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November 19, 2012

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
550 Capitol Street, NE, Suite 215
Post Office Box 2148
Salem, Oregon 97308-2148

Attn: Filing Center

RE: UM 1519, Recommended EEAST Legislative Modifications

NW Natural submits the following comments in response to Public Utility Commission of Oregon (PUC) Staff's request for interested parties to provide their opinion on proposed revisions to EEAST legislation as presented in EEAST quarterly meetings, and to offer a position on whether utilities should proceed in full or partial compliance with EEAST legislation.

NW Natural is proud to say that it currently provides EEAST on-the-bill repayment services to approximately 1,200 customers. NW Natural has actively participated in and supported the successful development of the EEAST program. The Company's comments are provided with the same intent of supporting the development of a good program that will benefit customers and reduce energy consumption.

I. Background

Since early 2009 NW Natural has been actively participating as a partner with Clean Energy Works Oregon (Formerly part of City of Portland and known as Clean Energy Works Portland) and Craft3 (formerly known as Shorebank Enterprise Cascadia, and then Enterprise Cascadia) in providing on-the-bill repayment services to gas heat customers who have taken out loans for the purpose of making energy efficiency retrofits. When the Clean Energy Works Portland loan program became designated as the first pilot to be offered under the Energy Efficiency and Sustainability Technology legislation (EEAST) passed as Oregon House Bill 2626 and codified as ORS 470.500 through 470.815, the Company's partnership around this offering expanded to include Energy Trust of Oregon (Energy Trust), Oregon Department of Energy (ODOE), and PUC Staff.

In compliance with HB 2626 Sections 42 through Section 46(a), ODOE and the Energy Trust initiated more pilot EEAST programs in order to test multiple aspects of the program. In further compliance with HB 2626, Energy Trust prepared reports on its findings and submitted them to the PUC. Section 43(3) required the PUC to review the report and to order either full implementation of the program in compliance with the legislation or partial implementation of the program, and if necessary, to recommend legislative changes.

Staff brought their recommendations to the Commission at the public meeting held on January 25, 2011. Staff's recommendations were to extend the pilot programs until the end of 2012, to recommend no statutory revisions to the legislative assembly, and to convene with interested parties on a quarterly basis during the remainder of 2011 and 2012¹. Prior to this public meeting, NW Natural submitted written comments outlining its general concern with EEAST as drafted. Throughout the whole process, NW Natural has been clear that it supports the concept of EEAST and is a willing partner in offering on-the-bill repayment services, but that complying with the law as written would be difficult and costly. NW Natural presented these concerns verbally at the January 25, 2011 public meeting. The Commission issued Order No. 11-039, which partially adopted Staff's recommendations, namely to extend the pilot period. The Commissioners decided to delay their ruling regarding legislative changes so they could convene a workshop on the topic.

The workshop was scheduled for February 4, 2011. Parties were encouraged to bring any suggested legislative changes. However, Commissioner Savage provided clear guidance that suggested revisions should be limited to those that are necessary and that could not be resolved through a DOE or PUC rulemaking. NW Natural presented the recommendations filed in this docket on February 1, 2011.

The requested edits to EEAST legislation as presented in the Company's filing focused on two substantive issues:

First, the Company requested that the definition in ORS 470.050 for "sustainable energy territory" be replaced with the term "utility service territory." NW Natural explained that sustainable energy territory as defined assigned EEAST program boundaries to electric utilities. As drafted, gas utilities could have as many programs and program managers as they have overlapping electric utility service territories. For instance, NW Natural's territory overlaps with Portland General Electric and PacifiCorp. In those areas, it would work with Energy Trust. For its territory that overlaps with Salem Electric and Eugene Water and Electric Board, it potentially would have two additional program managers. NW Natural explained that this approach would be cumbersome, administratively burdensome, and confusing to customers as offerings may differ between programs offered within NW Natural's service territory. The Company proposed that the law be revised to define gas and electric programs by each utility's service territory. As such, NW Natural would work with one program manager to deliver a product it can offer consistently to all its customers.

The second issue was regarding the requirement that the loan follow the meter as stated in ORS 470.675. NW Natural did not believe it could comply with this requirement since it could not assign the

¹ Staff's public meeting memo from January 25, 2011 is available at this URL:
<http://www.oregon.gov/puc/meetings/pmemos/2011/012511/reg1.pdf>

repayment of debt to a third party who was not a party to the loan agreement, and had no reason to believe a new account holder would accept responsibility for another person's debt.

These changes were presented and no objections to them were raised. The Commission Order No. 11-075 adopted Staff's recommendations that the EEAST pilot period would be extended until December 31, 2012 and to look at legislative changes later. The order said,

The three Oregon natural gas utilities support the Commission's decision to not recommend any statutory modifications at this time, but raise concerns that may need to be addressed in future legislation. Northwest Natural Gas Company and Cascade Natural Gas Company question the statutory definition of Sustainable Energy Territories and the requirement for the utilities to transfer the EEAST loan repayment charge; Avista Utilities seeks clarification of the entity responsible for the provision of loan program services when a customer is served by an investor-owned electric utility and an investor-owned natural gas utility.²

With this direction, NW Natural proceeded to deliver on-the-bill repayment services in pilot programs and meeting quarterly with parties involved in the delivery of EEAST. Necessary legislative changes were discussed frequently at these meeting. ODOE provided additional suggested edits to ORS 470.560 specific to Prime Contractors. ODOE edits and NW Natural's proposed revisions were compiled in one document, they were summarized, and they were presented at multiple EEAST quarterly meetings. The changes were received without conflict or push back, and the pilot projects that continued followed the parameters presented in NW Natural's suggested revisions. Namely, NW Natural's EEAST program has had only one program manager for a program that conforms to the Company's service territory, and EEAST loans have not followed meters.

PUC Staff discussed the course of action that would need to take place for parties to the EEAST meetings to submit the legislative changes that had been discussed and piloted. Since the PUC would have needed significant lead time to work revisions through the state process, it was determined that NW Natural would file the changes in the pre-legislative session. NW Natural's government affairs representative met with all parties from the EEAST quarterly meetings to ensure parties mutually consented to the recommendations. Once established, the group met with Representative Jules Bailey on July 12, 2012 to walk him through the changes. No objections and no new changes were brought forward at this time. NW Natural proceeded with filing the changes with the legislature.

After the due date for filing changes in the pre-legislative session, MPower contacted parties in the EEAST pilot to say it had filed additional language changes. The changes are significant and concerns have not been adequately addressed.

II. Recommended Legislative Changes

NW Natural continues to recommend the changes that it filed with the Commission on February 1, 2011. Those changes are included as Exhibit A. Again, they address two issues: First, that "sustainable energy territory" be replaced with the term "utility service territory" and second, that the requirement to have

² Page 2 of Commission Order No. 11-075.

loans follow the meter be removed. These changes have been discussed as well as tested in EEAST pilots.

NW Natural has no objection to the changes submitted by ODOE regarding prime contractors and herein included as Exhibit B.

The Company objects to the suggested changes that MPower has filed with the legislature and those presented at the EEAST quarterly meetings scheduled on September 26, 2012 and October 30, 2012. Although the presentation of the changes has varied, the Company's comments will focus on the revisions presented on at the October 30, 2012 EEAST Quarterly meeting and attached as Exhibit C. As mentioned, these changes are significant and have not been fully discussed or tested in pilots.

MPower is asking for three substantial changes: First, MPower would like the pilot period extended. NW Natural will address this in Section III below. Second, MPower would like to redefine loans to include off balance sheet loans or non-debt based loans where the loan repayment would be referred to as an energy service charge. Finally, MPower would like the loans to follow the meter and has added language that would require that evidence be given to the utility to ensure that it knows that the new customer at an address has accepted responsibility for the prior occupant's debt.

A. Pilot parameters

Under Number 1 in Exhibit C, MPower suggests the following revisions:

Sec. 43. (1) The Public Purpose Fund Administrator shall initiate pilot programs in investor-owned utility service territories to demonstrate the feasibility of innovative approaches to financing and installing energy efficiency and sustainable technology measures as described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] in residences, including low to moderate income multifamily and single family housing, and commercial buildings in urban and rural communities.

(2) The Public Purpose Fund Administrator shall report to the commission no later than October 1, 201~~40~~. The administrator shall provide a copy of the report to the State Department of Energy. The report shall evaluate the effectiveness of the pilot programs

At the October 30, 2012, EEAST meeting, parties concluded that the additional language defining pilot programs was not necessary towards the intended purpose of requiring pilot for MPower's demographic of low income multifamily property owners, property managers, and tenants. The general reference to pilots is broad enough to include low income customers in multifamily dwellings without specific reference. At the meeting, MPower agreed that it would not pursue this language.

MPower continues to want to extend the EEAST pilot period for two years. Again, this request is addressed in Section III below.

B. Loan as non-debt based financing

MPOWER's suggested revision presented under number 2 in Exhibit C is the following redefinition of loan:

For purposes of the energy efficiency and sustainable technology loan program under ORS 470.500 to 470.710, the term "Loan" includes payments and financing, including non-debt based financing delivered through an energy services agreement for the benefit of individual utility customers. For purposes of ORS 470.500 to 470.710, "energy services agreement" means an agreement between a program participant and an energy efficiency service company pursuant to which the energy service company agrees to invest in capital improvements and provide long term support services in exchange for a regularly assessed payment.

It is useful to note that the redlined text is presented in the same manner that it was presented by MPOWER in their document attached as Exhibit C. The redline text would suggest that part of the definition presented is as adopted in the current statute, but that is not the case. "Loan" is defined in ORS 470.050(14) as follows:

"Loan" includes the purchase or other acquisition of evidence of indebtedness and money used for the purchase or other acquisition of evidence of indebtedness.

This definition applies to all of Chapter 470 of the ORS and is not limited to EEAST. As such, it is unclear logistically or structurally how two definitions of loan are proposed for Chapter 470. The new language also further complicates the otherwise difficult to untangle EEAST legislation by introducing a new and undefined party to the process—an energy service company.

Besides the technical awkwardness of this proposal, the substance of the change demands greater attention. The shift from an EEAST loan being debt-based to being a non-debt-based energy service charge raises many questions. First, a debt-based loan is an easily understood, straight-forward transaction. The loanee receives money and pays that money back over time with interest. The loanee receives the benefit of the investment, which in the case of EEAST loans is energy efficiency assets and property upgrades. If the upgrades do not result in the expected energy savings, the loanee is not harmed because he/she owns the assets purchased. This is not the case with a non-debt based loan because non-debt based loans can be assigned to tenants (those that do not own the property).

Non-debt based loans may be appealing to large business owners or multifamily dwelling owners because they may not be able to afford more debt and they can receive upgrades to their property without having to make an upfront investment. By agreement, the debt may be assigned to the tenants. Tenants would not need to qualify for the debt in the traditional way they would qualify for debt-based loans since they would only be responsible to repay the loan for the period that they are using energy at

the treated dwelling. The payment would be “sold” to the tenant as an energy services charge for benefits such as energy or water savings, or possibly intangible benefits like comfort or better housing stock. The benefits are not necessarily tied to the energy used to heat the home and, therefore, may not be offset by savings on the gas bill that lists the repayment obligation. In other words, a NW Natural bill containing an energy services charge would likely be higher than it otherwise would be absent the loan because the savings that the energy services charge procures are for a myriad of non-gas related things including water for landscaping, lighting, etc.

Neither the statute as adopted nor the recommended edits include language that would require the EEAST project manager or the energy services company to guarantee that the customer is not financially harmed by paying back the loan without receiving a commensurate fiscal benefit. The only way that NW Natural would want to be obligated to bill tenants to repay their landlord’s loans would be if the statute required the energy services company or the program manager – the parties responsible for selling the non-debt-based loan as a purchase of something else – to guarantee that tenants would be reimbursed if they were financially worse off for having to pay their landlord’s loan. While this may sound administratively burdensome, there is precedent for this with the electric time of use rates.³

NW Natural believes a mandated guarantee is essential if the utility is going to be obligated to provide on-the-bill repayment services to tenants for non-debt-based loans. Savings claims that are made to get a tenant to sign to accept responsibility for some portion of the loan should be verified. Without clear parameters, there is risk that marketing could be dishonest and customers who rent could be harmed.

It is also unclear how tenants can be obligated to pay for building upgrades without being strong armed into doing so. For instance, if a building is retrofitted, will all the existing tenants have to agree to the loan repayment charge? What if they choose not to? Also, utilities do not disconnect service for nonpayment of EEAST loans. MPower initially said it was considering evicting tenants who do not pay their monthly loan fee. It is unclear how the energy services company would require the landlord to evict for a tenant’s failure to pay NW Natural’s bill. MPower has not been able to adequately address these customer-sensitive issues. NW Natural does not want to be obligated by law to bill for a repayment of a loan where nonpayment results in an eviction.

As outlined above, the Company believes that the non-debt based loan is problematic to tenants. Granted, parties may say they do not want to charge tenants at this time because parties concerns have not been addressed, but the statute would allow it if the non-debt-based language defining loan is adopted. Further MPower’s recommended revisions would allow landlords to transfer the “loan” debt to low income customers. MPower has stated repeatedly in public forums that it intends to target low income multifamily dwellings. So, all the company’s concerns regarding tenants –concerns about

³ See Staff Public Meeting Memo dated July 1, 2002 for the July 9, 2002 Public Meeting.

eviction for nonpayment, etc-- must be considered as first being applied to low income customers. Targeting low income customers seems out of alignment with ORS 470.650 which says,

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. (Emphasis added.)

The statute clarifies that a low income customer may take out an EEAST loan but should do so knowing that “no fee” weatherization options may be available. The Company hopes this provision is not ignored because it would be unfortunate to lead low income customers into assuming debt unnecessarily. If parties reported on their compliance to this section of the statute, it would help utilities understand if low income customers are interested in taking loans for services when they have full knowledge of their no cost options. Such information should be used to identify any flaws that may need to be fixed with the traditional low income weatherization programs.

To NW Natural’s concerns regarding the recommendation to redefine loan as non-debt based financing, it is worth noting that non-debt based financing for energy efficiency can be done now without obligating utilities to bill for repayment.

C. Loan to track with the meter

Under Section 3 of Exhibit C, MPower suggests the following edits to section ORS 470.675(4):

(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 provided the utility has written evidence is reasonably satisfied that the entity making the loan financial partner has approved the assignment and the new customer properly assumed the obligation.

In its comments filed with the Commission in 2011 and attached as Exhibit A, NW Natural recommended that this section be deleted altogether. The Company stated that this language is not necessary. EEAST statutes obligate the utility to provide on-the-bill repayment services when its heating customers take out an EEAST loan. From a process standpoint, paperwork is signed demonstrating that the customer has accepted responsibility for the debt whether the loan is being reassigned to a new occupant or whether it is a new loan at a new location. In both instances, to the utility, a customer has taken out an EEAST loan and, therefore, the utility must provide on-the-bill repayment services.

The intent of this language was to obligate utilities to transfer loan repayment services from tenant to tenant. The Company was not opposed to the loans following the meter when they were debt based loans, but as discussed above, non-debt based loans open the door to potential harm to customers who rent their homes. NW Natural does not want to be obligated to participate in programs that are not well thought through and have not been tested, and that may leave customers worse off.

III. Extending the Pilot.

Parties have discussed extending the pilot period. NW Natural strongly opposes this proposal. As mentioned above, NW Natural has been fully engaged in the provision of services for EEAST loans since 2009. The Company identified the statutory changes that needed to be made in 2011. NW Natural is currently providing on-the-bill repayment services to approximately 1,200 customers. The Company is at a point where it would like to further automate its process and do the system work necessary to ensure that EEAST loans are consistently delivered long term, to a growing base of customers.

Parties have mentioned that EEAST is one tool in the tool box. That is correct. It is not the final solution to getting all dwellings weatherized. It is a good tool, but it would be a mistake to continue to try to shoehorn new and untested ideas in the legislation, to delay full compliance, and to continue to offer the program inconsistently.

The Company continues to believe the legislative changes it has brought forward are necessary. Assuming those are adopted, the Company would recommend full compliance to the statute upon adoption. The Company's recommendation regarding full compliance and the timing would likely be different if the legislation adopted differs from what the Company has filed in the pre-legislative session. (See Exhibits A and B).

IV. Closing

NW Natural appreciates the opportunity to comment in this proceeding. The Company has been fully engaged in the effort to make EEAST a good program. As noted, the Company believes EEAST currently is and has the potential of continuing to be one of many useful options that can be made available to energy customers. The Company hopes that EEAST will proceed in a manner where customers clearly know what they are paying for when they repay a loan and are truly receiving the benefits.

NW Natural – UM 1519 Comments

November 19, 2012

Page 9 of 9

NW Natural appreciates the opportunity to provide comments on EEAST legislation.

This filing has been sent to all parties who have intervened in this docket. A Certificate of Service is attached.

Please contact me at (503) 226-4122, extension 3590, if you have questions.

Thank you.

/s/ Jennifer Gross

Jennifer Gross

Tariff and Regulatory Compliance

cc: UM 1519 Service List

Juliet Johnson, OPUC

EXHIBIT A

Rates and Regulatory Affairs
Facsimile: 503.721.2516



February 1, 2011

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
550 Capitol Street, NE, Suite 215
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Salem, Oregon 97308-2148

Attn: Maury Galbraith

RE: UM 1519, Recommended EEAST Legislative Modifications

NW Natural has prepared the following comments in response to the Commission's decision, made on January 25, 2011, that an all-utility workshop be convened to review Chapter 470 of the ORS and provide recommended statutory modifications, as needed.

NW Natural outlined its concerns with ORS 470.050 through ORS 470.715 (EEAST legislation) in its comments submitted to the Public Utility Commission of Oregon on January 12, 2011. This document addresses only those concerns that NW Natural believes require statutory modification. Oregon Administrative rules may define processes or clarify ambiguity within statutory context, but rules cannot redefine or contradict that which is clearly elucidated in the statute. The Company believes statutory revisions are required to fix the definitions of sustainable energy territory and to remove the requirement that the utility reassign the responsibility to repay loans. An explanation of each suggested edit organized by statute section is provided below.

ORS 470.050

In section ORS 470.050, the definition for "sustainable energy territory" is removed and replaced with "utility service territory". The intent of this change is to simplify the boundaries wherein an energy efficiency and sustainable technology loan program is offered. Program boundaries should coincide with each utility's service territory. The need for this change is further explained below.

Section 470.530

Section 470.530 defines sustainable energy territories so that program boundaries do not overlap as gas and electric service territories do. Instead, predominance in the establishing of boundaries is given to

electric utilities, first to investor owned electric utilities and then to consumer owned electric utilities. As the statute is currently written, NW Natural could be required to work with Energy Trust, the public purpose fund administrator for PGE and PacifiCorp territories, as well as every consumer owned electric utility that wants to be the project manager of its own energy efficiency and sustainable technology loan program and with which NW Natural shares its service territory. NW Natural's service territory overlaps with twelve consumer owned electric utilities in Oregon (Coos Curry Electric Coop, Central Lincoln PUD, Blachy Lane Electric Coop, Emerald PUD, Lane County Electric Coop, Douglas Electric Coop, Consumers Power Inc., Salem Electric, West Oregon Electric Coop, Clatskanie PUD, Northern Wasco PUD, and Hood River Electric Coop). If even a fraction of these consumer owned utilities decide to manage their own loan programs, NW Natural would be subject to costly, burdensome and duplicative administration.

While ORS 470.530(3)(b)(B)(c) gives the ODOE director some authority to adjust boundaries, this authority only applies when the project manager of a sustainable energy territory is not the public purpose fund administrator or a consumer-owned utility. Therefore adjustment of sustainable energy territories cannot prevent natural gas companies from being forced to work with multiple program managers. Furthermore, the ability to adjust sustainable energy territory boundaries does not change the fact that there is only one program manager per sustainable energy territory. Regardless of how boundary lines are drawn, natural gas utilities will still be required to work with multiple program managers so long as the utility's service territory overlaps multiple sustainable energy territories.

NW Natural believes that the programs should be offered by utility service territory, in the same way that energy efficiency programs are. This would be simpler for customers to understand, and easier for the Company and for project managers to administer. If the Company were required to work with multiple project managers in the offering of the energy efficiency and sustainable technology loan program, it would incur expenses for building and maintaining multiple information system interfaces for each program managers' unique data information system and, consequently, unique data set. The costs would not be commensurate with the benefits received by a few customers.

In fact, the definition of sustainable energy territory structures the loan offering in a manner that would likely prevent all of NW Natural's customers from having the opportunity to receive EEAST loans. When a consumer owned utility that shares service territory with NW Natural chooses to be the project manager, it seems likely that the loans would be extended to customers in that area through the project manager's energy efficiency program, which would serve only electrically heated homes. For NW Natural, it would be better if all its customers were offered the opportunity to receive energy efficiency loans through the Company's energy efficiency program. Since the EEAST project manager is responsible for estimating potential energy savings and later verifying the savings without funding for this task, NW Natural would prefer that it works with one entity that is both its EEAST project manager and the delivery arm for the Company's energy efficiency programs.

NW Natural acknowledges that EEAST is useful in promoting energy efficiency to its customers, but the costs of the program need to be comparable to the benefits of the program. For best results, program design should be as simple as possible. Defining programs by utility service territory would reduce administrative complexity and costs. It would also reduce customer confusion by allowing all customers within a service territory to have access to the same offerings and promotional materials.

ORS 470.555

This section is revised in accordance with the changes explained above: The term sustainable energy territory is removed and replaced with the term utility service territory or a like concept where more appropriate.

ORS 470.675

Section 4 currently requires that the utility transfer the responsibility of repayment of the loan to the new account holder after the customer of record who took out the loan closes his utility account. This section needs to be removed because the utility holds no interest in the loan, is not a party to the loan contracts, and cannot lawfully reassign the repayment of this debt. NW Natural does not disagree with the intent of this rule but believes the responsibility of reassigning the debt needs to be with the party granting the loan to the customer.

NW Natural appreciates the opportunity to provide comments on EEAST legislation.

Please contact me at (503) 226-4122, extension 3590, if you have questions.

Thank you.

/s/ Jennifer Gross

Jennifer Gross

Tariff and Regulatory Compliance

DEFINITIONS

470.050 Definitions. 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) "Loan" includes the purchase or other acquisition of evidence of indebtedness and money used for the purchase or other acquisition of evidence of indebtedness.

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

(16) "Loan offset grant" means moneys from the Loan Offset Grant Fund that are used to help offset the initial project costs or loan payments for energy efficiency, renewable energy and energy conservation projects.

(17) "Loan Offset Grant Fund" means the fund established under ORS 470.575.

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

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

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

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

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

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

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

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

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

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

(25) "Small business" means:

(a) An Oregon business that is:

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

or

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

(b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity for which the total number of employees for both the

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

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

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

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

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

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

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

(c) A recycling project;

(d) An alternative fuel project;

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

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

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

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

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

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

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

(31) "Utility service territory" means the allocated territory as defined in ORS 758.015(1) in which utility a utility subject to ORS 470 provides utility service as defined in ORS 758.015(3).

~~[1979 c.672 §1; 1981 c.50 §1; 1983 c.188 §1; 1985 c.593 §2; 1993 c.496 §4; 1995 c.551 §8; 1997 c.29 §1; 1999 c.365 §7; 2003 c.186 §55; 2005 c.201 §3; 2009 c.753 §54; 2009 c.760 §1]~~

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

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ENERGY EFFICIENCY AND SUSTAINABLE TECHNOLOGY LOAN PROGRAM

(Loan Program Administration)

470.500 Goals. (1) The Director of the State Department of Energy shall administer the energy efficiency and sustainable technology loan program for the purpose of providing financing, promotion and technical support to encourage significant investments in energy efficiency, renewable energy and energy conservation.

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

- (a) Provide capital at the lowest possible cost for the purpose of supporting energy efficiency and conservation and renewable energy projects for residential and commercial structures;
- (b) Expand, and to simplify taking advantage of, opportunities for small scale local energy project financing;
- (c) Leverage multiple sources of public and private capital through a unified and strategic funding mechanism;
- (d) Provide technical and financing information to the public and to businesses;
- (e) Foster energy savings;
- (f) Stimulate job growth; and
- (g) Help substantially reduce carbon emissions. [2009 c.753 §2]

470.505 Delay or suspension of program. 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 territories or may delay or suspend any feature of the energy efficiency and sustainable technology loan program. [2009 c.753 §2a]

470.510 State Department of Energy may enter contracts for loan issuance; financing of loans; consent of utility. (1) Except as provided in subsection (3) of this section, the State Department of Energy may enter into contracts for the issuance of energy efficiency and sustainable technology loans. Except as provided in ORS 470.700, the department shall finance the loans using moneys from the Small Scale Local Energy Project Loan Fund, the Energy Project Supplemental Fund or the Energy Project Bond Loan Fund, or from a combination of those funds.

(2) 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.

(3) The department must obtain the consent of the utility before operating an energy efficiency and sustainable technology loan program within the service territory of:

(a) An investor-owned electric utility that serves fewer than 20,000 customers; or

(b) An investor-owned gas utility that is actively administering an energy conservation program established:

(A) On or before January 1, 2009; and

(B) Without assistance from a nongovernmental entity that receives public purpose charge moneys under ORS 757.612. [2009 c.753 §3]

470.515 Rules. The Public Utility Commission may adopt rules for carrying out the duties, functions and powers of the commission and the Public Purpose Fund Administrator under ORS 470.500 to 470.710. [2009 c.753 §4]

470.520 State Department of Energy may contract for performance of duties. The State Department of Energy may contract for persons to perform the duties of the department under ORS 470.500 to 470.710 including, but not limited to, the development of standardized base efficiency packages and standardized optional packages, energy efficiency and sustainable technology loan evaluation, processing and collection. A loan processed by a person contracting with the department, other than a loan processed by a sustainable energy project manager, must include the department as a party to the loan. [2009 c.753 §5]

470.525 Quarterly report. (1) The State Department of Energy shall send a quarterly report to the Small Scale Local Energy Project Advisory Committee. The report shall include, but need not be limited to, a summary of:

(a) The total amount of energy efficiency and sustainable technology loans issued;

(b) The types of projects being funded by the loans; and

(c) The characteristics of loan recipients.

(2) The committee shall review the report to determine whether the goals of the loan program are being implemented and whether applicable rules and statutory standards are met. The committee may send comments regarding the report to the Director of the State Department of Energy. [2009 c.753 §6]

(Project Managers)

470.530 Qualifications; duties; certification program; program boundaries. (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 project manager shall provide the promotion, technical and financial support and verifications necessary to administer the energy efficiency and sustainable technology loan program in the territory served by the project manager.

(2) The project manager shall serve the investor owned gas utilities' or the consumer owned utilities' service territory as assigned by the director. The project manager shall provide loan

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program information and technical and financial information to promote energy efficiency and use of renewable energy at the neighborhood and community levels. The 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 project manager may administer the energy efficiency and sustainable technology loan program within the territory.

(3) ~~The boundaries for each energy efficiency and sustainable technology loan program offering will be consistent with the utility service territory of the investor-owned or consumer-owned utility that is providing electricity or natural gas services.~~

(4) A local government, nonprofit, for-profit, tribal or state entity may be a 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 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 project manager in any utility service territory that is not served by another 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 project manager. [2009 c.753 §7]

470.535 Applications for certification as project manager; selection factors. (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 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 territory; and

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

(3) After reviewing all applications received, the director may select a project manager. In selecting the 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.

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Deleted: (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.¶

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

(4) An applicant may not be certified as a 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. [2009 c.753 §8]

470.540 State Department of Energy to notify unsuccessful applicants; time- table for certification of project manager. (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 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 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 project manager. However, the director may at any time select a different applicant as the proposed project manager or may reinstate the certification process.

(3) Upon deciding to certify the proposed 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 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. [2009 c.753 §9]

470.545 Appeal of certification decision; fee. (1) A person that believes a decision of the Director of the State Department of Energy to certify a sustainable energy project manager is inconsistent with applicable rules or statutes may file a request to appeal with the Small Scale Local Energy Project Advisory Committee. Unless the request for appeal is filed by a nonprofit entity, the request must be accompanied by a \$2,000 appeal fee. The fee shall be waived for a nonprofit entity. The committee may initiate a review on its own motion.

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

(3) The decision of the Governor is final. If the Governor does not act within 30 days after receiving the appeal from the presiding officer of the committee, the appeal is denied. [2009 c.753 §10]

470.550 Term of certification of project manager; certification approval letter; conditions for termination of certification. (1) Unless the sustainable energy project manager is the Public Purpose Fund Administrator or a consumer-owned utility, the certification of a

project manager shall be for a five-year term. The Director of the State Department of Energy shall issue the project manager a certification approval letter that states any conditions applicable to the certification.

(2) The director may terminate the certification of a 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 project manager criteria established by the director; or
- (d) Failure to perform other certification conditions. [2009 c.753 §11]

470.555 Project managers; contract with qualified third parties; coordination. (1) ~~The Public Purpose Fund Administrator shall be the sustainable energy project manager for 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) ~~If the local gas utility is an investor-owned utility, the utility may act as the project manager for the territory or may contract with the Public Purpose Fund Administrator to act as project manager on behalf of the utility.~~

(3) ~~The consumer-owned utility shall be the project manager for its own service territory if the utility agrees to promote energy efficiency and sustainable technology loans as part of any energy efficiency or renewable energy program offered by the utility. A consumer-owned utility may conduct energy efficiency and renewable energy programs within the territory of the utility regardless of whether the 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 gas utility and a consumer-owned 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 ~~utility service territory~~ does not prevent a consumer-owned utility from conducting any energy efficiency or renewable energy program offered by the utility. If the consumer-owned utility declines to become the project manager for the 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 project manager as described in ORS 470.535 and 470.540.

(6) Subject to approval by the director, a project manager may contract with a qualified third party to assist the 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. If the third party is acting as a financier, the third party is not required to comply with laws regulating utilities based

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on the actions of the third party as a financier. The 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 utilities to engage and inform utility customers about the energy efficiency and sustainable technology loan program. The Public Purpose Fund Administrator and 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 project managers shall coordinate with a gas utility regarding the installation of appliances used for space heating, water heating and compressed natural gas refueling. [2009 c.753 §12]

(Contractors)

470.560 Rules; certification standards; provision for preferred service providers. (1)

The State Department of Energy shall adopt rules establishing certification standards for 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 contractor holding the certification 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 contractor:

(a) Prove that the contractor has 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.

(4) The Construction Contractors Board may issue a qualifying contractor a certification authorizing the contractor to participate in the construction of small scale local energy projects

financed through the energy efficiency and sustainable technology loan program. A contractor seeking certification shall apply to the board as provided under ORS 701.119.

(5) The State Department of Energy shall identify certified contractors that provide employees with health insurance benefits as preferred service providers and may take other actions as practicable to encourage certified contractors to provide employees with health insurance benefits. [2009 c.753 §13]

Note: Section 48, chapter 753, Oregon Laws 2009, provides:

Sec. 48. The State Department of Energy shall adopt rules establishing contractor certification standards required under section 13 of this 2009 Act [470.560] no later than December 1, 2010. The Construction Contractors Board shall implement a certification system for contractors under section 51 of this 2009 Act [701.119] no later than January 1, 2011. [2009 c.753 §48]

470.565 Loan applicant request for energy savings projection; processing of loan applications. (1) At the request of a loan applicant, a 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 utility service territory that does not have a sustainable energy project manager.

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

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

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(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. [2009 c.753 §14]

Note: 470.565 becomes operative January 1, 2011. See section 53, chapter 753, Oregon Laws 2009.

(Funds)

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

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

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

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

(c) The Energy Project Bond Loan Fund.

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

(e) The Energy Revenue Bond Repayment Fund.

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

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

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

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

(4) The State Treasurer may establish any subaccounts in the Energy Project Supplemental Fund that the treasurer or the director considers reasonable for the efficient administration of the fund. [2009 c.753 §15]

470.575 Loan Offset Grant Fund; sources; uses. (1) The Loan Offset Grant Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Loan Offset Grant Fund shall be credited to the Loan Offset Grant Fund. Moneys in the fund are continuously appropriated to the State Department of Energy for use as provided in this section.

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

(3) The department shall use fund moneys:

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

(b) To transfer to an appropriate fund for carrying out any purpose under this chapter specified as a condition of a gift, grant or donation. [2009 c.753 §16]

470.580 Energy Project Bond Loan Fund; sources; uses. (1) The Energy Project Bond Loan Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Energy Project Bond Loan Fund shall be credited to the fund.

(2) The fund shall consist of:

(a) Net proceeds from the issuance of revenue bonds under ORS 470.610 that are deposited to the fund;

(b) Moneys from project initiation fees under ORS 470.655;

(c) Repayments of any moneys loaned from the fund and interest earned on those moneys;

- (d) Any moneys appropriated to the fund;
 - (e) Moneys from the sale of refunding bonds under ORS 470.610 and any accrued interest on those bonds; and
 - (f) Interest earned on cash balances invested under ORS 470.595.
- (3) Moneys in the fund are continuously appropriated to the State Department of Energy for the following purposes:
- (a) Subject to ORS 470.620, to issue and administer small scale local energy program loans and energy efficiency and sustainable technology loans and to administer the loan programs.
 - (b) For transfer to the Energy Revenue Bond Repayment Fund for the payment of bond obligations, the costs of issuing bonds described in subsection (2) of this section and the costs of administering the revenue bond program and for the funding of bond payment reserves. Transfers under this paragraph shall be carried out as determined by the Director of the State Department of Energy under ORS 470.610 (2).
 - (4) The State Treasurer may establish any subaccounts in the Energy Project Bond Loan Fund that the treasurer or the director considers reasonable for the efficient administration of the fund. [2009 c.753 §17]

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

- (a) Administrative expenses of the State Department of Energy and the Director of the State Department of Energy for energy efficiency and sustainable technology loans and small scale local energy program loans made from the proceeds of energy project revenue bonds, to the extent those expenses are not paid from the Energy Project Bond Loan Fund, the Energy Project Supplemental Fund or the Loan Offset Grant Fund;
 - (b) Administrative expenses incurred by the State Treasurer under this chapter;
 - (c) Principal, interest and any redemption premiums of energy project revenue bonds;
 - (d) Net investment earnings on moneys loaned to municipal corporations from energy project revenue bonds under ORS 470.610 but withheld as provided in ORS 470.230; and
 - (e) Costs of issuing revenue bonds and obtaining credit enhancement for those revenue bonds.
- (2) The Energy Revenue Bond Repayment Fund shall consist of moneys transferred to the fund from the Energy Project Bond Loan Fund and Energy Project Supplemental Fund by the State Treasurer as provided in ORS 470.610 (2). [2009 c.753 §18]

(Financial Managers)

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

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

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

(3) To provide a platform for the blending of private and public capital from various sources including, but not limited to, small scale local energy project financing, moneys from the Energy Project Bond Loan Fund, the Loan Offset Grant Fund and the Energy Project Supplemental Fund, private activity bonds and grant moneys. [2009 c.753 §19]

470.595 Investment with financial manager; rate of return. Private utilities and other private entities may invest capital with an energy efficiency and sustainable technology loan program financial manager for use in carrying out the loan program. The Public Utility Commission may establish a reasonable rate of return that a financial manager may pay to a utility investing capital under this section. In establishing the rate of return, the commission shall consider the risk to the utility in providing the investment capital. [2009 c.753 §20]

(Supplemental Capital Funds)

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

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

(2) The supplemental capital funds are made subject to any requirements adopted by the director by rule to ensure adequate protection of project moneys. [2009 c.753 §21]

(Local Governments)

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

(2) Any moneys deposited under this section shall be separately accounted for and shall be managed consistently with small scale local energy project goals and any agreement between the State Department of Energy and the entity providing the moneys. The moneys may be disbursed only for use as designated by, and in the geographic area designated by, the entity providing the moneys. [2009 c.753 §25]

(Bonds)

470.610 Issuance of bonds; written declaration of State Department of Energy. (1) The State Treasurer, at the request of the Director of the State Department of Energy, from time to time may issue and sell revenue bonds in the name of and on behalf of the State of Oregon in compliance with the applicable provisions of ORS chapter 286A in the principal amount the director considers necessary to carry out the purposes of ORS 470.500 to 470.710, or for paying or refunding any revenue bonds previously issued on behalf of the State Department of Energy for those purposes.

(2) All bonds shall be special revenue obligations of the State of Oregon, and, unless paid from the proceeds of other bonds, shall be payable as to principal, redemption premium, if any, and interest, through the Energy Revenue Bond Repayment Fund solely from the revenues, moneys and other assets of the Energy Project Bond Loan Fund and the Energy Project Supplemental Fund that may be pledged for that payment. The Director of the State Department of Energy shall determine for each fiscal quarter the amount that will fall due during that fiscal quarter for bonds issued under this section, other amounts described in ORS 470.585 and any expected significant changes in bond obligations for upcoming fiscal quarters and the amount necessary to adequately fund reserves. The director shall request that the State Treasurer make transfers from the Energy Project Bond Loan Fund and Energy Project Supplemental Fund to the Energy Revenue Bond Repayment Fund as the director believes prudent to ensure the continuing payment of maturing obligations and the funding of reserves.

(3) Prior to an issuance of revenue bonds under this section, the director shall prepare and sign a written declaration setting forth the amount of the bonds to be issued and the terms and conditions for issuance. If the State Treasurer approves the declaration, the State Treasurer shall certify the approval on the declaration. The approved declaration shall be known as an "energy revenue bond declaration." Each bond declaration shall be deemed to be and shall constitute conclusive proof of the authorization to issue the bonds described in the bond declaration and may contain further pledges and covenants as determined by the director or the State Treasurer. [2009 c.753 §22]

470.615 Payment of bonds. (1) Revenue bonds issued under ORS 470.610 do not constitute a debt, liability or general obligation of this state or any political subdivision of this state or a pledge of the faith and credit of this state or any political subdivision of this state, but shall be payable solely from the revenues, moneys and other assets of the Energy Project Bond Loan Fund and the Energy Project Supplemental Fund that are pledged to the repayment in the energy revenue bond declaration.

(2) Each revenue bond issued under ORS 470.610 shall contain on the face of the bond a statement that the department is not obligated to pay the bond or the interest on the bond except from the revenues or assets pledged for those payments and that neither the faith and credit nor the taxing power of this state or any political subdivision of this state is pledged to the payment of the principal of or the interest on the bond.

(3) A utility or sustainable energy project manager is not liable for the payment of the principal of or the interest on any bond issued under this section. [2009 c.753 §23]

470.620 Bond pledges; trustees. The bonds issued by the State Treasurer under ORS 470.610 and the energy revenue bond declaration may:

(1) Pledge all or any part of the fees received by the State Department of Energy under ORS 470.655 and all or any part of the moneys received in payment of energy efficiency and sustainable technology loans and small scale local energy program loans that are funded with revenue from bonds issued under ORS 470.610, interest on those amounts and other moneys credited to the Energy Project Bond Loan Fund.

(2) Pledge any moneys, loans or grants received from the federal government, this state or any city, county or political subdivision of this state for payment of revenue bonds issued under ORS 470.610.

(3) Vest in a trustee appointed by the Director of the State Department of Energy and approved by the State Treasurer such property, rights, powers and duties in trust as the director may determine. [2009 c.753 §24]

(Program Loans)

470.630 Form of disbursement; conditions for issuance. (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 project manager only for the purpose of enabling the project manager to issue energy efficiency and sustainable technology loans and small scale local energy program loans to applicants in the utility service territory served by the project manager.

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(2) The 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 project manager to an applicant located in the utility service territory served by the 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 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 project as provided in ORS 470.680 or 470.685. [2009 c.753 §26]

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470.635 Requirement for energy savings projection; form of projection; use of certified contractors. (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 contractor designated by the 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 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 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, initialed by the prospective loan applicant.

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

(6) Prior to the disbursement of the loan moneys to the contractor, a 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 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. [2009 c.753 §27]

470.640 Amount of loans. (1) Except as provided in subsection (2) of this section, the amount of an energy efficiency and sustainable technology loan may not exceed \$40,000.

(2) The loan amount limit described in subsection (1) of this section shall increase annually on January 1 of each year, beginning January 1, 2011. The loan amount limit shall increase from the most recently established loan amount limit by a percentage equal to the percentage increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as reported by the Bureau of Labor Statistics of the United States Department of Labor. [2009 c.753 §28]

470.645 Application for loan; contents. An application for an energy efficiency and sustainable technology loan must contain:

(1) Information sufficient to identify real or personal property located within this state against which a fixture filing and lien may be filed under ORS 470.680 or 470.685 to secure the loan and sufficient to allow verification that the property owner is the applicant or has consented to the fixture filing and lien;

(2) A clear and conspicuous disclosure:

(a) That a lien or other form of security for the energy efficiency and sustainable technology loan need not be paid in full upon a sale of the property, but all amounts due under the repayment plan as of the sale date must be paid before the sale closes; and

(b) That some lenders may be unwilling to make a mortgage on a property that is subject to a lien or other form of security for the energy efficiency and sustainable technology loan;

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

(4) The State Department of Energy must be satisfied that all conditions required under ORS 470.090 to support the loan have been satisfied. [2009 c.753 §29]

470.650 Residential small scale local energy projects; weatherization program. (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 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. [2009 c.753 §30]

(Fees)

470.655 Project initiation fee; rules. Except as provided in ORS 470.650, an applicant for an energy efficiency and sustainable technology loan approved by the State Department of Energy shall pay the department a project initiation fee. Upon request of the loan applicant, the department may add all or part of a project initiation fee to the principal of an issued loan. The department may establish the fee amount by rule, not to exceed four percent of the approved loan amount. If the department does not establish the fee amount, the fee shall be two percent of the approved loan amount. [2009 c.753 §31]

(On-Bill Financing)

470.660 Investor-owned utilities; requirements of system; rules; waiver. (1) If an investor-owned utility has established an on-bill financing system, an energy efficiency and

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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. [2009 c.753 §32]

470.665 Consumer-owned utilities; requirements of system; rules; waiver. (1) If a consumer-owned utility 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

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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. [2009 c.753 §33]

470.670 Repayment requirement for customer served by electric utility and gas utility.

If a customer is served by both an electric utility and a gas utility that both have an on-bill financing system, a loan repaid through on-bill financing shall be repaid through the on-bill financing system of the utility that supplies the customer's primary source of heat for the property. [2009 c.753 §34]

470.675 Cost eligibility for ratemaking purposes and loan repayment charges: (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.

[2009 c.753 §35]

(Repayment and Liens)

470.680 State Department of Energy to identify forms of acceptable security. (1) Subject to ORS 470.170, the State Department of Energy may identify forms of acceptable security for energy efficiency and sustainable technology loans that the department determines will achieve the goals and requirements of the energy efficiency and sustainable technology loan program and that provide adequate security for repayment of the loans.

(2) For loans from the Small Scale Local Energy Project Loan Fund, the department may record a fixture filing as defined in ORS 79.0102 covering those building materials to be attached to the real property pursuant to an energy efficiency and sustainable technology loan that remain easily detachable from the property and are not essential to a structure or the use of a structure. The department shall record a lien on the real property benefited by the loan for those indebtedness amounts that are not secured by a fixture filing. The department may record a filing or lien under this section only on a property for which the property owner has agreed to the installation of a base efficiency package or optional package benefiting the property.

(3) An energy efficiency and sustainable technology loan must provide for repayment through an on-bill financing system unless the department finds that an alternative method for repaying the loan would provide suitable security for the loan and the department and the borrower specify the alternative repayment method in the loan agreement. [2009 c.753 §36]

Deleted: ;

Deleted: change in property ownership benefited by loan

Deleted: (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.

470.685 Recording liens; foreclosure of liens; attorney fees and costs. (1) The State Department of Energy or a sustainable energy project manager may act on behalf of the Director of the State Department of Energy for the purpose of recording a lien in favor of the director as required by ORS 470.170 (3) against property benefited by an energy efficiency and sustainable technology loan.

(2) A lien described in this section attaches to the property and is perfected upon recording in the county deed records.

(3) In an action to foreclose a lien created under this section, the court shall include in the lien amount all costs for filing and recording the lien. The court shall award a prevailing party in the foreclosure action reasonable attorney fees and costs. [2009 c.753 §37]

470.690 Avoidance of foreclosure. A person that acquired an interest in a property in good faith and for a valuable consideration before the date a lien described in ORS 470.680 or 470.685 attached to the property under ORS 470.170 may avoid foreclosure of the lien by paying any delinquencies and collection costs associated with the underlying loan repayment charge and assuming normal payments in compliance with the energy efficiency and sustainable technology loan agreement repayment provisions. [2009 c.753 §38]

470.695 Sale of real property; notice of loan repayment charge required. A person entering into an agreement to sell, rent, lease or otherwise confer a right in the person's real property that is benefited by an energy efficiency and sustainable technology loan for which a loan repayment charge or other repayment obligation applies or for which a fixture filing, lien or other form of security exists shall, prior to any party signing the agreement, give notice of the loan repayment charge, repayment obligation, filing, lien or other security affecting the property to the other parties to the agreement. [2009 c.753 §39]

(Loan Offset Grants)

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

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

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

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

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

(2) If a small scale local energy program loan applicant is a person with an income limited as described in ORS 470.650 (2), the department may use loan offset grant moneys for an optional

package or to offset reasonable costs associated with structural improvements that are not included in the base efficiency package, but that are necessary to the proper installation of the base efficiency package.

(3) The Director of the State Department of Energy may investigate and test the feasibility of using mechanisms other than the disbursing of Loan Offset Grant Fund moneys for accomplishing the purposes described in subsection (1) of this section. [2009 c.753 §40]

(Miscellaneous)

470.710 Apprenticeship and job training. (1) The State Department of Energy shall collaborate with the State Workforce Investment Board and other interested parties to identify opportunities for apprenticeship and for job training and development that would further the goals of ORS 470.500 to 470.710 and provide valuable skills to Oregon workers.

(2) In adopting any rules for carrying out apprenticeship and job training and development under the energy efficiency and sustainable technology loan program, the department and the board shall consult with representatives from:

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

(3) In addition to consulting with entities described in subsection (2) of this section, in adopting any rules for carrying out apprenticeship and job training and development under the energy efficiency and sustainable technology loan program, the department and the board may seek input from organizations representing construction contractors. [2009 c.753 §41]

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

(1) May be paid from the Loan Offset Grant Fund or Energy Project Bond Loan Fund; or

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

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

(b) The transfer will not create the need for issuance of any bonds. [2009 c.753 §47]

Note: 470.715 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 470 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Temporary provisions relating to pilot programs, on-bill financing and delay of energy efficiency and sustainable technology loan program)

Note: Sections 42 to 46a and 49, chapter 753, Oregon Laws 2009, provide:

Sec. 42. (1) The Director of the State Department of Energy shall initiate the energy efficiency and sustainable technology loan program described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] in phases through a series of pilot programs, limiting the geographic availability and other features of the program as the director considers necessary to facilitate an orderly and successful implementation of the program. The director shall initiate the program as quickly as the director considers practicable to achieve the benefits of the program while ensuring high participant satisfaction and program integrity.

(2) The director shall endeavor to establish pilot programs initially in sustainable energy territories that reflect a variety of population densities. The director may give preference to territories that request to participate in the pilot program. [2009 c.753 §42]

Sec. 43. (1) The Public Purpose Fund Administrator shall initiate pilot programs in investor-owned utility service territories to demonstrate the feasibility of innovative approaches to financing and installing energy efficiency and sustainable technology measures as described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] in residences and commercial buildings in urban and rural communities. The pilot programs shall test:

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

(b) The costs and benefits of taking alternative approaches to energy audits, including but not limited to, the identification of measures 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 efficiency packages;

(c) Ways to assist program participants in understanding and accessing small scale local energy project funding and making informed decisions in selecting appropriate energy efficiency and renewable energy projects;

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

(e) The effectiveness of on-billing financing as a means of loan repayment and the effectiveness of fixture filings, liens or other forms of security for loans;

(f) The feasibility and effectiveness of coordinated installations of residential and commercial structure energy packages overseen by a single project manager;

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

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

(i) The administrative costs and participation rates associated with various forms of loan security; and

(j) Other strategies and measures identified by the State Department of Energy or the Public Utility Commission.

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

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

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

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

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

(3) The commission shall review the report and:

(a) Order full implementation of the successful energy efficiency and sustainable technology loan program measures and strategies in investor-owned utility service territories; or

(b) Order the partial implementation of energy efficiency and sustainable technology loan program measures and strategies and make recommendations to the Legislative Assembly for appropriate statutory modification of the program.

(4) When carrying out pilot programs under this section, the Public Purpose Fund Administrator and sustainable energy project managers shall cooperate and coordinate their efforts with the efforts of local utilities and encourage utilities to promote energy efficiency and renewable energy and to engage in outreach and promotional efforts to inform customers of the utility about the energy efficiency and sustainable technology loan program. The Public Purpose Fund Administrator and 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 project managers shall coordinate with a gas utility regarding the installation of appliances used for space heating, water heating and compressed natural gas refueling. [2009 c.753 §43]

Sec. 44. (1) The Director of the State Department of Energy shall consult with consumer-owned utilities and other interested parties to develop a pilot program for energy efficiency and sustainable technology as described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] for use in the consumer-owned utility service territories. The director shall solicit one or more consumer-owned utilities to act as sustainable energy project managers for the pilot program. The director shall solicit utilities to act as project managers for the developed pilot program no later than 180 days after the effective date of this 2009 Act [July 22, 2009].

(2) The pilot program shall test:

(a) The effectiveness of direct contact, door-to-door, media outlet and other community-focused outreach and solicitation strategies designed to provide potential energy efficiency and sustainable technology loan program participants with information about energy efficiency and

renewable energy opportunities under the program and under similar local, state and federal incentive programs;

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

(c) Ways to assist program participants in understanding and accessing small scale local energy project funding and making informed decisions in selecting appropriate energy efficiency and renewable energy projects;

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

(e) The effectiveness of on-billing financing as a means of loan repayment and the effectiveness of fixture filings, liens or other forms of security for loans;

(f) The feasibility and effectiveness of coordinated installations of residential and commercial structure energy packages overseen by a single project manager;

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

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

(i) The administrative costs and participation rates associated with various forms of loan security; and

(j) Other strategies and measures identified by the director.

(3) The sustainable energy project managers in the consumer-owned utility service areas shall report to the director no later than October 1, 2010. The report shall evaluate the effectiveness of the pilot program and shall include an evaluation of the extent to which various program strategies and measures:

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

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

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

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

(4) When carrying out pilot programs under this section, the director and the sustainable energy project managers shall cooperate and coordinate their efforts with the efforts of local utilities and encourage utilities to promote energy efficiency and renewable energy and to engage in outreach and promotional efforts to inform customers of the utility about the energy efficiency and sustainable technology loan program. [2009 c.753 §44]

Sec. 45. A contractor may construct small scale local energy projects financed under a pilot program described in sections 42 to 44 of this 2009 Act without being certified under section 51 of this 2009 Act [701.119] if:

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

(2) The Public Purpose Fund Administrator or the sustainable energy project manager has approved allowing the contractor to implement projects financed under the energy efficiency and sustainable technology loan program; and

(3) The contractor pays 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 or, if the project is for a commercial structure or is subject to prevailing wage laws, the prevailing wage for each trade or occupation employed. As used in this subsection, "commercial structure" means a structure other than a residential structure as defined in ORS 701.005. [2009 c.753 §45]

Sec. 46a. Notwithstanding any other provision of sections 42 to 48, 51 [701.119] and 52 [701.108] of this 2009 Act, 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 pilot program areas or may delay or suspend any feature of the energy efficiency and sustainable technology loan program. [2009 c.753 §46a]

Sec. 49. Sections 42, 43, 44, 45, 46, 46a and 47a of this 2009 Act are repealed January 2, 2016. [2009 c.753 §49]

Deleted: Sec. 46. 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. [2009 c.753 §46]¶

EXHIBIT B

**Oregon Department of Energy
Proposed Changes to EEAST Legislation**

DEFINITIONS

470.050 Definitions

- (23) “Prime Contractor” means the principal contractor who
- (a) has a direct contract with the owner of the property,
 - (b) has the full responsibility for its completion,
 - (c) undertakes to perform a complete contract, and
 - (d) may employ (and manage) one or more subcontractors to carry out specific parts of the contract.

470.560 Rules; certification standards; provision for preferred service providers. (1) The State Department of Energy shall adopt rules establishing certification standards for prime 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 prime contractor holding the certification, and all sub-contractors engaged by the prime contractor, 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 prime contractor:

(a) Prove that the prime contractor has sufficient skill to ensure that the prime contractor, and all sub-contractors engaged by the prime 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.

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

(5) The State Department of Energy shall identify certified contractors that provide employees with health insurance benefits as preferred service providers and may take other actions as practicable to encourage certified contractors to provide employees with health insurance benefits. [2009 c.753 §13]

EXHIBIT C

October 29, 2012

To: EEAST Workgroup
From: Faith Graham, MPower Oregon LLC, Managing Director
Re: Update: Suggested Changes to EEAST

MEMO

In early September, MPower submitted five suggested technical fixes to EEAST through legislative counsel. On September 26, 2012, this group briefly considered the merits of those proposals in context of a larger discussion on the scope and appropriateness of EEAST pilots in general. Two of the 5 suggestions – (i) limitation of the EEAST CCB license to prime contractors, and (ii) exception to the 180% wage floor to account for apprenticeship programs already contemplated by EEAST -- did not raise immediate concern for this workgroup. The 3 suggestions warranting additional consideration are set forth below. I have included the original proposal as well as certain highlighted changes intended to be responsive to initial comments. We welcome additional comments and look forward to the opportunity to discuss further.

1. Additional Affordable Housing Pilot.

Issue: Volatile and rising utility costs pose a threat to the economic stability of low income Oregonians. Utility costs have, and are projected to increase at a much faster pace than area median income. With these trends, expenses will eventually outstrip the ability of affordable housing owners and low-income customers to pay their utility bills. By reducing and stabilizing energy costs for low-income customers, utilities and ratepayers benefit from reduced shut-offs and a decrease in partial or non-payments (bad debt).

Government subsidy and utility funding together has not met demand for energy efficiency measures for the affordable housing sector. Government subsidies are projected to decrease significantly from 2010 – 2012 levels in the next decade, so it is essential to incorporate private capital sources and alternative financing mechanisms as options for the affordable housing industry to install efficiency measures. Solutions for reaching the affordable housing sector have not yet been tested in the pilot period authorized by Sections 42 to 46 and 49, chapter 753, Oregon Laws 2009.

Solution: A limited expansion of Sections 42 to 46 and 49, chapter 753, Oregon Laws 2009 to specifically address affordable housing is necessary. I propose a new two year pilot period limited to one single family and one multifamily affordable housing demonstration pilot.

Suggested language:

Sec. 43. (1) The Public Purpose Fund Administrator shall initiate pilot programs in investor-owned utility service territories to demonstrate the feasibility of innovative approaches to financing and installing energy efficiency and sustainable technology measures as described in sections 2 to 41 of this 2009 Act [470.500 to 470.710] in residences, [including low to moderate income multifamily and single family housing](#), and commercial buildings in urban and rural communities.

(2) The Public Purpose Fund Administrator shall report to the commission no later than October 1, 2014. The administrator shall provide a copy of the report to the State Department of Energy. The report shall evaluate the effectiveness of the pilot programs,...

2. Expansion of Loan to include non-debt based financing.

Issue: The overarching purpose of EEAST is to provide financing, promotion and technical support to encourage significant investments in energy efficiency, renewable energy and energy conservation, including a goal to leverage multiple sources of public and private capital through a unified funding platform. Whether the capital contributed to an EEAST project is by means of a traditional loan or an energy services contract is immaterial to the purpose of EEAST. References to “loan” throughout the statute could limit the ability to use an energy services model to deploy low-cost public and private capital into energy conservation.

Solution: ORS 470.050 to 470.715 should apply to financing even where capital to install energy efficiency measures is not contributed as debt but instead as part of an energy services agreement and recaptured through an energy services charge. See attached proposed language.

Suggested Language:

AMENDMENT: For purposes of the energy efficiency and sustainable technology loan program under ORS 470.500 to 470.710, the term “Loan” includes payments and financing, including non-debt based financing delivered through an energy services agreement [for the benefit of individual utility customers](#). [For purposes of ORS 470.500 to 470.710, “energy services agreement” means an agreement between a program participant and an energy efficiency service company pursuant to which the energy service company agrees to invest in capital improvements and provide long term support services in exchange for a regularly assessed payment.](#)

3. Flexibility in ‘run with the meter’ provision.

Issue: ORS 470.675 currently mandates that the utility transfer the responsibility of repayment of the EEAST financing to the new account holder after the original customer closes his utility account. Where a utility is not the funder and does not have a borrower/lender relationship with the customer, it has no authority to transfer the EEAST tariff charge to the next customer absent a proper assignment and assumption accepted by the original customer, the new customer, and the financing entity. Additional flexibility is needed.

Solution: ORS 470.675 should be modified to provide that the utility will transfer the EEAST tariff charge to the next customer so long as it is reasonably satisfied that the financial partner has approved the assignment and the new customer properly assumed the obligation. A determination of what constitutes reasonable evidence of authority may be influenced by national best practices. See attached proposed language.

Suggested language:

(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 provided the utility [has written evidence is reasonably satisfied](#) that the [entity making the loan financial partner](#) has approved the assignment and the new customer properly assumed the obligation.



CERTIFICATE OF SERVICE

I hereby certify that I have this day served by electronic mail to each party listed below the attached NW Natural Comments on EEAST Legislation:

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Respectfully submitted,

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