

Enrolled
House Bill 2436

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy, Environment and Water)

CHAPTER

AN ACT

Relating to energy efficiency and sustainable technology loan program; creating new provisions; amending ORS 468A.040, 470.050, 470.505, 470.530, 470.535, 470.540, 470.550, 470.555, 470.560, 470.565, 470.630, 470.635, 470.650, 470.660, 470.665, 470.675 and 701.119 and section 49, chapter 753, Oregon Laws 2009; and repealing section 46, chapter 753, Oregon Laws 2009.

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

SECTION 1. ORS 470.050 is amended to read:

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

(1) "Alternative fuel project" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A base efficiency package; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) “Primary contractor” means a contractor that:

(a) Has entered into a contract with an owner of property for which a proposed small scale local energy project will be located;

(b) Is responsible for the completion of the small scale local energy project;

(c) Undertakes to complete the small scale local energy project; and

(d) Is responsible for any subcontractors performing work on the small scale local energy project.

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

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

[25] (26) “Small business” means:

(a) An Oregon business that is:

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

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

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

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

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

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

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

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

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

(c) A recycling project.

(d) An alternative fuel project.

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

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

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

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

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

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

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

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

(32) “Utility service territory” means the allocated territory in which a utility subject to this chapter provides a utility service. For the purposes of this subsection, “allocated territory” and “utility service” have the meanings given those terms in ORS 758.400.

SECTION 2. ORS 470.560 is amended to read:

470.560. (1) The State Department of Energy shall adopt rules establishing certification standards for **primary** contractors participating in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. The department shall design the standards to ensure that the project work performed by a **primary** contractor holding the certification **and all the primary contractor’s subcontractors** is of high quality and will result in a high degree of customer satisfaction.

(2) The certification standards established by the department must, at a minimum, require that the **primary** contractor:

(a) Prove that the **primary** contractor [has] **and the primary contractor’s subcontractors have** sufficient skill to [ensure that the contractor can] successfully install energy efficiency, renewable energy or weatherization projects.

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

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

(d) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers’ Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.

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

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

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

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

(4) The Construction Contractors Board may issue a qualifying **primary** contractor a certification authorizing the **primary** contractor to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. A **primary** contractor seeking certification shall apply to the board as provided under ORS 701.119.

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

SECTION 3. ORS 470.635 is amended to read:

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

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

(b) Any optional package recommended for the structure.

(c) The estimated net monthly cost to the applicant when energy savings, project repayment costs, tax or other incentives, loan offset grants, base efficiency package fees and other relevant economic factors are considered.

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

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

(2) A base efficiency package or optional package may not provide for achieving energy efficiency upgrades through the use of appliances or other equipment that lack sufficient relationship to the structure to be subject to a fixture filing or real property lien.

(3) The projection or other evaluation shall state in a clear and conspicuous manner:

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

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

(4) If the base efficiency package or recommended optional package includes the use of nontraditional technology, the projection or other evaluation shall include a statement that the technology is nontraditional, initiated by the prospective loan applicant.

(5) An energy efficiency and sustainable technology loan may be used only for a project constructed by a **primary** contractor certified under ORS 701.119.

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

(7) The department shall periodically consult with **primary** contractors certified under ORS 701.119 for the purpose of updating average cost and projected savings figures used for energy savings projections or other evaluations under this section. The department shall encourage the use of methods for conducting energy savings projections or other evaluations under this section that are cost-effective and time-effective, take advantage of economies of scale and produce results that are accurate and are replicable for equivalent base energy packages.

SECTION 4. ORS 701.119 is amended to read:

701.119. (1) A licensed contractor that possesses an appropriate endorsement may apply to the Construction Contractors Board for certification to participate **as a primary contractor, as defined in ORS 470.050**, in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. The board may issue the certification to a contractor that meets the standards established by the State Department of Energy under ORS 470.560. The board may charge a reasonable fee for certifying a contractor.

(2) If the board receives information that the contractor has failed to comply with the certification standards established by the department or has violated a wage and hours standard described in ORS 701.108, the board shall hold a hearing and may revoke the certification.

(3) The board shall give the department notice of the issuance or revocation of a certification under this section.

SECTION 5. ORS 470.530 is amended to read:

470.530. (1) Except as provided in subsection (5) of this section, the Director of the State Department of Energy may establish qualifications for sustainable energy project managers and may exercise oversight to ensure [*project manager*] compliance with those qualifications. A **sustainable energy** project manager shall provide the promotion, technical and financial support and verifications necessary to administer [*the*] **an** energy efficiency and sustainable technology loan [*program in the territory served by the project manager*].

(2) **A sustainable energy project manager may administer an energy efficiency and sustainable technology loan only within a utility service territory of an investor-owned or consumer-owned utility that provides electricity or gas services.**

[2] (3) *[The project manager shall serve a sustainable energy territory established by the director.]* A **sustainable energy project manager shall serve the utility service territory for which the sustainable energy project manager has been selected by the director.** The **sustainable energy** project manager shall provide loan program information and technical and financial information to promote energy efficiency and use of renewable energy at the neighborhood and community levels. The **sustainable energy** project manager shall be responsible for small scale local energy project verification and for monitoring program effectiveness for energy efficiency and sustainable technology loans and small scale local energy program loans. The **sustainable energy** project manager may administer the energy efficiency and sustainable technology loan program within the **utility service** territory.

[3(a) *Except as provided in this subsection, the boundaries of a sustainable energy territory must be consistent with the service territory of a local electric utility.*]

[b) *The boundaries of a sustainable energy territory may be consistent with the service territory of a local gas utility if:*]

[A) *The local electric utility is a consumer-owned electric utility that elects not to be the project manager for the sustainable energy territory; and*]

[B) *The service territory of the local electric utility and the service territory of the local gas utility overlap.*]

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

(4) A city, county, metropolitan service district or other local government entity, or a nonprofit, for-profit, tribal or state entity, may be a **sustainable energy** project manager if the entity meets the qualifications established by the director under this section and is approved by the director to provide promotion, outreach and customer support related to the energy efficiency and sustainable technology loan program within a [*sustainable energy*] **utility service** territory. The Public Purpose Fund Administrator is an ex officio sustainable energy project manager. The Public Purpose Fund Administrator shall act as the **sustainable energy** project manager in any [*sustainable energy*] **utility service** territory that is not served by another **sustainable energy** project manager.

(5) The director shall establish a sustainable energy project manager certification program. However, the Public Purpose Fund Administrator or a consumer-owned utility is not required to obtain a sustainable energy project manager certificate and the Public Purpose Fund Administrator is not subject to any qualifications established by the director for a **sustainable energy** project manager.

SECTION 6. ORS 470.535 is amended to read:

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

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

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

(b) A proposed plan for implementing and administering the goals and requirements of the energy efficiency and sustainable technology loan program in the [*sustainable energy*] **utility service** territory; and

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

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

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

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

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

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

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

SECTION 7. ORS 470.555 is amended to read:

470.555. (1) *[Except as provided in subsection (2) of this section, if a sustainable energy territory is all or part of the service territory for an investor-owned electric utility,]* The Public Purpose Fund Administrator shall be the sustainable energy project manager for *[the sustainable energy territory]* **investor-owned electric utilities**. The Public Purpose Fund Administrator shall inform the Public Utility Commission and the State Department of Energy of the activities of the administrator by filing a yearly action plan and an end-of-year report with the commission and the department.

(2) *[For a sustainable energy territory described in ORS 470.530 (3)(b), if the local gas utility is]* An investor-owned **gas** *[utility, the]* utility may act as *[the]* **a sustainable energy** project manager for the **utility service territory serviced by the utility** or may contract with the Public Purpose Fund Administrator to act as **the sustainable energy** project manager on behalf of the utility.

(3) *[If a territory is served by a consumer-owned utility and is outside the service territory of an investor-owned electric utility, the]* A consumer-owned utility shall be the **sustainable energy** project manager **for the utility service territory serviced by the utility** if the utility agrees to promote energy efficiency and sustainable technology loans as part of *[any]* **an** energy efficiency or renewable energy program offered by the utility. A consumer-owned utility may conduct energy efficiency and renewable energy programs within the **utility service** territory of the utility regardless of whether the **utility service** territory is served by an energy efficiency and sustainable technology loan program. A consumer-owned utility may decline to participate in the energy efficiency and sustainable technology loan program.

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

(5) The existence of an energy efficiency and sustainable technology loan program, or the appointment of a sustainable energy project manager, in *[a sustainable energy]* **a utility service** territory does not prevent a consumer-owned utility from conducting *[any]* **an** energy efficiency or renewable energy program offered by the utility. If the consumer-owned utility declines to *[become the]* **serve as a sustainable energy** project manager for the **utility service** territory, the utility may:

(a) Continue with existing utility services and policies; or

(b) Work with the Director of the State Department of Energy to solicit and select a qualified entity to serve as the **sustainable energy** project manager as described in ORS 470.535 and 470.540.

(6) Subject to approval by the director, a **sustainable energy** project manager may contract with a qualified third party to assist the **sustainable energy** project manager in *[providing project manager services within the territory. If a sustainable energy territory is served by a project manager, the appointment of additional project managers shall be a subcontract approved by the existing project manager]* **servicing a utility service territory. If a utility service territory is served by a sustainable energy project manager, the appointment of additional sustainable energy project managers may be made only by entering into a subcontract approved by the existing**

sustainable energy project manager. If the third party is acting as a financier, the third party is not required to comply with laws regulating utilities based on the actions of the third party as a financier. The **sustainable energy** project manager may enter into agreements with trade associations and other public and private entities for the promotion or marketing of the energy efficiency and sustainable technology loan program.

(7) The Public Purpose Fund Administrator and sustainable energy project managers shall cooperate with, and coordinate their outreach and promotional efforts with, local utilities and other stakeholders to promote energy efficiency and renewable energy and to use the customer contacts, resources and capacity of **the** utilities to engage and inform utility customers about the energy efficiency and sustainable technology loan program. The Public Purpose Fund Administrator and **sustainable energy** project managers shall coordinate with gas utilities regarding any changes to a gas pipeline and with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure. The Public Purpose Fund Administrator and **sustainable energy** project managers shall coordinate with a gas utility regarding the installation of appliances used for space heating, water heating and compressed natural gas refueling.

SECTION 8. ORS 470.565 is amended to read:

470.565. (1) At the request of a loan applicant, a **primary** contractor that is authorized to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program may conduct an energy savings projection or similar evaluation for a property and conduct post-project verifications of energy savings in a [*sustainable energy territory that does not have a*] **utility service territory not served by a sustainable energy project manager.**

(2) The State Department of Energy shall process a loan application submitted by an applicant in a [*sustainable energy territory that does not have a*] **utility service territory not served by a sustainable energy project manager** in the same manner as an application submitted through a **sustainable energy project manager.**

(3) The department may approve an energy efficiency and sustainable technology loan for property located in a [*sustainable energy territory that does not have a*] **utility service territory not served by a sustainable energy project manager** if:

(a) On-bill financing is available to the loan applicant through a local utility serving the benefited property; or

(b) The department and the loan applicant agree to an alternative method for ensuring repayment of the loan.

SECTION 9. ORS 470.630 is amended to read:

470.630. (1) The State Department of Energy may disburse energy efficiency and sustainable technology loan and small scale local energy program loan moneys by providing the loan moneys through a sustainable energy project manager or providing the loan moneys to or through an entity described in ORS 470.060. Loan moneys may be disbursed through a **sustainable energy** project manager only for the purpose of enabling the **sustainable energy** project manager to issue energy efficiency and sustainable technology loans and small scale local energy program loans to applicants in the [*sustainable energy*] **utility service** territory served by the **sustainable energy** project manager.

(2) The **sustainable energy** project manager may issue a loan from moneys disbursed under this section only if adequate security exists to ensure repayment of the loan. An energy efficiency and sustainable technology loan from a **sustainable energy** project manager to an applicant located in the [*sustainable energy*] **utility service** territory served by the **sustainable energy** project manager must have the features described in ORS 470.150 and 470.645 and is subject to the requirements and processes imposed under ORS 470.500 to 470.710 for energy efficiency and sustainable technology loans issued by the Director of the State Department of Energy. A **sustainable energy** project manager that issues an energy efficiency and sustainable technology loan to support a small scale local energy project may record a fixture filing and lien on the property that benefits from the **small scale local energy** project as provided in ORS 470.680 or 470.685.

SECTION 10. ORS 470.660 is amended to read:

470.660. (1) All investor-owned utilities, except those that have withheld consent under ORS 470.510 (3), shall provide on-bill financing, except as described in subsection (4) of this section. After an investor-owned utility [*servicing a sustainable energy territory*] has established an on-bill financing system, an energy efficiency and sustainable technology loan shall be repaid by on-bill financing unless the loan agreement specifies that the State Department of Energy and the borrower have agreed to an alternative method for ensuring repayment of the loan.

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

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

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

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

(3) The Public Utility Commission shall adopt rules for the use of on-bill financing by investor-owned utilities. The rules may include, but need not be limited to, rules regarding nonpayment, insufficient payment, delinquency notices, repayment charge transfers, processing fees, late fees and refunds. The commission may not adopt any rule that imposes responsibility for the repayment of an energy efficiency and sustainable technology loan on the utility.

(4) The commission may waive the requirement that an investor-owned utility provide on-bill financing for one or more loans if the commission determines that providing the on-bill financing is not practicable. If the commission grants a utility a waiver under this subsection, the utility shall bill the affected customers for loan repayment separately from any utility customer meter billings.

SECTION 11. ORS 470.665 is amended to read:

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

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

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

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

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

(3) The director may not adopt any rule that imposes responsibility for the repayment of an energy efficiency and sustainable technology loan on the utility.

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

SECTION 12. ORS 470.675 is amended to read:

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

(2) A loan repayment charge for an energy efficiency and sustainable technology loan may include, but need not be limited to, the amount of the loan, interest on the loan and the cost incurred by the State Department of Energy to implement, promote and administer the energy efficiency and sustainable technology loan program.

(3) The amount of an energy efficiency and sustainable technology loan repayment and any moneys received by a utility to assist in the implementation of an on-bill financing system are not gross revenue for purposes of calculating franchise fees or other regulatory assessments.

[(4) If there is a change in ownership or other interest in property benefited by an energy efficiency and sustainable technology loan, and the loan relies on an on-bill financing system for collection of the loan repayment charge, the utility shall transfer the loan repayment charge to the utility customer account of the person acquiring the ownership or other interest in the property.]

SECTION 13. ORS 468A.040 is amended to read:

468A.040. (1) By rule the Environmental Quality Commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065. A permit subject to the federal operating permit program shall be issued in accordance with the rules adopted under ORS 468A.310.

(2) If a request for review of the final Department of Environmental Quality action, or any part thereof, is made on an application for a permit issued under the federal operating permit program established under ORS 468A.310 in accordance with the rules adopted by the commission, the effect of the contested conditions and any conditions that are not severable from those contested shall be stayed upon a showing that compliance with the contested conditions during the pendency of the appeal would require substantial expenditures or losses that would not be incurred if the permittee prevails on the merits of the review and there exists a reasonable likelihood of success on the merits. The department may require that the contested conditions not be stayed if the department finds that substantial endangerment of public health or welfare would result from the staying of the conditions.

(3) Any source under an existing permit shall:

(a) Comply with the conditions of the existing permit during any modification or reissuance proceeding; and

(b) To the extent conditions of any new or modified permit are stayed under subsection (2) of this section, comply with the conditions of the existing permit that correspond to the stayed conditions, unless compliance would be technologically incompatible with compliance with other conditions of the new or modified permit that have not been stayed.

(4) For purposes of this section, a small scale local energy project, as defined in ORS 470.050 [(27)(a)], located in a maintenance area or nonattainment area, and any infrastructure related to that project located in the same area, is considered to provide a net air quality benefit to the extent required by this chapter if the project provides reductions in each air contaminant in the maintenance area or nonattainment area equal to the ratio specified in rules adopted by the commission, unless the department determines that the project will pose a material threat to compliance with air quality standards in the maintenance area or nonattainment area.

(5) As used in this section:

(a) "Maintenance area" has the meaning given that term in rules adopted by the commission.

(b) "Nonattainment area" has the meaning given that term in rules adopted by the commission.

SECTION 14. ORS 470.505 is amended to read:

470.505. Notwithstanding any other provision of this chapter, if the Director of the State Department of Energy determines that the State Department of Energy is unable to issue a sufficient number of energy efficiency and sustainable technology loans to offset the reasonable cost to the department of operating the loan program, the director may delay or suspend the energy efficiency and sustainable technology loan program in one or more [*sustainable energy*] **utility service** territories or may delay or suspend any feature of the energy efficiency and sustainable technology loan program.

SECTION 15. ORS 470.540 is amended to read:

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

(2) To the extent practicable, the director shall certify a **sustainable energy** project manager not later than four months after publication of the request for proposals and not later than two months after the selection of the proposed **sustainable energy** project manager. However, the director may at any time select a different applicant as the proposed **sustainable energy** project manager or may reinitiate the certification process.

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

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

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

SECTION 16. ORS 470.550 is amended to read:

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

(2) The director may terminate the certification of a **sustainable energy** project manager for:

(a) Failure to adequately implement an applicable plan for implementing the energy efficiency and sustainable technology loan program;

(b) Noncompliance with the regulatory or statutory requirements of the energy efficiency and sustainable technology loan program;

(c) Failure to meet any **sustainable energy** project manager criteria established by the director; or

(d) Failure to perform other certification conditions.

SECTION 17. ORS 470.650 is amended to read:

470.650. (1) If an applicant for a loan to construct a residential small scale local energy project has household income that may qualify the person for a weatherization program operated by the Housing and Community Services Department, the sustainable energy project manager shall refer the applicant to the department. This subsection does not prohibit a **sustainable energy** project manager from accepting an application from a person who has been denied, or is receiving, assistance under a department weatherization program.

(2) If an applicant for a loan to construct a residential small scale local energy project has household income that is less than 250 percent of the federal poverty guidelines, upon request by the applicant, the State Department of Energy may waive all or part of an application fee for the loan and may waive all or part of the project initiation fee.

SECTION 18. Section 49, chapter 753, Oregon Laws 2009, as amended by section 15, chapter 92, Oregon Laws 2010, is amended to read:

Sec. 49. Sections 42, 43, 44, 45[, 46] and 47a, chapter 753, Oregon Laws 2009, are repealed January 2, 2016.

SECTION 19. Section 46, chapter 753, Oregon Laws 2009, is repealed.

SECTION 20. The amendments to ORS 470.560, 470.565, 470.635 and 701.119 by sections 2 to 4 and 8 of this 2013 Act apply to applications for certification to participate in the construction of small scale local energy projects that are submitted on or after the effective date of this 2013 Act.

SECTION 21. Notwithstanding the amendments to ORS 470.530, 470.535, 470.555, 470.565, 470.630, 470.660 and 470.665 by sections 5 to 11 of this 2013 Act, a sustainable energy project manager serving a sustainable energy territory before the effective date of this 2013 Act may continue to serve that sustainable energy territory until the Director of the State Department of Energy selects another sustainable energy project manager for that sustainable energy territory.

Passed by House February 20, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate March 12, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State