 stalled by any person in connection with the conduct of a trade or business and actually used in the
 27 processing or utilization of renewable energy resources to:

28 (A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

29 (B) Provide the initial use of energy where electricity, petroleum or natural gas would have been
 30 used;

31 (C) Generate electricity to replace an existing source of electricity or to provide a new source
 32 of electricity for sale by or use in the trade or business;

33 (D) Perform a process that obtains energy resources from material that would otherwise be solid
 34 waste as defined in ORS 459.005; or

35 (E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol,
 36 methanol, gasohol or biodiesel.

37 (b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing
 38 structure, building, installation, excavation, machinery, equipment or device necessarily acquired,
 39 erected, constructed or installed by any person in connection with the conduct of a trade or business
 40 in order to substantially reduce the consumption of purchased energy.

41 (c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is
 42 defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance
 43 standard in the state building code.

44 (d) The replacement of an electric motor with another electric motor that substantially reduces
 45 the consumption of electricity.

1 (6) “Facility” means an energy facility, recycling facility, transportation facility, car sharing
 2 facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to op-
 3 erate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling
 4 station, a high-efficiency combined heat and power facility, a high-performance home, a
 5 homebuilder-installed renewable energy system, or a renewable energy resource equipment manu-
 6 facturing facility.

7 (7) “High-efficiency combined heat and power facility” means a device or equipment that simul-
 8 taneously produces heat and electricity from a single source of fuel and that meets the criteria es-
 9 tablished for a high-efficiency combined heat and power facility under ORS 469.197.

10 (8) “High-performance home” means a new single-family dwelling that:

11 (a) Is designed and constructed to reduce net purchased energy through use of both energy ef-
 12 ficiency and on-site renewable energy resources; and

13 (b) Meets the criteria established for a high-performance home under ORS 469.197.

14 (9) “Homebuilder-installed renewable energy system” means a renewable energy resource system
 15 that:

16 (a) Meets the criteria established for a renewable energy resource system under ORS 469.197;
 17 and

18 (b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder con-
 19 structing the dwelling.

20 (10) “Qualified transit pass contract” means a purchase agreement entered into between a
 21 transportation provider and a person, the terms of which obligate the person to purchase transit
 22 passes on behalf or for the benefit of employees, students, patients or other individuals over a
 23 specified period of time.

24 (11) “Recycling facility” means equipment used by a trade or business solely for recycling:

25 (a) Including:

26 (A) Equipment used solely for hauling and refining used oil;

27 (B) New vehicles or modifications to existing vehicles used solely to transport used recyclable
 28 materials that cannot be used further in their present form or location such as glass, metal, paper,
 29 aluminum, rubber and plastic;

30 (C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to
 31 or attached to existing waste collection vehicles; and

32 (D) Any equipment used solely for processing recyclable materials such as balers, flatteners,
 33 crushers, separators and scales.

34 (b) But not including equipment used for transporting or processing scrap materials that are
 35 recycled as a part of the normal operation of a trade or business as defined by the [director] **com-**
 36 **mission.**

37 (12)(a) “Renewable energy resource” includes, but is not limited to:

38 (A) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant
 39 or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal
 40 energy;

41 (B) A hydroelectric generating facility that obtains all applicable permits and complies with all
 42 state and federal statutory requirements for the protection of fish and wildlife and:

43 (i) That does not exceed 10 megawatts of installed capacity; or

44 (ii) Qualifies as a research, development or demonstration facility; or

45 (C) A renewable energy storage device as defined by the [director] **commission** by rule.

1 (b) “Renewable energy resource” does not include a hydroelectric generating facility that is not
2 described in paragraph (a) of this subsection.

3 (13) “Renewable energy resource equipment manufacturing facility” means any structure, build-
4 ing, installation, excavation, machinery, equipment or device, or an addition, reconstruction or im-
5 provement to land or an existing structure, building, installation, excavation, machinery, equipment
6 or device, that is necessarily acquired, constructed or installed by a person in connection with the
7 conduct of a trade or business, that is used primarily to manufacture:

8 (a) Equipment, machinery or other products designed to use a renewable energy resource and
9 that meets the criteria established under ORS 469.197.

10 (b) Electric vehicles, including three-wheeled vehicles, that are designed for use as Class I or
11 Class II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are
12 used for agricultural, commercial, industrial or governmental purposes, or designed for use as modes
13 of transportation on public roads and highways, or component parts of electric vehicles, but not
14 including component parts that may be used in both electric and conventional vehicles. The
15 [director] **commission** may further define “agricultural, commercial, industrial or governmental
16 purposes” of electric vehicles by rule. For purposes of this paragraph, “component parts” does not
17 include batteries.

18 (c) Renewable energy storage devices.

19 (14) “Sustainable building practices facility” means a commercial building in which building
20 practices that reduce the amount of energy, water or other resources needed for construction and
21 operation of the building are used. “Sustainable building practices facility” may be further defined
22 by the [State Department of Energy] **commission** by rule, including rules that establish traditional
23 building practice baselines in energy, water or other resource usage for comparative purposes for
24 use in determining whether a facility is a sustainable building practices facility.

25 (15) “Transportation facility” means a transportation project that reduces energy use during
26 commuting to and from work or school, during work-related travel, or during travel to obtain med-
27 ical or other services, and may be further defined by the [department] **commission** by rule.
28 “Transportation facility” includes, but is not limited to:

29 (a) A qualified transit pass contract or a transportation services contract; or

30 (b) The purchase of efficient truck technology and related truck trailers, as defined in ORS
31 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS
32 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or
33 826.011.

34 (16) “Transportation provider” means a public, private or nonprofit entity that provides trans-
35 portation services to members of the public.

36 (17) “Transportation services contract” means a contract that is related to a transportation fa-
37 cility, and may be further defined by the [department] **commission** by rule.

38 **SECTION 38.** ORS 469.195, as amended by section 6, chapter 76, Oregon Laws 2010, is amended
39 to read:

40 469.195. (1) In determining the eligibility of any facility for tax credits, preference shall be given
41 to those projects that:

42 (a) Provide energy savings for real or personal property within the state inhabited as the prin-
43 cipal residence of a tenant, including:

44 (A) Nonowner occupied single family dwellings; and

45 (B) Multiple unit residential housing; or

1 (b) Provide long-term energy savings from the use of renewable resources or conservation of
2 energy resources.

3 (2) The [*Director of the State Department of Energy*] **State Energy Commission** shall establish
4 by rule a tiered priority system to be used in evaluating applicants for certification of facilities us-
5 ing or producing renewable energy resources. The tier system shall be based upon the projected
6 costs of facilities. In determining the eligibility for tax credits and in allocating the available certi-
7 fied cost pursuant to section 2 (1), chapter 76, Oregon Laws 2010, among facilities, the [*director*]
8 **commission** shall subject facilities with higher projected costs to closer scrutiny, shall compare
9 projects of similar costs against each other and may certify less than the total cost of any facility
10 based on this evaluation. The [*director*] **commission** may employ criteria including the following
11 factors as defined by rule:

12 (a) Technology-specific energy production standards;

13 (b) Market sector;

14 (c) Delivery of energy into existing distribution and transmission network;

15 (d) Investment payback period;

16 (e) Expected lifespan of the facility;

17 (f) Potential for long-term viability;

18 (g) Environmental standards established by the [*director*] **commission**;

19 (h) Potential to create and sustain new jobs;

20 (i) Projected siting in a location that is geographically or socioeconomically advantageous;

21 (j) Demonstrated readiness to begin implementation;

22 (k) Amount and quality of energy generated;

23 (L) Strength of business plan;

24 (m) Provision of operations and maintenance data, with appropriate protections for trade secrets
25 consistent with ORS chapter 192;

26 (n) Connection to existing infrastructure;

27 (o) Third-party review of the applicant's business plan; or

28 (p) Data related to projected return on investment.

29 **SECTION 39.** ORS 469.197, as amended by section 7, chapter 76, Oregon Laws 2010, is amended
30 to read:

31 469.197. The [*State Department of Energy*] **State Energy Commission** shall by rule establish all
32 of the following criteria:

33 (1) For a high-performance home, the minimum design and construction standards that must be
34 met or exceeded for a dwelling to be considered a high-performance home, including but not limited
35 to standards for the building envelope, HVAC systems, lighting, appliances, water conservation
36 measures, use of sustainable building materials and on-site renewable energy systems. The criteria
37 must also establish the minimum reduction in estimated net purchased energy that a dwelling must
38 achieve to be considered a high-performance home.

39 (2) For a homebuilder-installed renewable energy system, the minimum performance and effi-
40 ciency standards that a solar electric system, solar domestic water heating system, passive solar
41 space heating system, wind power system, geothermal heating system, fuel cell system or other sys-
42 tem utilizing renewable resources must achieve to be considered a homebuilder-installed renewable
43 energy system.

44 (3) For a high-efficiency combined heat and power facility, the minimum performance and effi-
45 ciency standards that the facility must achieve to be considered a high-efficiency combined heat and

1 power facility.

2 (4) For a renewable energy resource equipment manufacturing facility:

3 (a) Standards relating to the type of equipment, machinery or other products being manufactured
4 and related performance and efficiency standards applicable to the manufactured products;

5 (b) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a
6 single renewable energy resource equipment manufacturing facility that include:

7 (A) Standards establishing what constitutes property that is not included within a renewable
8 energy resource equipment manufacturing facility; and

9 (B) The consideration of such factors as phases of development, expansion of or additions to
10 existing facilities or product lines, increased production and number of jobs created or maintained
11 by an applicant;

12 (c) Standards relating to the minimum level of increased employment in Oregon for a renewable
13 energy resource equipment manufacturing facility;

14 (d) Standards relating to indicators of financial viability of an applicant for preliminary certifi-
15 cation under ORS 469.205;

16 (e) Standards relating to the likelihood of long-term operation and success of a renewable energy
17 resource equipment manufacturing facility; and

18 (f) Standards relating to the likelihood that an applicant seeking preliminary certification of a
19 renewable energy resource equipment manufacturing facility will base decisions to locate or expand
20 a facility in Oregon on the allowance of a tax credit under ORS 315.354.

21 (5) For a facility using or producing renewable energy resources, standards relating to criteria
22 required under ORS 469.195 (2).

23 (6) Standards, consistent with the definitions in ORS 469.185, relating to what constitutes a
24 single facility.

25 **SECTION 40.** ORS 469.205, as amended by section 10, chapter 76, Oregon Laws 2010, is
26 amended to read:

27 469.205. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any
28 person may apply to the State Department of Energy for preliminary certification under ORS 469.210
29 if:

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

32 (b) The facility complies with the standards or rules adopted by the [*Director of the State De-*
33 *partment of Energy*] **State Energy Commission**; and

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

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

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

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

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

42 (2) An application for preliminary certification shall be made in writing on a form prepared by
43 the department and shall contain:

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

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

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

3 (C) Plans to use a renewable energy resource in the generation of electricity for sale or to re-
4 place an existing or proposed use of an existing source of electricity;

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

7 (E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (11);

8 (F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alterna-
9 tive fuel vehicle;

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

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

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

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

14 (K) Plans to acquire a car sharing facility and operate a car sharing program;

15 (L) Plans to construct a high-efficiency combined heat and power facility;

16 (M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;

17 (N) Is a homebuilder and plans to construct a high-performance home; or

18 (O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing
19 facility.

20 (b) A detailed description of the proposed facility and its operation and information showing that
21 the facility will operate as represented in the application and remain in operation for at least five
22 years, unless the [director] **commission** by rule specifies a shorter period of operation.

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

27 (d) The projected cost of the facility.

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

30 (f) Information on the amount and type of jobs that will be created, the number of jobs sustained
31 throughout the construction, installation and operation of the facility and the benefits of the facility
32 with regard to overall economic activity in this state.

33 (g) Information demonstrating that the proposed facility will comply with applicable state and
34 local laws and regulations and obtain required licenses and permits.

35 (h) Information relating to the criteria required under ORS 469.195.

36 (i) Any other information the Director **of the State Department of Energy** considers necessary
37 to determine whether the proposed facility is in accordance with the provisions of ORS 469.185 to
38 469.225, and any applicable rules or standards adopted by the [director] **commission**.

39 (3) An application for preliminary certification shall be accompanied by a fee established under
40 ORS 469.217. The director may refund all or a portion of the fee if the application for certification
41 is rejected.

42 (4) The director may allow an applicant to file the preliminary application or a reapplication
43 under subsection (6) of this section after the start of erection, construction, installation or acquisi-
44 tion of the facility if the director finds:

45 (a) Filing the application before the start of erection, construction, installation or acquisition is

1 inappropriate because special circumstances render filing earlier unreasonable; and

2 (b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to
3 469.225.

4 (5) A preliminary certification of a sustainable building practices facility shall be applied for and
5 issued as prescribed by the [department] **commission** by rule.

6 (6) A preliminary certification of a renewable energy resource equipment manufacturing facility
7 shall remain valid for a period of five calendar years after the date the preliminary certification is
8 issued by the director. For all other facilities, a preliminary certification shall remain valid for a
9 period of three calendar years after the date the preliminary certification is issued by the director.
10 The director may extend the three-year period for two additional calendar years upon reapplication
11 and submission of the fee required by this section.

12 **SECTION 41.** ORS 469.206 is amended to read:

13 469.206. (1) The owner of a facility may transfer a tax credit for the facility in exchange for a
14 cash payment equal to the present value of the tax credit.

15 (2) The [State Department of Energy] **State Energy Commission** shall establish by rule a for-
16 mula to be employed in the determination of prices of credits transferred under this section. In
17 establishing the formula the [department] **commission** shall incorporate inflation projections and
18 market real rate of return.

19 (3) The [department] **commission** shall recalculate credit transfer prices quarterly, employing
20 the formula established under subsection (2) of this section.

21 (4) Notwithstanding any other provision of law, a tax credit transferred pursuant to this section
22 does not decrease the amount of taxes required to be reported by a public utility.

23 **SECTION 42.** ORS 469.208 is amended to read:

24 469.208. (1) The owner of a rental housing unit may transfer a tax credit for energy conservation
25 measures installed in rental housing units under ORS 469.207 in exchange for a cash payment equal
26 to the present value of the tax credit. To be eligible for a transfer, the energy conservation meas-
27 ures must have been recommended in an energy audit as provided in ORS 469.633, 469.651 or
28 469.675.

29 (2) The [State Department of Energy] **State Energy Commission** may establish by rule uniform
30 discount rates to be used in calculating the present value of a tax credit under this section.

31 **SECTION 43.** ORS 469.215, as amended by section 12, chapter 76, Oregon Laws 2010, is
32 amended to read:

33 469.215. (1) A final certification may not be issued by the Director of the State Department of
34 Energy under this section unless:

35 (a) The facility was acquired, erected, constructed or installed under a preliminary certificate
36 of approval issued under ORS 469.210;

37 (b) The applicant demonstrates the ability to provide the information required by ORS 469.205
38 (2) and does not violate any condition that may be imposed as described in ORS 469.210 (3); and

39 (c) The facility was acquired, erected, constructed or installed in accordance with the applicable
40 provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the
41 [director] **State Energy Commission**.

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

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

44 (b)(A) After completion of erection, construction, installation or acquisition of the proposed fa-
45 cility or, if the facility is a qualified transit pass contract, after entering into the contract with a

1 transportation provider; or

2 (B) After transfer of the facility, as provided in ORS 315.354 (5).

3 (3) An application for final certification shall be made in writing on a form prepared by the
4 department and shall contain:

5 (a) A statement that the conditions of the preliminary certification have been complied with;

6 (b) The actual cost of the facility certified to by a certified public accountant who is not an
7 employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts
8 for purchase and installation of the facility;

9 (c) The amount of the credit under ORS 315.354 that is to be claimed;

10 (d) The number and type of jobs created by the operation and maintenance of the facility over
11 the five-year period beginning with the year of preliminary certification under ORS 469.210 and in-
12 formation on the benefits of the facility with regard to overall economic activity in this state;

13 (e) Information sufficient to demonstrate that the facility will remain in operation for at least
14 five years, unless the [*director*] **commission** by rule specifies a shorter period of operation;

15 (f) Information sufficient to demonstrate, in the case of a research, development or demon-
16 stration facility that is not in operation, that the applicant has made reasonable efforts to make the
17 facility operable and meet the requirements of the preliminary certificate;

18 (g) Documentation of compliance with applicable state and local laws and regulations and li-
19 censing and permitting requirements as defined by the director; and

20 (h) Any other information determined by the director to be necessary prior to issuance of a final
21 certificate, including inspection of the facility by the department.

22 (4) The director shall act on an application for certification before the 60th day after the filing
23 of the application under this section. The director may issue the certificate, or certificates for effi-
24 cient truck technology within a transportation facility, together with such conditions as the director
25 determines are appropriate to promote the purposes of ORS 315.354, 469.185 to 469.225 and 469.878.
26 If the applicant is an entity subject to regulation by the Public Utility Commission, the director may
27 consult with the commission prior to issuance of the certificate. The action of the director shall
28 include certification of the actual cost of the facility. However, the director may not certify an
29 amount for tax credit purposes that is more than the amount approved in the preliminary certificate
30 issued for the facility.

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

36 (6) Upon approval of an application for final certification of a facility, the director shall certify
37 the facility. Each certificate shall bear a separate serial number for each device. Where one or
38 more devices constitute an operational unit, the director may certify the operational unit under one
39 certificate.

40 (7) The [*director*] **State Energy Commission** may establish by rule timelines and intermediate
41 deadlines for submission of application materials.

42 **SECTION 44.** ORS 469.217 is amended to read:

43 469.217. By rule and after **holding a** hearing, the [*Director of the State Department of Energy*]
44 **State Energy Commission** may adopt a schedule of reasonable fees which the State Department
45 of Energy may require of applicants for preliminary or final certification under ORS 469.185 to

1 469.225. Before the adoption or revision of the fees, the [*department*] **commission** shall estimate the
2 total cost of the program to the department. The fees shall be used to recover the anticipated cost
3 of filing, investigating, granting and rejecting applications for certification and shall be designed not
4 to exceed the total cost estimated by the [*department*] **commission**. Any excess fees shall be held
5 by the department and shall be used by the department to reduce any future fee increases. The fee
6 may vary according to the size and complexity of the facility. The fee shall not be considered as part
7 of the cost of the facility to be certified.

8 **SECTION 45.** ORS 469.255 is amended to read:

9 469.255. (1) A manufacturer of a product specified in ORS 469.238 that is sold or offered for sale,
10 or installed or offered for installation, in this state shall test samples of the manufacturer's products
11 in accordance with the test methods specified in ORS 469.233 or, if more stringent, those specified
12 in the state building code.

13 (2) If the test methods for products required to be tested under this section are not provided for
14 in ORS 469.233 or in the state building code, the State Department of Energy shall adopt test
15 methods for these products. The department shall use test methods approved by the United States
16 Department of Energy or, in the absence of federal test methods, other appropriate nationally re-
17 cognized test methods for guidance in adopting test methods. The State Department of Energy may
18 periodically review and revise its test methods.

19 (3) A manufacturer of a product regulated pursuant to ORS 469.229 to 469.261, except for man-
20 ufacturers of single-voltage external AC to DC power supplies, walk-in refrigerators and walk-in
21 freezers, shall certify to the State Department of Energy that the products are in compliance with
22 the minimum energy efficiency standards specified in ORS 469.233. The [*department*] **State Energy**
23 **Commission** shall establish rules governing the certification of these products and may coordinate
24 with the certification and testing programs of other states and federal agencies with similar stan-
25 dards.

26 (4)(a) The [*department*] **commission** shall establish rules governing the identification of the
27 products that comply with the minimum energy efficiency standards specified in ORS 469.233. The
28 rules shall be coordinated to the greatest extent practicable with the labeling programs of other
29 states and federal agencies with equivalent efficiency standards.

30 (b) Identification required under paragraph (a) of this subsection shall be by means of a mark,
31 label or tag on the product and packaging at the time of sale or installation.

32 (c) The [*department*] **commission** shall waive marking, labeling or tagging requirements for
33 products marked, labeled or tagged in compliance with federal requirements or for products certified
34 pursuant to subsection (3) of this section, unless the [*department*] **commission** determines that state
35 marking, labeling or tagging is required to provide adequate energy efficiency information to the
36 consumer.

37 **SECTION 46.** ORS 469.261 is amended to read:

38 469.261. (1)(a) Notwithstanding ORS 469.233, the [*State Department of Energy*] **State Energy**
39 **Commission** shall periodically review the minimum energy efficiency standards specified in ORS
40 469.233.

41 (b) After the review pursuant to paragraph (a) of this subsection, the [*Director of the State De-*
42 *partment of Energy*] **commission** may adopt rules to update the minimum energy efficiency stan-
43 dards specified in ORS 469.233 if the [*director*] **commission** determines that the standards need to
44 be updated:

45 (A) To promote energy conservation in the state;

1 (B) To achieve cost-effectiveness for consumers; or

2 (C) Due to federal action or to the outcome of collaborative consultations with manufacturers
3 and the energy departments of other states.

4 (c)(A) In addition to the rules adopted under paragraph (b) of this subsection, the [director]
5 **commission** may postpone by rule the operative date of any of the minimum energy efficiency
6 standards specified in ORS 469.233 if the [director] **commission** determines that:

7 (i) Adjoining states with similar minimum energy efficiency standards have postponed the oper-
8 ative date of their corresponding minimum energy efficiency standards; or

9 (ii) Failure to modify the operative date of any of the minimum energy efficiency standards
10 would impose a substantial hardship on manufacturers, retailers or the public.

11 (B)(i) The [director] **commission** may not postpone the operative date of a minimum energy ef-
12 ficiency standard under subparagraph (A) of this paragraph for more than one year.

13 (ii) If at the end of the first postponement period the [director] **commission** determines that
14 adjoining states have further postponed the operative date of minimum energy efficiency standards
15 and the requirements of subparagraph (A) of this paragraph continue to be met, the [director]
16 **commission** may postpone the operative date for not more than one additional year.

17 (d) After the review pursuant to paragraph (a) of this subsection, the [director] **commission** may
18 adopt rules to establish new minimum energy efficiency standards if the [director] **commission** de-
19 termines that new standards are needed:

20 (A) To promote energy conservation in the state;

21 (B) To achieve cost-effectiveness for consumers; or

22 (C) Due to federal action or to the outcome of collaborative consultations with manufacturers
23 and the energy departments of other states.

24 (e) If the [director] **commission** adopts rules under paragraph (b) of this subsection to update
25 the minimum energy efficiency standards specified in ORS 469.233 or under paragraph (d) of this
26 subsection to establish new minimum energy efficiency standards:

27 (A) The rules may not take effect until one year following their adoption by the [director]
28 **commission**; and

29 (B) The Governor shall cause to be introduced at the next Legislative Assembly a bill to con-
30 form the statutory minimum energy efficiency standards to the minimum energy efficiency standards
31 adopted by the [director] **commission** by rule.

32 (2) If the [director] **commission** determines that implementation of a state minimum energy ef-
33 ficiency standard requires a waiver of federal preemption, the [director] **commission** shall apply for
34 a waiver of federal preemption pursuant to 42 U.S.C. 6297(d).

35 **SECTION 47.** ORS 469.410 is amended to read:

36 469.410. (1) Any applicant for a site certificate for an energy facility shall be deemed to have
37 met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to
38 469.563, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate
39 shall be issued by the Energy Facility Siting Council for:

40 (a) Any transmission lines for which application has been filed with the federal government and
41 the Public Utility Commission of Oregon prior to July 2, 1975; and

42 (b) Any energy facility under construction on July 2, 1975.

43 (2) Each applicant for a site certificate under this section shall pay the fees required by ORS
44 469.421 (2) to (9), if applicable, and shall execute a site certificate in which the applicant agrees:

45 (a) To abide by the conditions of all licenses, permits and certificates required by the State of

1 Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975;
2 and

3 (b) On and after July 2, 1975, to abide by the rules of the [*Director of the State Department of*
4 *Energy adopted pursuant to ORS 469.040 (1)(d)*] **State Energy Commission adopted pursuant to**
5 **section 6 of this 2011 Act** and rules of the council adopted pursuant to ORS 469.300 to 469.563,
6 469.590 to 469.619 and 469.930.

7 (3) The council has continuing authority over the site for which the site certificate is issued and
8 may inspect, or direct the State Department of Energy to inspect, or request another state agency
9 or local government to inspect, the site at any time in order to ensure that the facility is being
10 operated consistently with the terms and conditions of the site certificate and any applicable health
11 or safety standards.

12 (4) The council shall establish programs for monitoring the environmental and ecological effects
13 of the operation and the decommissioning of energy facilities subject to site certificates issued prior
14 to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate
15 and any applicable health or safety standards.

16 (5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July
17 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site
18 certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of
19 the [*director adopted pursuant to ORS 469.040 (1)(d)*] **commission adopted pursuant to section 6**
20 **of this 2011 Act** and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to
21 469.619, 469.930 and 469.992.

22 **SECTION 48.** ORS 469.533 is amended to read:

23 469.533. Notwithstanding ORS chapter 401, the [*State Department of Energy in cooperation with*
24 *the Oregon Health Authority and the Office of Emergency Management*] **State Energy Commission,**
25 **after consulting with the Oregon Health Authority and the Office of Emergency Manage-**
26 **ment,** shall establish rules for the protection of health and procedures for the evacuation of people
27 and communities who would be affected by radiation in the event of an accident or a catastrophe
28 in the operation of a nuclear power plant or nuclear installation.

29 **SECTION 49.** ORS 469.534 is amended to read:

30 469.534. Each county in this state that has a nuclear-fueled thermal power plant located within
31 county boundaries and each county within this state that has any portion of its area located within
32 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written
33 procedures that are compatible with the rules adopted by the [*State Department of Energy*] **State**
34 **Energy Commission** under ORS 469.533. The [*department*] **commission** shall review the county
35 procedures to determine whether they are compatible with the rules of the [*department*]
36 **commission.**

37 **SECTION 50.** ORS 469.536 is amended to read:

38 469.536. A public utility [*which*] **that** operates a nuclear power plant or nuclear installation
39 shall disseminate to the governing bodies of cities and counties that may be affected information
40 [*approved by the State Department of Energy which*] **that** explains rules or procedures adopted under
41 ORS 469.533. **The State Energy Commission may adopt rules that require the public utility to**
42 **obtain the approval of the commission before disseminating the information.**

43 **SECTION 51.** ORS 469.605 is amended to read:

44 469.605. (1) No person shall ship or transport radioactive material identified by the Energy Fa-
45 cility Siting Council by rule as posing a significant hazard to public health and safety or the envi-

1 ronment if improperly transported into or within the State of Oregon without first obtaining a
2 permit from the State Department of Energy.

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

5 (3) Application for a permit under this section shall be made in a form and manner prescribed
6 by the Director of the State Department of Energy and may include:

7 (a) A description of the kind, quantity and radioactivity of the material to be transported;

8 (b) A description of the route or routes proposed to be taken and the transport schedule;

9 (c) A description of any mode of transportation; and

10 (d) Other information required by the director to evaluate the application.

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

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

19 (6) The director may delegate the authority to issue permits for the transportation of radioactive
20 material to the Department of Transportation. In exercising such authority, the Department of
21 Transportation shall comply with the applicable provisions of ORS 469.603 to 469.619 and rules
22 adopted by the [*director or the*] Energy Facility Siting Council under ORS 469.603 to 469.619. Per-
23 mits issued by the Department of Transportation under this subsection shall be enforced according
24 to the provisions of ORS 825.258. The director also may delegate other authority granted under ORS
25 469.605 to 469.619 to other state agencies if the delegation will maintain or enhance the quality of
26 the transportation safety program.

27 **SECTION 52.** ORS 469.677 is amended to read:

28 469.677. (1) The Director of the State Department of Energy shall contract and a fuel oil dealer
29 may rely upon the director to contract for the information, assistance and technical advice required
30 to be provided by a fuel oil dealer under ORS 469.675.

31 (2) The [*director*] **State Energy Commission** shall adopt standards for energy audits required
32 under ORS 469.675 by rule in accordance with the rulemaking provisions of ORS chapter 183.

33 **SECTION 53.** ORS 469.754 is amended to read:

34 469.754. (1) State agencies are authorized to enter into such contractual and other arrangements
35 as may be necessary or convenient to design, develop, operate and finance projects on-site at state
36 owned or state rented facilities. In developing such projects, state agencies shall offer a right of first
37 refusal of two months for conservation and direct use renewable resources and three months for
38 cogeneration and generating renewable resources to each local utility providing utility service to
39 the agency to jointly develop, finance, operate and otherwise act together in the development and
40 operation of such projects. The [*State Department of Energy*] **State Energy Commission** shall adopt
41 rules to establish the procedure by which the right of first refusal shall be administered. In adopting
42 the rules, the [*department shall insure*] **commission shall ensure** that the local utility providing
43 utility service to the state agency is entitled to the first right to negotiate with the state agency
44 and that the utility is entitled to match any offer made by any other entity to participate in the
45 project. The [*department*] **commission** also shall adopt procedures that [*insure*] **ensure** that the

1 right to first negotiate and the right to match any offer applies to the sale of electrical or steam
2 output from the project.

3 (2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings:

4 (A) A state agency's budget shall not be cut because of savings due to the project; and

5 (B) A state agency shall retain 50 percent of the net savings to the state agency after any
6 project debt service.

7 (b) Savings from a project shall be deposited in a revolving fund administered by the state
8 agency.

9 (3) A state agency shall spend the savings under subsection (2) of this section to increase pro-
10 ductivity through:

11 (a) Energy efficiency projects;

12 (b) High-tech improvements, such as the purchase or installation of new desktop or laptop com-
13 puters or the linkage of computers into systems or networks; or

14 (c) Infrastructure improvements.

15 (4) The moneys credited to the revolving fund may be invested and reinvested as provided in
16 ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or
17 other earnings on moneys in the revolving fund shall be credited to the revolving fund.

18 (5) The remaining 50 percent of net savings to the state agency after any project debt service
19 shall be deposited in the General Fund.

20 (6) Nothing in ORS 469.752 to 469.756 authorizes a state agency to sell electricity to an entity
21 other than an investor owned utility, a publicly owned utility, an electric cooperative utility or the
22 Bonneville Power Administration.

23 (7) Nothing in ORS 469.752 to 469.756 limits the authority of a state agency conferred by any
24 other provision of law, or affects any authority, including the authority of a municipality, to regulate
25 utility service under existing law.

26 **SECTION 54.** ORS 469.756 is amended to read:

27 469.756. The [*State Department of Energy*] **State Energy Commission** in consultation with other
28 state agencies and utilities shall adopt rules, guidelines and procedures that are necessary to es-
29 tablish savings for projects and to implement other provisions of ORS 469.752 to 469.756, including,
30 but not limited to, rules prescribing the procedures to be followed by an agency in negotiating with
31 local utilities to develop agreements suitable for the joint development of projects, and procedures
32 to determine which local utility, if any, shall be chosen to jointly develop the project. The [*depart-*
33 *ment*] **State Department of Energy** may enter into agreements under ORS chapter 190 with state
34 agencies to provide technical assistance in selecting appropriate projects and to evaluate and de-
35 termine energy and cost savings.

36 **SECTION 55.** ORS 469.785 is amended to read:

37 469.785. The [*State Department of Energy*] **State Energy Commission** shall by rule identify
38 categories of fuel blend and solid biofuel that qualify for the personal income tax credit allowed
39 under ORS 315.465.

40 **SECTION 56.** ORS 469.880 is amended to read:

41 469.880. Each publicly owned utility serving Oregon shall, either independently or as part of an
42 association, provide an energy audit program for its commercial customers. The [*Director of the State*
43 *Department of Energy*] **State Energy Commission** shall adopt rules governing the commercial en-
44 ergy audit program established under this section and may provide for coordination among electric
45 utilities and gas utilities that serve the same commercial building.

1 **SECTION 57.** ORS 469.885 is amended to read:

2 469.885. (1) Within 180 days after the adoption of rules by the [*Director of the State Department*
3 *of Energy*] **State Energy Commission** under ORS 469.880, each publicly owned utility shall present
4 [*for the director's approval a commercial energy audit program that shall, to the director's*
5 *satisfaction*] **a commercial energy audit program to the Director of the State Department of**
6 **Energy for the director's approval. The program must:**

7 (a) Make information about energy conservation available to any commercial building customer
8 of the publicly owned utility, upon request;

9 (b) Regularly notify all customers in commercial buildings of the availability of the services de-
10 scribed in this section;

11 (c) Provide to any commercial building customer of the publicly owned utility, upon request, an
12 on-site energy audit of the customer's commercial building, including, but not limited to, an estimate
13 of the cost of the energy conservation measures; and

14 (d) Set a reasonable time schedule for effective implementation of the elements set forth in this
15 section.

16 (2) The commercial energy audit program submitted under subsection (1) of this section shall
17 specify whether the publicly owned utility proposes to charge the customer a fee for the energy
18 audit and, if so, the fee amount.

19 **SECTION 58.** ORS 469.890 is amended to read:

20 469.890. (1) [*Within 365 days after November 1, 1981, the Director of the State Department of En-*
21 *ergy*] **The State Energy Commission** shall adopt rules governing energy conservation programs
22 prescribed by ORS 469.895 and 469.900 (3) and this section and may provide for coordination among
23 electric utilities and gas utilities that serve the same commercial building. [*Within 180 days of the*
24 *adoption of rules by the director,*]

25 (2) Each covered publicly owned utility shall present [*for the director's*] **to the Director of the**
26 **State Department of Energy for the director's** approval a commercial energy conservation ser-
27 vices program that shall, to the director's satisfaction:

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

30 (b) Regularly notify all customers in commercial buildings of the availability of the services de-
31 scribed in this section; and

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

35 [(2)] (3) The programs submitted and approved under this section shall include a reasonable time
36 schedule for effective implementation of the elements set forth in subsection [(1)] (2) of this section
37 in the service areas of the covered publicly owned utility.

38 [(3)] (4) The commercial energy conservation services program submitted under subsections [(1)
39 *and*] (2) **and** (3) of this section shall specify whether the covered publicly owned utility proposes to
40 charge the customer a fee for the energy audit and, if so, the fee amount.

41 **SECTION 59.** ORS 469A.020, as amended by section 1, chapter 17, Oregon Laws 2010, and sec-
42 tion 1, chapter 71, Oregon Laws 2010, is amended to read:

43 469A.020. (1) Except as provided in this section, electricity may be used to comply with a
44 renewable portfolio standard only if the electricity is generated by a facility that becomes opera-
45 tional on or after January 1, 1995.

1 (2) Electricity from a generating facility, other than a hydroelectric facility, that became oper-
2 ational before January 1, 1995, may be used to comply with a renewable portfolio standard if the
3 electricity is attributable to capacity or efficiency upgrades made on or after January 1, 1995.

4 (3) Electricity from a hydroelectric facility that became operational before January 1, 1995, may
5 be used to comply with a renewable portfolio standard if the electricity is attributable to efficiency
6 upgrades made on or after January 1, 1995. If an efficiency upgrade is made to a Bonneville Power
7 Administration facility, only that portion of the electricity generation attributable to Oregon's share
8 of the electricity may be used to comply with a renewable portfolio standard.

9 (4) Subject to the limit imposed by ORS 469A.025 (5), electricity from a hydroelectric facility
10 that became operational before January 1, 1995, may be used to comply with a renewable portfolio
11 standard if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995,
12 by a national certification organization recognized by the [*State Department of Energy*] **State En-**
13 **ergy Commission** by rule, and if the facility is either:

14 (a) Owned by an electric utility; or

15 (b) Not owned by an electric utility and located in Oregon and licensed by the Federal Energy
16 Regulatory Commission under the Federal Power Act, 16 U.S.C. 791a et seq., or exempt from such
17 license.

18 (5)(a) Electricity from a generating facility located in this state that uses biomass and that be-
19 came operational before January 1, 1995, may be used to comply with a renewable portfolio standard
20 if the facility meets the requirements of the federal Public Utility Regulatory Policies Act of 1978
21 (P.L. 95-617) on March 4, 2010, regardless of whether the facility qualifies under the requirements
22 of the Public Utility Commission.

23 (b) Renewable energy certificates derived from electricity generated by a facility that qualifies
24 under paragraph (a) of this subsection may not be used to comply with a renewable portfolio
25 standard before January 1, 2026. However, renewable energy certificates issued before January 1,
26 2026, may be banked pursuant to ORS 469A.005 to 469A.210 for use on or after January 1, 2026.

27 (6) A facility located in this state that generates electricity from direct combustion of municipal
28 solid waste and that became operational before January 1, 1995, may be used to comply with a
29 renewable portfolio standard for up to 11 average megawatts of electricity generated per calendar
30 year. Renewable energy certificates derived from electricity generated by a facility described in this
31 subsection may not be used to comply with a renewable portfolio standard before January 1, 2026.
32 However, renewable energy certificates issued before January 1, 2026, may be banked pursuant to
33 ORS 469A.005 to 469A.210 for use on or after January 1, 2026.

34 **SECTION 60.** ORS 469A.025, as amended by section 3, chapter 17, Oregon Laws 2010, and sec-
35 tion 2, chapter 71, Oregon Laws 2010, is amended to read:

36 469A.025. (1) Electricity generated utilizing the following types of energy may be used to comply
37 with a renewable portfolio standard:

38 (a) Wind energy.

39 (b) Solar photovoltaic and solar thermal energy.

40 (c) Wave, tidal and ocean thermal energy.

41 (d) Geothermal energy.

42 (2) Except as provided in subsection (3) of this section, electricity generated from biomass and
43 biomass by-products may be used to comply with a renewable portfolio standard, including but not
44 limited to electricity generated from:

45 (a) Organic human or animal waste;

- 1 (b) Spent pulping liquor;
- 2 (c) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
3 or rangeland ecological health and to reduce uncharacteristic stand replacing wildfire risk;
- 4 (d) Wood material from hardwood timber grown on land described in ORS 321.267 (3);
- 5 (e) Agricultural residues;
- 6 (f) Dedicated energy crops; and
- 7 (g) Landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or
8 municipal solid waste.
- 9 (3) Electricity generated from the direct combustion of biomass may not be used to comply with
10 a renewable portfolio standard if any of the biomass combusted to generate the electricity includes
11 wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or
12 chromated copper arsenate.
- 13 (4) Electricity generated by a hydroelectric facility may be used to comply with a renewable
14 portfolio standard only if:
- 15 (a) The facility is located outside any protected area designated by the Pacific Northwest Elec-
16 tric Power and Conservation Planning Council as of July 23, 1999, or any area protected under the
17 federal Wild and Scenic Rivers Act, P.L. 90-542, or the Oregon Scenic Waterways Act, ORS 390.805
18 to 390.925; or
- 19 (b) The electricity is attributable to efficiency upgrades made to the facility on or after January
20 1, 1995.
- 21 (5)(a) Up to 50 average megawatts of electricity per year generated by an electric utility from
22 certified low-impact hydroelectric facilities described in ORS 469A.020 (4)(a) may be used to comply
23 with a renewable portfolio standard, without regard to the number of certified facilities operated
24 by the electric utility or the generating capacity of those facilities. A hydroelectric facility described
25 in this paragraph is not subject to the requirements of subsection (4) of this section.
- 26 (b) Up to 40 average megawatts of electricity per year generated by certified low-impact hy-
27 droelectric facilities described in ORS 469A.020 (4)(b) may be used to comply with a renewable
28 portfolio standard, without regard to the number of certified facilities or the generating capacity
29 of those facilities. A hydroelectric facility described in this paragraph is not subject to the require-
30 ments of subsection (4) of this section.
- 31 (6)(a) Direct combustion of municipal solid waste in a generating facility located in this state
32 may be used to comply with a renewable portfolio standard. The qualification of a municipal solid
33 waste facility for use in compliance with a renewable portfolio standard has no effect on the quali-
34 fication of the facility for a tax credit under ORS 469.185 to 469.225.
- 35 (b) The total amount of electricity generated in this state by direct combustion of municipal
36 solid waste by generating facilities that became operational in this state on or after January 1, 1995,
37 may not exceed nine average megawatts per year for the purpose of complying with a renewable
38 portfolio standard.
- 39 (7) Electricity generated from hydrogen gas, including electricity generated by hydrogen power
40 stations using anhydrous ammonia as a fuel source, may be used to comply with a renewable port-
41 folio standard if:
- 42 (a) The electricity is derived from:
- 43 (A) Any source of energy described in subsection (1) or (2) of this section; or
- 44 (B) A hydroelectric facility that complies with subsection (4) of this section and that is certified
45 as a low-impact hydroelectric facility as described in ORS 469A.020 (4); and

1 (b) The output of the original source of energy is not also used to comply with a renewable
2 portfolio standard.

3 (8) If electricity generation employs multiple energy sources, that portion of the electricity
4 generated that is attributable to energy sources described in this section may be used to comply
5 with a renewable portfolio standard.

6 (9) The [*State Department of Energy*] **State Energy Commission** by rule may approve energy
7 sources other than those described in this section that may be used to comply with a renewable
8 portfolio standard. The [*department*] **commission** may not approve petroleum, natural gas, coal or
9 nuclear fission as an energy source that may be used to comply with a renewable portfolio standard.

10 **SECTION 61.** ORS 470.050 is amended to read:

11 470.050. As used in this chapter, unless the context requires otherwise:

12 (1) "Alternative fuel project" means:

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

15 (A) Uses an alternative fuel including electricity, biofuel, gasohol with at least 20 percent de-
16 natured alcohol content, hydrogen, hythane, methane, methanol, natural gas, propane or any other
17 fuel approved by the [*Director of the State Department of Energy*] **State Energy Commission by**
18 **rule**; and

19 (B) Produces lower exhaust emissions or is more energy efficient than equivalent equipment fu-
20 eled by gasoline or diesel; and

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

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

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

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

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

31 (6) "Director" means the Director of the State Department of Energy appointed under ORS
32 469.040.

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

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

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

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

43 (b) An alternative repayment method identified by the department and the borrower and speci-
44 fied in the loan agreement.

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

- 1 (11) "Energy Project Supplemental Fund" means the fund established under ORS 470.570.
- 2 (12) "Energy Revenue Bond Repayment Fund" means the fund established under ORS 470.585.
- 3 (13) "Energy savings projection" means an examination of the energy performance and site
4 characteristics of a property that, at a minimum, identifies:
- 5 (a) A base efficiency package; and
- 6 (b) Any additional optional measures that a customer is able to repay and that the sustainable
7 energy project manager believes to be feasible for the site.
- 8 (14) "Loan" includes the purchase or other acquisition of evidence of indebtedness and money
9 used for the purchase or other acquisition of evidence of indebtedness.
- 10 (15) "Loan contract" means the evidence of indebtedness and all instruments used in the pur-
11 chase or acquisition of the evidence of indebtedness. For eligible federal or state agencies or mu-
12 nicipal corporations that are tax exempt entities, a loan contract may include a lease purchase
13 agreement with respect to personal property.
- 14 (16) "Loan offset grant" means moneys from the Loan Offset Grant Fund that are used to help
15 offset the initial project costs or loan payments for energy efficiency, renewable energy and energy
16 conservation projects.
- 17 (17) "Loan Offset Grant Fund" means the fund established under ORS 470.575.
- 18 (18) "Loan repayment charge" means an amount charged to a utility customer account through
19 on-bill financing as a mechanism for the repayment of an energy efficiency and sustainable tech-
20 nology loan.
- 21 (19) "Municipal corporation" has the meaning given in ORS 297.405 and also includes any Indian
22 tribe or authorized Indian tribal organization or any combination of two or more of these tribes or
23 organizations acting jointly in connection with a small scale local energy project.
- 24 (20) "On-bill financing" means a mechanism for collecting the repayment of an energy efficiency
25 and sustainable technology loan through a utility customer account billing system.
- 26 (21) "Optional package" means measures for promoting energy efficiency or the use of renewable
27 energy:
- 28 (a) That are in addition to the measures described in the customer's base efficiency package;
- 29 (b) For which a customer has the ability to repay; and
- 30 (c) That the sustainable energy project manager believes to be feasible for the site.
- 31 (22) "Oregon business" means a sole proprietorship, partnership, company, cooperative, corpo-
32 ration or other form of business entity that is organized or authorized to do business under Oregon
33 law for profit.
- 34 (23) "Public Purpose Fund Administrator" means the entity designated by the Public Utility
35 Commission to administer moneys collected by a company through the public purpose charge de-
36 scribed under ORS 757.612.
- 37 (24) "Recycling project" means a facility or equipment that converts waste into a new and usa-
38 ble product.
- 39 (25) "Small business" means:
- 40 (a) An Oregon business that is:
- 41 (A) A retail or service business employing 50 or fewer persons at the time the loan is made; or
- 42 (B) An industrial or manufacturing business employing 200 or fewer persons at the time the loan
43 is made; or
- 44 (b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corpo-
45 ration or other form of business entity for which the total number of employees for both the sub-

1 subsidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other
2 form of business entity at the time the loan is made is:

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

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

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

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

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

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

16 (c) A recycling project;

17 (d) An alternative fuel project;

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

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

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

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

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

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

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

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

39 **SECTION 62.** ORS 470.080 is amended to read:

40 470.080. (1) After consultation with the Small Scale Local Energy Project Advisory Committee,
41 the [*Director of the State Department of Energy*] **State Energy Commission** shall establish by rule
42 standards and criteria for small scale local energy projects to be funded under this chapter other
43 than projects funded through energy efficiency and sustainable technology loans. The standards and
44 criteria shall operate to encourage diversity in projects funded, give preference to the maximum
45 extent practical to projects proposed by individuals and small businesses, ensure acceptability of

1 environmental impacts and shall require consideration of the potential contribution of a project if
 2 developed at other suitable locations to meeting the energy needs of this state. The standards and
 3 criteria shall give the least preference to projects proposed by an eligible federal agency.

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

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

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

11 (3) After concluding its review, unless the application meets the criteria established by the
 12 committee under subsection (4) of this section, the department shall refer the application and its
 13 findings and recommendation to the committee for its review. The department shall notify the ap-
 14 plicant of the date, time and place of any oral presentation to the committee on the application. The
 15 committee shall review the application and the department's findings and recommendations and ad-
 16 vise the [*director*] **Director of the State Department of Energy** whether the proposed small scale
 17 local energy project meets the criteria established by the [*director*] **commission** under subsection
 18 (1) of this section, whether the project should be financed with moneys from the Small Scale Local
 19 Energy Project Loan Fund and in what amount the loan should be made if approved.

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

22 **SECTION 63.** ORS 470.140 is amended to read:

23 470.140. (1) In accordance with the applicable provisions of ORS chapter 183, the [*Director of the*
 24 *State Department of Energy*] **State Energy Commission** may adopt rules considered necessary to
 25 carry out the purposes of this chapter.

26 (2) The [*director*] **commission** shall submit to the Legislative Assembly and the Governor a
 27 biennial report of the transactions of the Small Scale Local Energy Project Loan Fund and the Small
 28 Scale Local Energy Project Administration and Bond Sinking Fund in such detail as will accurately
 29 indicate the condition of the funds.

30 **SECTION 64.** ORS 470.150 is amended to read:

31 470.150. Except as provided in ORS 470.155 and 470.170, if the Director of the State Department
 32 of Energy approves the financing of a small scale local energy project, the director, on behalf of the
 33 state, and the applicant may enter into a loan contract, secured by a first lien or by other good and
 34 sufficient collateral in the manner provided in ORS 470.155 to 470.210. For purposes of this section,
 35 the interest of the State Department of Energy under a lease purchase contract entered into with
 36 an eligible federal or state agency or a municipal corporation may constitute good and sufficient
 37 collateral. The contract:

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

42 (2) Shall provide a plan for repayment by the applicant of moneys borrowed from the loan fund
 43 used for the development of the small scale local energy project and interest on those moneys used
 44 at a rate of interest the director determines is necessary to provide adequate funds to recover the
 45 administrative expenses incurred in connection with the loan. The director shall set the interest rate

1 at an incremental rate above the interest rate on the underlying bonds in an amount sufficient to
2 recover all program-related costs including, but not limited to, implementation, financing, adminis-
3 tration and promotional costs for the program. The incremental rate for projects proposed by an
4 eligible federal agency shall be greater than the incremental rate charged to any other govern-
5 mental borrower. The repayment plan, among other matters:

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

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

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

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

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

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

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

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

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

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

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

42 (b) A plainly worded acknowledgment by the applicant that failure to make payments as re-
43 quired under the loan agreement may result in the foreclosure of a property lien or other debt col-
44 lection actions;

45 (c) A waiver stating that the applicant waives any jurisdictional or other irregularities or de-

1 facts in:

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

3 (B) A small scale local energy project;

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

5 (D) This chapter; or

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

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

12 (e) A description of any other conditions required by the department.

13 **SECTION 65.** ORS 470.535 is amended to read:

14 470.535. (1) The Director of the State Department of Energy shall initiate the certification pro-
15 cess for a sustainable energy project manager by publishing a request for proposals.

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

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

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

22 (c) Any additional information required by the [director] **State Energy Commission** by rule.

23 (3) After reviewing all applications received, the director may select a project manager. In se-
24 lecting the project manager, the director shall consider the following factors:

25 (a) The organizational experience of the applicant and the capacity of the applicant to success-
26 fully implement the energy efficiency and sustainable technology loan program goals and require-
27 ments.

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

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

33 (d) Any other factors the [director] **commission** adopts by rule or [directive] **the director re-**
34 **quires.**

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

38 **SECTION 66.** ORS 470.540 is amended to read:

39 470.540. (1) Upon selecting a proposed sustainable energy project manager, the Director of the
40 State Department of Energy shall notify all unsuccessful applicants for the position that another
41 candidate is proposed for appointment. The director shall negotiate with the proposed project man-
42 ager regarding any modifications to the service cost estimates or other features of the applicant's
43 proposed plan that are necessary to ensure that the applicant will meet the goals and requirements
44 of the energy efficiency and sustainable technology loan program and [State Department of Energy]
45 rules **adopted by the State Energy Commission.**

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

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

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

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

12 **SECTION 67.** ORS 470.560 is amended to read:

13 470.560. (1) The [*State Department of Energy*] **State Energy Commission** shall adopt rules es-
14 tablishing certification standards for contractors participating in the construction of small scale lo-
15 cal energy projects financed through the energy efficiency and sustainable technology loan program.
16 The [*department*] **commission** shall design the standards to ensure that the project work performed
17 by a contractor holding the certification is of high quality and will result in a high degree of cus-
18 tomer satisfaction.

19 (2) The certification standards established by the [*department*] **commission** must, at a minimum,
20 require that the contractor:

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

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

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

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

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

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

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

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

38 (4) The Construction Contractors Board may issue a qualifying contractor a certification au-
39 thORIZING the contractor to participate in the construction of small scale local energy projects fi-
40 nanced through the energy efficiency and sustainable technology loan program. A contractor
41 seeking certification shall apply to the board as provided under ORS 701.119.

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

45 **SECTION 68.** ORS 470.600 is amended to read:

1 470.600. To achieve the energy efficiency and sustainable technology loan program goals de-
 2 scribed in ORS 470.500, the Director of the State Department of Energy may enter into agreements
 3 to disburse supplemental capital funds through the Small Scale Local Energy Project Loan Fund and
 4 the Energy Project Supplemental Fund if:

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

8 (2) The supplemental capital funds are made subject to any requirements adopted by the
 9 [director] **State Energy Commission** by rule to ensure adequate protection of project moneys.

10 **SECTION 69.** ORS 470.655, as amended by section 4, chapter 92, Oregon Laws 2010, is amended
 11 to read:

12 470.655. (1) Except as provided in ORS 470.650, an applicant for an energy efficiency and
 13 sustainable technology loan approved by the State Department of Energy shall pay the department
 14 a project initiation fee. Upon request of the loan applicant, the department may add all or part of
 15 a project initiation fee to the principal of an issued loan. The [department] **State Energy Com-**
 16 **mission** may establish the fee amount by rule, not to exceed four percent of the approved loan
 17 amount. If the [department] **commission** does not establish the fee amount, the fee shall be two
 18 percent of the approved loan amount.

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

24 **SECTION 70.** ORS 470.665 is amended to read:

25 470.665. (1) If a consumer-owned utility serving a sustainable energy territory has established
 26 an on-bill financing system, an energy efficiency and sustainable technology loan shall be repaid by
 27 on-bill financing unless the loan agreement specifies that the State Department of Energy and the
 28 borrower have agreed to an alternative method for ensuring repayment of the loan.

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

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

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

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

39 (3) The [director] **State Energy Commission** may not adopt any rule that imposes responsibility
 40 for the repayment of an energy efficiency and sustainable technology loan on the utility.

41 (4) The director may waive the requirement that a consumer-owned utility provide on-bill fi-
 42 nancing for one or more loans if the director determines, after consultation with the Bonneville
 43 Power Administration, that providing the on-bill financing is not practicable. If the director grants
 44 a waiver under this subsection, the utility shall bill the affected customers for loan repayment sep-
 45 arately from any utility customer account or customer meter billings.

1 **SECTION 71.** ORS 470.710 is amended to read:

2 470.710. (1) The State Department of Energy shall collaborate with the State Workforce Invest-
3 ment Board and other interested parties to identify opportunities for apprenticeship and for job
4 training and development that would further the goals of ORS 470.500 to 470.710 and provide valu-
5 able skills to Oregon workers.

6 (2) *[In adopting any rules for carrying out apprenticeship and job training and development under*
7 *the energy efficiency and sustainable technology loan program, the department and the board]* **The**
8 **State Energy Commission and the board shall adopt rules for the purpose of carrying out**
9 **apprenticeship and job training and development under the energy efficiency and sustainable**
10 **technology loan program. In adopting rules under this subsection, the commission and board**
11 shall consult with representatives from:

- 12 (a) State workforce programs;
- 13 (b) Organized labor;
- 14 (c) The State Apprenticeship and Training Council;
- 15 (d) The Bureau of Labor and Industries; and
- 16 (e) Consumer advocacy organizations.

17 (3) In addition to consulting with entities described in subsection (2) of this section, in adopting
18 any rules *[for carrying out apprenticeship and job training and development under the energy efficiency*
19 *and sustainable technology loan program, the department]* **under subsection (2) of this section, the**
20 **commission** and the board may seek input from organizations representing construction contrac-
21 tors.

22 **SECTION 72.** ORS 757.528 is amended to read:

23 757.528. (1) Unless modified by rule by the *[State Department of Energy]* **State Energy Com-**
24 **mission** as provided in this section, the greenhouse gas emissions standard that applies to
25 consumer-owned utilities is 1,100 pounds of greenhouse gases per megawatt-hour for a generating
26 facility.

27 (2) Unless modified pursuant to subsection (4) of this section, the greenhouse gas emissions
28 standard includes only carbon dioxide emissions.

29 (3) For purposes of applying the emissions standard to cogeneration facilities, the *[department]*
30 **commission** shall establish an output-based methodology to ensure that the calculation of emissions
31 of greenhouse gases for cogeneration facilities recognizes the total usable energy output of the
32 process and includes all greenhouse gases emitted by the facility in the production of both electrical
33 and thermal energy.

34 (4) The *[department]* **commission** shall review the greenhouse gas emissions standard estab-
35 lished under this section no more than once every three years. After public notice and hearing, and
36 consultation with the Public Utilities Commission, the *[department]* **State Energy Commission** may:

37 (a) Modify the emissions standard to include other greenhouse gases as defined in ORS 468A.210,
38 with the other greenhouse gases expressed as their carbon dioxide equivalent; and

39 (b) Modify the emissions standard based upon current information on the rate of greenhouse gas
40 emissions from a commercially available combined-cycle natural gas generating facility that:

41 (A) Employs a combination of one or more gas turbines and one or more steam turbines and
42 produces electricity in the steam turbines from waste heat produced by the gas turbines;

43 (B) Has a heat rate at high elevation within the boundaries of the Western Electricity Coordi-
44 nating Council; and

45 (C) Has a heat rate at ambient temperatures when operating during the hottest day of the year.

1 (5) In modifying the greenhouse gas emissions standard, the [*department*] **commission** shall:

2 (a) Use an output-based methodology to ensure that the calculation of greenhouse gas emissions
3 through cogeneration recognizes the total usable energy output of the process and includes all
4 greenhouse gases emitted by the generating facility in the production of both electrical and thermal
5 energy; and

6 (b) Consider the effects of the emissions standard on system reliability and overall costs to
7 electricity consumers.

8 (6) If upon a review conducted pursuant to subsection (4) of this section, the [*department*]
9 **commission** determines that a mandatory greenhouse gas emissions limit has been established pur-
10 suant to state or federal law, the [*department*] **commission** shall issue a report to the appropriate
11 legislative committees of the Legislative Assembly stating which portions, if any, of the greenhouse
12 gas emissions standard are no longer necessary as a matter of state law.

13 **SECTION 73.** ORS 757.533 is amended to read:

14 757.533. (1)(a) A governing board of a consumer-owned utility may not enter into a long-term
15 financial commitment unless the baseload electricity acquired under the commitment is produced by
16 a generating facility that complies with a greenhouse gas emissions standard established under ORS
17 757.528.

18 (b) A generating facility complies with the greenhouse gas emissions standard established under
19 ORS 757.528 if the rate of emissions of the facility does not exceed the emissions standard.

20 (c) In determining whether a generating facility complies with the emissions standard, the total
21 emissions associated with producing baseload electricity at the generating facility shall be included
22 in determining the rate of emissions of greenhouse gases. The total emissions associated with
23 producing electricity at the generating facility do not include emissions associated with transporta-
24 tion, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

25 (2) Notwithstanding subsection (1) of this section, the emissions standard does not apply to
26 greenhouse gas emissions produced by a generating facility owned by a consumer-owned utility or
27 contracted through a long-term financial commitment if the emissions:

28 (a) Come from a facility powered exclusively by renewable energy sources described in ORS
29 469A.025;

30 (b) Come from a cogeneration facility in this state that is fueled by natural gas, synthetic gas,
31 distillate fuels, waste gas or a combination of these fuels, and that is producing energy, in service
32 for tax purposes, commercially operable, or in rates as of July 1, 2010, until the facility is subject
33 to a new long-term financial commitment; or

34 (c) Come from a generating facility that has in place a plan to be a low-carbon emission re-
35 source, as determined by the State Department of Energy, pursuant to sufficient technical doc-
36 umentation, within seven years of commencing plant operations.

37 (3) The governing board may provide an exemption for an individual generating facility from the
38 emissions performance standard to address:

39 (a) Unanticipated electricity system reliability needs;

40 (b) Catastrophic events or threat of significant financial harm that may arise from unforeseen
41 circumstances; or

42 (c) Long-term financial commitments between members of a joint operating entity recognized
43 under federal law or the joint operating entity's predecessor organization, or with the joint operat-
44 ing entity for a baseload resource that the consumer-owned utility had an ownership interest in
45 prior to July 1, 2010.

1 (4) A governing board shall report to the consumer-owned utility's customers or members and
2 to the State Department of Energy information on any case-by-case exemption from the emissions
3 performance standard granted by the governing board.

4 (5) For purposes of ORS 757.522 to 757.536, a long-term financial commitment for a consumer-
5 owned utility does not include agreements to purchase electricity from the Bonneville Power Ad-
6 ministration.

7 (6) The [department] **State Energy Commission** by rule shall establish:

8 (a) Standards for identifying contracts for electricity for which the emissions cannot readily be
9 determined with any specificity; and

10 (b) Emissions to be attributed to such contracts for purposes of determining compliance with the
11 emissions standard established under ORS 757.528.

12 **SECTION 74.** ORS 757.538 is amended to read:

13 757.538. The Public Utility Commission and the [*State Department of Energy*] **State Energy**
14 **Commission** shall adopt rules as necessary to implement ORS 757.522 to 757.536.

15 **SECTION 75.** ORS 757.600 is amended to read:

16 757.600. As used in ORS 757.600 to 757.689, unless the context requires otherwise:

17 (1) "Aggregate" means combining retail electricity consumers into a buying group for the pur-
18 chase of electricity and related services.

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

22 (3) "Commission" means the Public Utility Commission.

23 (4) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an
24 electric cooperative.

25 (5) "Default supplier" means an electricity service supplier or electric company that has a legal
26 obligation to provide electricity services to a consumer, as determined by the commission.

27 (6) "Direct access" means the ability of a retail electricity consumer to purchase electricity and
28 certain ancillary services, as determined by the commission for an electric company or the govern-
29 ing body of a consumer-owned utility, directly from an entity other than the distribution utility.

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

32 (8) "Distribution" means the delivery of electricity to retail electricity consumers through a
33 distribution system consisting of local area power poles, transformers, conductors, meters, sub-
34 stations and other equipment.

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

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

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

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

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

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

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

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

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

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

19 (19) “Low-income weatherization” means repairs, weatherization and installation of energy effi-
20 cient appliances and fixtures for low-income residences for the purpose of enhancing energy effi-
21 ciency.

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

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

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

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

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

35 (25) “Power generation company” means a company engaged in the production and sale of
36 electricity to wholesale customers, including but not limited to independent power producers, affil-
37 iated generation companies, municipal and state authorities, provided the company is not regulated
38 by the commission.

39 (26) “Qualifying expenditures” means those expenditures for energy conservation measures that
40 have a simple payback period of not less than one year and not more than 10 years, and expen-
41 ditures for the above-market costs of new renewable energy resources, provided that the [*State De-*
42 *partment of Energy*] **State Energy Commission** by rule may establish a limit on the maximum
43 above-market cost for renewable energy that is allowed as a credit.

44 (27) “Renewable energy resources” means:

45 (a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or by low-

1 emission nontoxic biomass based on solid organic fuels from wood, forest and field residues.

2 (b) Dedicated energy crops available on a renewable basis.

3 (c) Landfill gas and digester gas.

4 (d) Hydroelectric facilities located outside protected areas as defined by federal law in effect
5 on July 23, 1999.

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

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

16 (30) "Site" means a single contiguous area of land containing buildings or other structures that
17 are separated by not more than 1,000 feet, or buildings and related structures that are intercon-
18 nected by facilities owned by a single retail electricity consumer and that are served through a
19 single electric meter.

20 (31) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic
21 utility investment.

22 (32) "Transition credit" means a credit that returns to consumers all or a portion of the benefits
23 from an economic utility investment.

24 (33) "Transmission facility" means the plant and equipment used to transmit electricity in
25 interstate commerce.

26 (34) "Undue market power" means the unfair or improper exercise of influence to increase or
27 decrease the availability or price of a service or product in a manner inconsistent with competitive
28 markets.

29 (35) "Uneconomic utility investment" means all electric company investments, including plants
30 and equipment and contractual or other legal obligations, properly dedicated to generation, conser-
31 vation and workforce commitments, that were prudent at the time the obligations were assumed but
32 the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent
33 transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed
34 by the commission in a prudence review or other proceeding, to the extent of such disallowance, and
35 does not include fines or penalties as authorized by state or federal law.

36 **SECTION 76.** ORS 757.612 is amended to read:

37 757.612. (1) There is established an annual public purpose expenditure standard for electric
38 companies and Oregon Community Power to fund new cost-effective local energy conservation, new
39 market transformation efforts, the above-market costs of new renewable energy resources and new
40 low-income weatherization. The public purpose expenditure standard shall be funded by the public
41 purpose charge described in subsection (2) of this section.

42 (2)(a) Beginning on the date an electric company or Oregon Community Power offers direct ac-
43 cess to its retail electricity consumers, except residential electricity consumers, the electric com-
44 pany or Oregon Community Power shall collect a public purpose charge from all of the retail
45 electricity consumers located within its service area until January 1, 2026. Except as provided in

1 paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the
2 total revenues collected by the electric company, Oregon Community Power or the electricity ser-
3 vice supplier from its retail electricity consumers for electricity services, distribution, ancillary
4 services, metering and billing, transition charges and other types of costs included in electric rates
5 on July 23, 1999.

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

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

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

15 (A) Sixty-three percent for new cost-effective conservation and new market transformation.

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

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

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

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

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

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

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

41 (e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon
42 Community Power under subsection (2) of this section shall be distributed to education service dis-
43 tricts, as described in ORS 334.010, that are located in the service territory of the electric company
44 or Oregon Community Power. The funds shall be distributed to individual education service districts
45 according to the weighted average daily membership (ADMw) of the component school districts of

1 the education service district for the prior fiscal year as calculated under ORS 327.013. The com-
2 mission shall establish by rule a methodology for distributing a proportionate share of funds under
3 this paragraph to education service districts that are only partially located in the service territory
4 of the electric company or Oregon Community Power.

5 (B) An education service district that receives funds under this paragraph shall use the funds
6 first to pay for energy audits for school districts located within the education service district. An
7 education service district may not expend additional funds received under this paragraph on a
8 school district facility until an energy audit has been completed for that school district. To the
9 extent practicable, an education service district shall coordinate with the State Department of En-
10 ergy and incorporate federal funding in complying with this paragraph. Following completion of an
11 energy audit for an individual school district, the education service district may expend funds re-
12 ceived under this paragraph to implement the energy audit. Once an energy audit has been con-
13 ducted and completely implemented for each school district within the education service district, the
14 education service district may expend funds received under this paragraph for any of the following
15 purposes:

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

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

20 (iii) Energy conservation education programs.

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

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

25 (g) If the commission directs funds collected through public purpose charges to a nongovern-
26 mental entity, the entity shall:

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

29 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-
30 terest to be filed with the commission on or prior to April 15 of each calendar year for public review
31 in a form similar to the statement of economic interest required for public officials under ORS
32 244.060.

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

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

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

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

45 (h) The commission may remove from the board of directors of a nongovernmental entity an of-

1 ficer or director who fails to provide an annual disclosure of economic interest or declare actual
2 or potential conflict of interest, as described in paragraph (g)(B) and (C) of this subsection, in con-
3 nection with the allocation or expenditure of funds collected through public purpose charges and
4 directed to the entity.

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

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

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

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

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

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

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

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

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

35 (d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at
36 any site in the prior year may request that the State Department of Energy hire an independent
37 auditor to assess the potential for conservation investments at the site. If the independent auditor
38 determines there is no available conservation measure at the site that would have a simple payback
39 of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment
40 obligation for public purpose charges related to the site. If the independent auditor determines that
41 there are potential conservation measures available at the site, the retail electricity consumer shall
42 be entitled to a credit against public purpose charges related to the site equal to 54 percent of the
43 public purpose charges less the estimated cost of available conservation measures.

44 (B) A retail electricity consumer shall be entitled each year to the credit described in this sub-
45 section unless a subsequent independent audit determines that new conservation investment oppor-

1 tunities are available. The State Department of Energy may require that a new independent audit
2 be performed on the site to determine whether new conservation measures are available, provided
3 that the independent audits shall occur no more than once every two years.

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

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

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

14 (b) The [*commission*] **Public Utility Commission** shall establish the amount to be collected by
15 each electric company in calendar year 2008 from retail electricity consumers served by the com-
16 pany, and the rates to be charged to retail electricity consumers served by the company, so that the
17 total anticipated collection for low-income electric bill payment assistance by all electric companies
18 in calendar year 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the
19 commission may not change the rates established for retail electricity consumers, but the total
20 amount collected in a calendar year for low-income electric bill payment assistance may vary based
21 on electricity usage by retail electricity consumers and changes in the number of retail electricity
22 consumers in this state. In no event shall a retail electricity consumer be required to pay more than
23 \$500 per month per site for low-income electric bill payment assistance.

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

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

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

45 (f) Notwithstanding ORS 757.310, the commission may allow an electric company or Oregon

1 Community Power to provide reduced rates or other payment or crisis assistance or low-income
 2 program assistance to a low-income household eligible for assistance under the federal Low Income
 3 Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

4 (8) For purposes of this section, “retail electricity consumers” includes any direct service in-
 5 dustrial consumer that purchases electricity without purchasing distribution services from the elec-
 6 tric utility.

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

9 **SECTION 77.** ORS 469.210, as amended by section 11, chapter 76, Oregon Laws 2010, is
 10 amended to read:

11 469.210. (1) The Director of the State Department of Energy may require the submission of plans,
 12 specifications and contract terms, and after examination thereof, may request corrections and re-
 13 visions of the plans, specifications and terms.

14 (2) If the director determines that the proposed acquisition, erection, construction or installation
 15 is technically feasible and should operate in accordance with the representations made by the ap-
 16 plicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules
 17 or standards adopted by the [*director*] **State Energy Commission**, the director shall issue a pre-
 18 liminary certificate approving the acquisition, erection, construction or installation of the facility.
 19 The certificate shall indicate the potential amount of tax credit allowable and shall list any condi-
 20 tions for claiming the credit.

21 (3) The director may issue an order altering, conditioning, suspending or denying preliminary
 22 certification if the director determines that:

23 (a) The acquisition, erection, construction or installation does not comply with the provisions
 24 of ORS 469.185 to 469.225 and applicable rules and standards;

25 (b) The applicant has previously received preliminary or final certification for the same costs;

26 (c) The applicant is unable to demonstrate that the facility would be economically viable without
 27 the allowance of additional credits under ORS 315.354;

28 (d) The applicant was directly involved in an act for which the director has levied civil penalties
 29 or revoked, canceled or suspended any certification under ORS 469.185 to 469.225; or

30 (e) The applicant or the principal, director, officer, owner, majority shareholder or member of
 31 the applicant, or the manager of the applicant if the applicant is a limited liability company, is in
 32 arrears for payments owed to any government agency while in any capacity with direct or indirect
 33 control over a business.

34 **SECTION 78.** ORS 701.119 is amended to read:

35 701.119. (1) A licensed contractor that possesses an appropriate endorsement may apply to the
 36 Construction Contractors Board for certification to participate in the construction of small scale
 37 local energy projects financed through the energy efficiency and sustainable technology loan pro-
 38 gram. The board may issue the certification to a contractor that meets the standards established
 39 by the [*State Department of Energy*] **State Energy Commission** under ORS 470.560. The board may
 40 charge a reasonable fee for certifying a contractor.

41 (2) If the board receives information that the contractor has failed to comply with the certif-
 42 ication standards established by the [*department*] **commission** or has violated a wage and hours
 43 standard described in ORS 701.108, the board shall hold a hearing and may revoke the certification.

44 (3) The board shall give the [*department*] **commission** notice of the issuance or revocation of a
 45 certification under this section.

