LAWS RELATING TO THE

PUBLIC UTILITY COMMISSION

OF

OREGON

2024

Oregon
Public Utility
Commission

2023

OREGON REVISED STATUTES

Including

Acts of the 2023 regular session of the Eighty-second Legislative Assembly

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ATTENTION

Purchaser, Volume 5, 2023 Oregon Revised Statutes

ERRATUM

On page 500 of volume 5 of the 2023 Edition of the Oregon Revised Statutes, "personnel" was inadvertently included in the text of ORS 192.355 (3). See section 1, chapter 50, Oregon Laws 2023. Please cross out "personnel" as shown.

192.355 Public records exempt from disclosure. The following public records are exempt from disclosure under ORS 192.311 to 192.478:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2)(a) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) Images of a dead body, or parts of a dead body, that are part of a law enforcement agency investigation, if public disclosure would create an unreasonable invasion of privacy of the family of the deceased person, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Upon compliance with ORS 192.363, public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in ~~personnel~~ records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

Our office strives for complete accuracy in our publications and sincerely regrets any inconvenience caused by this error.

IMPORTANT

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Chapter 182

2023 EDITION

State Administrative Agencies

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STATE ADMINISTRATIVE AGENCIES GENERALLY

182.010 Nonattendance of member of board or commission at meetings as forfeiting office; appointment of successor. Any member of a state board or commission appointed by the Governor who fails to attend two consecutive meetings of the board or commission, whether regular, adjourned or special, shall forfeit office unless the member is prevented from attending by the serious illness of a member or the family of the member or for any other cause that in the judgment of the Governor constitutes a valid reason for failing to attend. The Governor shall immediately appoint a successor.

182.020 Notice of meetings of boards and commissions; reporting of absences. The secretary or clerk of every state board and commission shall:

(1) Give the members of the board or commission at least 10 days' notice, in writing, of the date and place of each regular, adjourned or special meeting.

(2) Report to the Governor the names of all members who fail to attend any meeting of the board or commission.

182.030 Employment of persons advocating violent overthrow of the Government of the United States or Oregon prohibited. (1) No state department, board or commission shall knowingly employ any person who either directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against the Government of the United States or of the State of Oregon.

(2) Any person employed by any state department, board or commission shall immediately be discharged from employment when it becomes known to the appointing employer that such person has, during the period of employment, committed any offense set forth in subsection (1) of this section.

(3) Any person denied employment or discharged pursuant to this section shall have a right of appeal in accordance with the provisions of the State Personnel Relations Law.

182.035 Criminal records checks to be conducted through Department of State Police. (1) If an agency of state government, as defined in ORS 174.111, conducts a criminal records check of a person for the purposes of employment by the agency, the agency shall conduct the criminal records check through the Department of State Police.

(2) A criminal records check conducted through the Law Enforcement Data System meets the requirements of this section. [2019 c.424 §1]

Note: 182.035 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.040 Boards and commissions to pay counties for services; exceptions. (1) All state boards and commissions that are supported by fees, fines, licenses or taxes or other forms of income not derived from a direct tax on tangible property shall pay the various counties of the State of Oregon the same fees required of others for services rendered.

(2) ORS 182.040 to 182.060 do not apply to:

(a) Except for those fees required in ORS 205.320, services rendered for the Bureau of Labor and Industries on wage claims assigned to it for collection.

(b) Any of the provisions or requirements of ORS 21.170, 52.410 to 52.440, 156.160, 205.360 and 205.370. [Amended by 1965 c.619 §35; 1967 c.398 §8; 1973 c.381 §7; 1981 s.s. c.3 §97; 1985 c.496 §25; 1999 c.803 §3; 2011 c.595 §135]

182.050 Time and manner of payment to counties. No state board or commission affected by the provisions of ORS 182.040 and 182.060 shall be required at the time of ordering the performance of any services for which a fee or charge may be collected by the county to pay the collectible fee or charge in advance or at the time the services are rendered. The county clerk or other officer performing the service, upon request made by the board or commission, shall charge to the board or commission the amount of the fee or charge, and thereafter on the first days of January, April, July and October of each calendar year supply to the board or commission an itemized statement of all services performed upon order of the board or commission for the three months preceding, together with the legal charge collectible therefor. The board or commission, upon receipt of the statement, promptly shall pay the amount due the county.

182.060 County clerk to record instruments affecting realty for state boards and commissions. When requested by a state board or commission, the county clerk shall record in the office of the clerk any instrument affecting real property and shall return to the board or commission a receipt for the instrument showing the legal charge for the recording of the instrument. [Amended by 1999 c.654 §12]

182.065 [1977 c.739 §1; 1979 c.593 §5; renumbered 183.025]

182.070 [1953 c.527 §2; 1961 c.167 §21; 1979 c.215 §1; repealed by 1995 c.69 §12]

182.072 Payment for licenses issued by county or other public body on behalf of state agency. If an agency of the executive department, as defined in ORS 174.112, enters into a contract with a county or other public body, as defined in ORS 174.109, for the purpose of issuing licenses on behalf of the agency, the agency, by rule, shall provide that payment for the licenses be made directly to the agency if:

(1) The agency has implemented a functioning licensing software system that is approved by the Oregon Department of Administrative Services; and

(2) The agency pays to the county or other public body the same amounts under the contract that the county or other public body would have received if the county or other public body had collected the license fees. [2007 c.768 §61]

Note: 182.072 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.080 Effect of repeal or amendment of statute authorizing state agency to collect, receive and expend moneys. (1) The repeal of a statute or the deletion by amendment of a part thereof that granted or conferred power to any state officer, board, commission, corporation, institution, department, agency or other state organization to collect, receive and expend moneys for or on behalf of the state or for any purpose authorized by law does not affect or impair any act done, or right accruing, accrued or acquired, or liability, or obligation to pay the state a license or other fee, or payment exacted or required by law to be made or authorized by the repealed or amended statute and the rules, regulations and orders, if any, promulgated thereunder and in effect at the time of the repeal or amendment, unless otherwise specifically provided by law. In the event of such repeal or amendment of a statute, the Secretary of State may determine, collect and disburse any moneys due the state, or payable by or through the state, representing such license or other fee, or payment exacted or required by law in accordance with the provisions of such repealed or amended statute and such rules, regulations and orders promulgated thereunder, and as otherwise provided by law, in order to secure the full force, effect and operation of such statute up to the time of its repeal or amendment, but not thereafter.

(2) Upon repeal or amendment of a statute as described in subsection (1) of this section, so much as may be necessary, and no more, of the balance in the General Fund appropriated for the use, operation and function of the state officer, board, commission, corporation, institution, department, agency or other state organization is transferred to the Secretary of State for the payment of all expenses incurred by the Secretary of State in winding up and concluding administration of the repealed or amended statute, as authorized in subsection (1) of this section. If the balance of the unexpended appropriation is insufficient to cover the costs and expenses of the Secretary of State in administering and concluding the operation of the repealed or amended statute, the secretary may request transfer or appropriation of any funds, accounts and receipts belonging to the state in the custody or control of such state officer, board, commission, corporation, institution, department, agency or other state organization, to cover in full the costs of winding up and concluding the administration of the statute. [1955 c.73 §1; 2005 c.755 §3]

182.090 State agency to pay attorney fees and expenses when court finds for petitioner and that agency acted unreasonably. (1) In any civil judicial proceeding involving as adverse parties a state agency, as defined in ORS 291.002, and a petitioner, the court shall award the petitioner reasonable attorney fees and reasonable expenses if the court finds in favor of the petitioner and also finds that the state agency acted without a reasonable basis in fact or in law.

(2) Amounts allowed under this section for reasonable attorney fees and expenses shall be paid from funds available to the state agency. The court may withhold all or part of the attorney fees from any award to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist which make the award of all or a portion of the attorney fees unjust.

(3) As used in this section, "civil judicial proceeding" means any proceeding, other than a criminal proceeding as defined in ORS 131.005 (7), conducted before a court of this state. [1981 c.871 §2; 1983 c.763 §61]

182.100 Affirmative action policy; implementation on appointments. (1) It is declared to be the policy of Oregon that this state shall be a leader in affirmative action. All appointive authorities for state boards, commissions and advisory bodies shall implement this policy of affirmative action in their appointments, subject to the legal requirements for each appointment.

(2) The Director of Affirmative Action shall assist all persons who have appointing authority at the state level for boards, commissions or advisory bodies in carrying out the state policy stated in subsection (1) of this section and ORS 236.115.

(3) As used in this section, "affirmative action" means a method of eliminating the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, sex, marital status or physical or mental disabilities, that are evident or indicated by analysis of present appointment patterns, practices and policies. [1981 c.255 §1; 1989 c.224 §10; 1997 c.539 §2]

182.105 Information concerning tax benefits of providing child care under employee benefit plan. Any state agency may provide information to employers concerning the tax benefits of providing child care, as defined in ORS 329A.250, under an employee benefit plan. [1985 c.753 §5; 1995 c.278 §28]

182.109 Agency actions to carry out state policies for persons with disabilities. In carrying out the policies stated in ORS 410.710, state agencies shall:

(1) Review their rules and policies and may revise them as necessary to reflect a positive approach to persons with disabilities.

(2) Encourage and promote education of state employees, state officials and the public in general about the worth and capacity of persons with disabilities.

(3) In all state correspondence and publications, avoid the use of stereotypes and negative labels such as "victim," "afflicted," "crippled" and "handicapped" except as such terms are required by statute or federal law and regulation.

(4) Use the preferred and more positive term "person with a disability" instead of "disabled person," "handicapped" or other negative words except as such terms are required by statute or federal law and regulation.

(5) In implementing subsections (1) to (4) of this section, develop and seek input regarding terminology and portrayal of persons with disabilities from persons who have disabilities and their advocates.

(6) Foster corrective measures and avoid stereotypes and negative labeling in texts used by schools, newspapers, magazines, radio and television by encouraging review and analysis of these media by publishers, company owners or appropriate agencies.

(7) Use the term "person with a disability" to the extent consistent with state and federal law in rules adopted on or after January 1, 2006. [1989 c.224 §2; 2005 c.411 §2; 2007 c.70 §48]

182.110 [1959 c.501 §1; repealed by 1959 c.501 §10]

182.112 Title to property acquired by state agency in name of state. A state agency, as defined in ORS 279A.250, authorized by law to acquire real or personal property or any interest therein shall take title to the property or the interest therein in the name of the State of Oregon. [2003 c.794 §192]

Note: 182.112 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.115 [1973 c.457 §1; 1975 c.731 §1; 1977 c.42 §1; 1983 c.150 §2; 1987 c.879 §5; renumbered 171.852 in 1987]

182.116 Identification of race or ethnicity on forms issued by public bodies. A form or document issued by a public body, as defined in ORS 174.109, that asks a person to identify the person's race or ethnicity must allow the person to select multiple races or ethnicities. [2019 c.352 §1]

Note: 182.116 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.119 Mailing of agency notices to post office boxes. (1) Notwithstanding any other provision of law, whenever an agency of state government, as defined in ORS 174.111, is required by statute to mail to an individual a notice containing information specifically pertinent to the individual, and the agency has on file a post office box address for the individual, the agency shall mail the notice to the post office box address if that address is the individual's last known address on file with the agency or the address to which the individual has requested in writing that notices be sent.

(2) A notice mailed to a post office box address under this section that meets any other requirements for service by mail is complete and adequate service by mail.

(3) An agency's failure to comply with the requirements of this section does not invalidate a notice mailed to an address other than a post office box address if the notice was received by the individual.

(4) If an agency of state government has multiple divisions that keep addresses on file, subsection (1) of this section applies separately to each division of the agency that keeps addresses on file. [2021 c.143 §1]

Note: 182.119 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.120 [1959 c.501 §2; repealed by 1959 c.501 §10]

182.121 [1975 c.731 §2; renumbered 171.855 in 1987]

182.122 [2005 c.739 §1; 2011 c.637 §62; 2015 c.767 §51; 2015 c.807 §12; renumbered 276A.300 in 2017]

182.124 [2005 c.739 §2; 2015 c.807 §13; renumbered 276A.303 in 2017]

182.125 [1973 c.457 §4; repealed by 1975 c.731 §3]

182.126 [2009 c.829 §1; 2015 c.807 §13a; 2017 c.444 §1; renumbered 276A.270 in 2017]

182.128 [2009 c.829 §2; 2015 c.807 §14; 2017 c.444 §2; renumbered 276A.273 in 2017]

182.130 [1959 c.501 §3; repealed by 1959 c.501 §10]

182.132 [2009 c.829 §3; 2011 c.545 §30; 2015 c.807 §15; 2017 c.444 §3; renumbered 276A.276 in 2017]

182.135 [1973 c.457 §3; repealed by 1975 c.731 §3]

182.140 [1959 c.501 §4; repealed by 1959 c.501 §10]

182.145 [1973 c.457 §5; repealed by 1975 c.731 §3]

182.150 [1959 c.501 §5; repealed by 1959 c.501 §10]

IMPACT OF STATE AGENCY ACTION ON FAMILIES

182.151 Assessment of impact of state agency action on families. In formulating and implementing policies and rules that may have significant impact on family formation, maintenance and general well-being, all state agencies in Oregon shall, to the extent permitted by law, assess such measures in light of the following considerations:

(1) If the action by the government strengthens or erodes the stability of the family and, particularly, the marital commitment;

(2) If the action strengthens or erodes the authority and rights of the parents in the education, nurture and supervision of their children;

(3) If the action helps the family perform its functions, or if the action substitutes governmental activity for the function;

(4) If the action by the government increases or decreases family earnings and if the proposed benefits of the action justify the impact on the family budget;

(5) If the activity can be carried out by a lower level of government or by the family itself;

(6) The message, intended or otherwise, the program sends to the public concerning the status of the family; and

(7) The message the action sends to young people concerning the relationship between their behavior, their personal responsibility and the norms of our society. [1999 c.523 §1]

Note: 182.151 and 182.152 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.152 No right or benefit created. ORS 182.151 is intended to improve the internal management of state agencies in Oregon and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the State of Oregon, its agencies, its officers or any person. [1999 c.523 §2]

Note: See note under 182.151.

182.160 [1959 c.501 §6; repealed by 1959 c.501 §10]

RELATIONSHIP OF STATE AGENCIES WITH INDIAN TRIBES

182.162 Definitions for ORS 182.162 to 182.168. As used in ORS 182.162 to 182.168:

(1) "State agency" has the meaning given that term in ORS 358.635.

(2) "Tribe" means a federally recognized Indian tribe in Oregon. [2001 c.177 §1]

Note: 182.162 to 182.168 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.164 State agencies to develop and implement policy on relationship with tribes; cooperation with tribes. (1) A state agency shall develop and implement a policy that:

(a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(b) Establishes a process to identify the programs of the state agency that affect tribes.

(c) Promotes communication between the state agency and tribes.

(d) Promotes positive government-to-government relations between the state and tribes.

(e) Establishes a method for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under this section.

(2) In the process of identifying and developing the programs of the state agency that affect tribes, a state agency shall include representatives designated by the tribes.

(3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110. [2001 c.177 §2]

Note: See note under 182.162.

182.166 Training of state agency managers and employees who communicate with tribes; annual meetings of representatives of agencies and tribes; annual reports by state agencies. (1) At least once a year, the Oregon Department of Administrative Services, in consultation with the Commission on Indian Services, shall provide training to state agency managers and employees who have regular communication with tribes on the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

(2) Once a year, the Governor shall convene a meeting at which representatives of state agencies and tribes may work together to achieve mutual goals.

(3) No later than December 15 of every year, a state agency shall submit a report to the Governor and to the Commission on Indian Services on the activities of the state agency under ORS 182.162 to 182.168. The report shall include:

(a) The policy the state agency adopted under ORS 182.164.

(b) The names of the individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(c) The process the state agency established to identify the programs of the state agency that affect tribes.

(d) The efforts of the state agency to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.

(e) A description of the training required by subsection (1) of this section.

(f) The method the state agency established for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under ORS 182.164. [2001 c.177 §3]

Note: See note under 182.162.

182.168 No right of action created by ORS 182.162 to 182.168. Nothing in ORS 182.162 to 182.168 creates a right of action against a state agency or a right of review of an action of a state agency. [2001 c.177 §4]

Note: See note under 182.162.

182.170 [1959 c.501 §7; repealed by 1959 c.501 §10]

182.180 [1959 c.501 §8; repealed by 1959 c.501 §10]

182.190 [1959 c.501 §9; repealed by 1959 c.501 §10]

182.200 [1959 c.501 §10; repealed by 1959 c.501 §10]

EMPLOYEE SUGGESTION PROGRAM

(Generally)

182.310 Definitions for ORS 182.310 to 182.360. As used in ORS 182.310 to 182.360:

(1) "Commission" means the Employee Suggestion Awards Commission.

(2) "Employee suggestion program" means the program developed by the commission under ORS 182.320 (3).

(3) "Secretary" means the secretary of the employee suggestion program. [1959 c.616 §1; 1989 c.815 §2; 1993 c.724 §25]

182.320 Employee Suggestion Awards Commission; authority; rules. (1) There is established the Employee Suggestion Awards Commission consisting of seven members appointed by the Governor. At least two members shall be public employees, as defined by ORS 243.650. The term of office is three years, beginning July 1. Members may be reappointed. Members serve at the pleasure of the Governor.

(2) The members of the commission shall elect annually one member as chairperson. The Director of the Oregon Department of Administrative Services shall appoint a state officer or employee to serve as secretary of the employee suggestion program. The commission members shall serve without compensation.

(3) The commission shall formulate, establish and maintain an employee suggestion program to encourage and reward meritorious suggestions by state employees that will promote effectiveness, efficiency and economy in the performance of any function of state government.

(4) The secretary, with the approval of the commission, shall adopt rules necessary or appropriate for the proper administration of ORS 182.310 to 182.360. [1957 c.616 §2; 1965 c.9 §1; 1989 c.815 §3; 1993 c.724 §26; 1995 c.286 §17; 2001 c.30 §1]

182.330 Commission determination final. The Employee Suggestion Awards Commission shall make the final determination as to whether an employee suggestion award will be made. Subject to the rules adopted pursuant to ORS 182.320, the commission shall determine the nature and extent of the award. [1957 c.616 §3; 1993 c.724 §27]

182.340 [1957 c.616 §5; repealed by 1965 c.9 §2]

182.350 [1957 c.616 §4; 1961 c.197 §3; repealed by 1967 c.73 §5]

182.360 Costs and payment of cash awards and administrative expenses. (1) The costs arising out of the employee suggestion awards under ORS 182.310 to 182.360 shall be paid in the following manner:

(a) For awards to employees not eligible for cash awards, the cost shall be added to and collected with the expenses and costs of operating the Personnel Division of the Oregon Department of Administrative Services collected under ORS 240.165.

(b) For any cash award for a suggestion having multiagency effect, as determined by the Employee Suggestion Awards Commission, and for which the commission cannot identify the cost savings realized or to be realized by the agencies as a result of implementation of the suggestion, the cost shall be added to and collected with the expenses and costs of operating the Personnel Division collected under ORS 240.165.

(c) If the commission is able to identify the agency or agencies that have realized or will realize cash savings as a result of im-

plementation of a suggestion, the cost of any cash award shall be paid by the affected agency or agencies from savings realized or to be realized by implementation of the suggestion. For suggestions with multiagency effect, the commission shall determine the portion of the award total to be contributed by each agency.

(d) For administrative expenses of the Personnel Division incurred in administering ORS 182.310 to 182.400, the expenses shall be added to and collected with the expenses and costs of operating the Personnel Division collected under ORS 240.165.

(2) Vouchers for awards described in subsection (1)(a) and (b) of this section and administrative expenses described in subsection (1)(d) of this section shall be prepared by the Administrator of the Personnel Division payable from the Oregon Department of Administrative Services Operating Fund. Vouchers for awards described in subsection (1)(c) of this section shall be drawn by the appropriate agency. All vouchers shall be drawn upon certification of the chairperson or secretary of the commission of the amount or cost of the award and the person to whom the award has been made or the amount of the administrative expenses. [1957 c.616 §6; 1981 c.233 §1; 1993 c.724 §28; 1995 c.79 §58; 2005 c.22 §127]

(Productivity Improvement Programs)

182.365 Legislative findings; definitions for ORS 182.365 to 182.400. (1) The Legislative Assembly finds that it is in the public interest to encourage and reward government efficiency and that the present state budgeting system has developed inadequate mechanisms to reward efficiency in government agencies and programs. The Legislative Assembly further finds that it is in the public interest to establish a program to reward efficiency and effectiveness in government agencies and programs.

(2) As used in ORS 182.365 to 182.400:

(a) "Agency or unit" means any department, division, agency or section or unit of any department, division or agency or unit, that has an identifiable budget which may be separated from other budgets and for which credit can be given.

(b) "Department" means the Oregon Department of Administrative Services.

(c) "Director" means the Director of the Oregon Department of Administrative Services. [1989 c.815 §1; 1993 c.724 §29]

182.370 [1989 c.815 §4; repealed by 1993 c.724 §36]

182.375 State Productivity Improvement Revolving Fund; creation; sources; uses. (1) There is created in the State Treasury, separate and distinct from the General Fund, an Oregon State Productivity Improvement Revolving Fund. All moneys in the fund are appropriated continuously to the Oregon Department of Administrative Services for making loans, grants, matching funds or cash awards available to state agencies or units for implementation of productivity improvement projects, including training and workforce development, upon authorization of the department, subject to ORS 243.650 to 243.809 when applicable. Interest on earnings of the fund shall be credited to the fund.

(2) The Oregon State Productivity Improvement Revolving Fund shall consist of:

(a) Moneys transferred from the Oregon Department of Administrative Services Operating Fund, as provided in ORS 240.170, in a sum not to exceed $500,000 to establish the fund.

(b) Savings realized from implementation of productivity improvement projects that may include existing and future projects authorized by the department.

(3) Fifty percent of the agency or unit budget savings resulting from improved efficiency shall be credited to the Oregon State Productivity Improvement Revolving Fund to be used for program improvement by the agency or unit. If not used in the biennium in which the savings occur, the amount of credit to an agency or unit may be treated as if it were continuously appropriated to the agency or unit and may be expended in the following biennium without resulting in any budget justification for the agency or unit. Expenditures from the fund are not subject to allotment or other budgetary procedures.

(4) None of the expenditures in a biennium by the agency or unit under this section shall be considered to be within any appropriation or expenditure limitation in the agency's base budget for the biennium.

(5) A productivity improvement project may include training and employee development authorized by the department and intended to lead to improved productivity.

(6) The department may require a different repayment schedule for training and employee development than for other productivity improvement projects.

(7) Agencies and units shall report to the department quarterly on project implementation, savings realized to date, or projected, and repayment of moneys to the fund. [1989 c.815 §5; 1991 c.385 §89; 1993 c.724 §30; 1995 c.79 §59; 2003 c.55 §3; 2003 c.794 §203]

182.380 Credit of certain savings to General Fund. Fifty percent of the agency or unit budget savings resulting from improved efficiency and effectiveness shall be credited to the General Fund or, if the origin of the agency or unit's funds is a dedicated

fund or federal money, to the fund or account of the agency or unit, to be used for the purposes of the fund or account. [1989 c.815 §6; 1993 c.724 §31]

182.385 Identification of reduced expenses resulting from improved efficiency. In preparing its budget for the biennium following one in which the state agency or unit credits any amount to the Oregon State Productivity Improvement Revolving Fund, the agency or unit shall identify any reduction in agency or unit expenses resulting from improved efficiency. [1989 c.815 §7; 1993 c.724 §32]

182.390 Plan for increased efficiency. (1) In order to qualify for credits under ORS 182.375 and 182.380, the agency or unit must present to the Oregon Department of Administrative Services a plan for increased efficiency resulting in budget savings and comply with the review requirements developed by the department. The plan must be approved by the Director of the Oregon Department of Administrative Services. Loans, grants or matching funds authorized under ORS 182.375 shall not require any increased funding or increases in an expenditure limitation and shall not require legislative review.

(2) The plan required in subsection (1) of this section shall include long-range objectives of each program, indicating in each case where the agency or unit shall increase efficiency and cost savings without a reduction in public services. The plan shall include reasons for leaving current positions vacant, actual reductions in services and supplies, travel and capital outlay and shall include a system to evaluate the resulting accomplishments of each agency or unit. [1989 c.815 §8; 1993 c.724 §33]

182.395 Ineligibility of new programs for credits. Any new programs mandated by law, assigned to the agency or unit by the Oregon Department of Administrative Services, or budgeted as additions to the base budget or reduced level budget of the agency or unit shall not be eligible for credit savings under ORS 182.365 to 182.400. [1989 c.815 §9; 1993 c.724 §34; 1995 c.79 §60]

182.400 Report on productivity improvement program. Prior to January 1 of each odd-numbered year, the Oregon Department of Administrative Services shall report to the Legislative Assembly on activities of the productivity improvement program in the manner prescribed in ORS 192.245. [1989 c.815 §10; 1993 c.724 §35]

182.410 [Amended by 1955 c.707 §56; renumbered 184.410]

RULES GOVERNING AGENCY-PROVIDED HOUSING

182.415 Definitions for ORS 182.415 to 182.435. As used in ORS 182.415 to 182.435 unless the context requires otherwise:

(1) "Furnishings" includes furniture usually used in connection with occupancy of a household but does not include rugs, draperies, ranges, refrigerators, washers, dryers or any item of furnishings received by the state or one of its agencies as a gift, nor does it include any furniture purchased for the state-owned residence required in relation to the official duties of an institutional executive.

(2) "Housing" includes single and multiple family dwellings, apartments, and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy but does not include guard stations maintained by the State Forestry Department or dormitory facilities at any state institution or at any public university listed in ORS 352.002.

(3) "Dormitory" includes any facility that houses students and those facilities used primarily for sleeping purposes by the employees of the Department of Human Services or the Oregon Health Authority.

(4) "State agency" has the meaning given that term in ORS 291.002. [1971 c.575 §1; 1977 c.583 §3; 1993 c.276 §1; 2009 c.11 §17; 2009 c.595 §161; 2009 c.762 §45; 2011 c.637 §63; 2015 c.767 §52]

182.420 [Renumbered 184.420]

182.425 State agency required to collect rental for housing provided to employees; provision of furnishings prohibited; determination of fair rental value. (1) Every state agency that provides housing for its officers or employees shall collect a rental for such housing based on the fair rental value as determined by an appraiser registered under ORS 308.010 or licensed or certified under ORS 674.310, subject to any reductions therefrom authorized under ORS 182.435. Rentals collected under this section shall be credited to the agency's account.

(2) No state agency shall provide furnishings as part of any housing provided by the agency.

(3) Determinations of fair rental value shall be reexamined periodically but not less frequently than once every five years and the rental shall be adjusted annually by the change in real estate values, for the affected community as determined by the state agency.

(4) Determination of the net rental of any employee-occupied state-owned housing unit under subsections (1), (2) and (3) of this section shall be considered a personnel action

for purposes of ORS 240.086. [1971 c.575 §§2,4; 1977 c.583 §4; 1993 c.276 §2; 2017 c.44 §3]

182.430 [Renumbered 184.430]

182.435 Schedule of reduction from fair rental value. (1) Each agency providing housing for its officers or employees may adopt a schedule of reductions from the fair rental value taking into account all pertinent factors including but not limited to:

(a) Isolation, for which a reduction of up to 20 percent of the fair rental value may be allowed;

(b) Invasion of privacy, for which a reduction of up to 30 percent of the fair rental value may be allowed;

(c) The agency's need in having its officers or employees occupying housing in a specific location, for which a reduction of up to 50 percent of fair rental value may be allowed; and

(d) Inequities between the fair rental value and the salary of the officer or employee, for which an amount may be allowed that when added to any other reductions corrects the inequity.

(2) Each agency providing housing shall prepare a report indicating the fair rental value of each housing unit, the date of the most recent appraisal and the amount of any reductions from fair rental value with the reasons for the reductions. This report shall be available for public inspection. [1971 c.575 §3; 1977 c.583 §5; 1993 c.276 §3]

182.440 [Renumbered 184.440]

182.450 [Renumbered 184.450]

182.451 [1999 c.1084 §1; 2001 c.409 §2; repealed by 2007 c.71 §58]

182.452 [1999 c.1084 §2; repealed by 1999 c.1084 §56 and 2003 c.206 §3]

SEMI-INDEPENDENT STATE AGENCIES

(Listing of Semi-Independent State Agencies)

182.454 Semi-independent state agencies. The following semi-independent state agencies are subject to ORS 182.456 to 182.472:

(1) The Appraiser Certification and Licensure Board.

(2) The State Board of Architect Examiners.

(3) The State Board of Examiners for Engineering and Land Surveying.

(4) The State Board of Geologist Examiners.

(5) The State Landscape Architect Board.

(6) The Oregon Board of Optometry.

(7) The Oregon Patient Safety Commission.

(8) The Oregon Wine Board.

(9) The State Board of Massage Therapists.

(10) The Oregon Board of Physical Therapy.

(11) The State Landscape Contractors Board.

(12) The Citizens' Initiative Review Commission. [1999 c.1084 §3; 2003 c.686 §13; 2003 c.797 §27; 2005 c.109 §2; 2007 c.71 §59; 2013 c.722 §§11,19; 2014 c.72 §3; 2019 c.43 §1]

Note: 182.454 to 182.472 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(General Provisions Relating to Semi-Independent State Agencies)

182.456 Definitions for ORS 182.456 to 182.472. As used in ORS 182.456 to 182.472:

(1) "Board" means a semi-independent state agency listed in ORS 182.454.

(2) "License" includes licenses, registrations, certifications, permits or other forms of permission required by law to pursue an occupation or engage in a business regulated by a board. [1999 c.1084 §§4,55; 2003 c.686 §§14,15; 2007 c.71 §60]

Note: See note under 182.454.

182.460 Statutory provisions applicable to semi-independent state agencies. (1) Except as provided in subsections (2) and (3) of this section and as otherwise provided by law, the provisions of ORS 283.085 to 283.092 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to a board. A board is subject to all other statutes governing a state agency that do not conflict with ORS 182.456 to 182.472, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS chapter 183, and a board's employees are included within the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, the following provisions apply to a board:

(a) ORS 240.309 (1) to (6) and 240.321;

(b) ORS 279A.250 to 279A.290;

(c) ORS 282.210 to 282.230; and

(d) ORS 293.240.

(3) Notwithstanding subsection (1) of this section, ORS chapter 240 applies to the Oregon Board of Optometry, the State Board of Massage Therapists and the Oregon Board of Physical Therapy.

(4) In carrying out the duties, functions and powers of a board, the board may contract with any state agency for the performance of duties, functions and powers as the

board considers appropriate. A state agency may not charge a board an amount that exceeds the actual cost of those services. ORS 182.456 to 182.472 do not require an agency to provide services to a board other than pursuant to a voluntary interagency agreement or contract.

(5) A board shall adopt personnel policies and contracting and purchasing procedures. The Oregon Department of Administrative Services shall review those policies and procedures for compliance with applicable state and federal laws and collective bargaining contracts.

(6) Except as otherwise provided by law, directors and employees of a board are eligible to receive the same benefits as state employees and are entitled to retain their State of Oregon hire dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer of all accumulated state agency leaves. [1999 c.1084 §5; 2003 c.794 §204; 2007 c.71 §61; 2011 c.110 §1; 2012 c.107 §59; 2019 c.43 §2]

Note: See note under 182.454.

182.462 Budgets for semi-independent state agencies; annual financial statements; disposition of civil penalties; rules. (1)(a) A board shall adopt budgets on a biennial basis using classifications of expenditures and revenues required by ORS 291.206 (1), but the budget is not subject to review and approval by the Legislative Assembly or to future modification by the Emergency Board or the Legislative Assembly.

(b) The budget referred to in paragraph (a) of this subsection shall be adopted in accordance with applicable provisions of ORS chapter 183. Except as provided in this paragraph, a board shall adopt or modify a budget only after a public hearing thereon. A board must give notice of the hearing to all holders of licenses issued by the board.

(c) A board shall follow generally accepted accounting principles and keep financial and statistical information as necessary to completely and accurately disclose the financial condition and financial operations of the board as may be required by the Secretary of State.

(d) A board shall prepare an annual financial statement of board revenues and expenses and shall make the statement available for public review. The board shall provide a copy of the statement to the Oregon Department of Administrative Services not later than the 90th day after the end of the state fiscal year.

(e) A board may, by rule, elect to donate all or part of the revenue derived by the board from civil penalties to the General Fund of the State Treasury.

(2) In addition to the reports required by ORS 182.472, the Oregon Board of Optometry, the State Board of Massage Therapists and the Oregon Board of Physical Therapy shall, on or before February 1 of each odd-numbered year, present the budget adopted by the board under this section to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Legislative Fiscal Officer. [1999 c.1084 §6; 2011 c.110 §2; 2019 c.43 §3]

Note: See note under 182.454.

182.464 Financial review by Secretary of State. The Secretary of State shall enter into agreements with each of the boards to set appropriate financial review schedules for those boards. The financial review schedules shall be set to allow board compliance with ORS 182.472. In lieu of conducting a financial review, the Secretary of State may elect to contract for the financial review with, or accept a financial review conducted by, an independent certified public accountant. [1999 c.1084 §7; 2007 c.218 §1]

Note: See note under 182.454.

182.466 Powers of semi-independent state agencies; fees; rules. In addition to other powers granted by ORS 182.456 to 182.472 and by the statutes specifically applicable to a board, a board may:

(1) Sue and be sued in its own name.

(2) Notwithstanding ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C, enter into contracts and acquire, hold, own, encumber, issue, replace, deal in and with and dispose of real and personal property.

(3) Notwithstanding ORS 670.300, fix a per diem amount to be paid to board members for each day or portion thereof during which the member is actually engaged in the performance of official duties. Board members may also receive actual and necessary travel expenses or other expenses actually incurred in the performance of their duties. If an advisory council or peer review committee is established under the law that governs the board, the board may also fix and pay amounts and expenses for members thereof.

(4) Set the amount of any fee required by statute and establish by rule and collect other fees as determined by the board. Fees shall not exceed amounts necessary for the purpose of carrying out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this subsection, a board shall hold a public hearing prior to adopting or modifying any fee without regard to the number of requests received to hold a hearing. A board shall give notice to all licensees of the board prior to holding a hearing on

the adoption or modification of any fee. A board may adopt fees in conjunction with the budget adoption process described in ORS 182.462.

(5) Subject to any other statutory provisions, adopt procedures and requirements governing the manner of making application for issuance, renewal, suspension, revocation, restoration and related activities concerning licenses that are under the jurisdiction of a board. [1999 c.1084 §8; 2001 c.104 §62; 2003 c.794 §205]

Note: See note under 182.454.

182.468 Administrators. (1) Notwithstanding ORS 670.306, a board may select and appoint an administrator. The board shall fix the qualifications and compensation for the position.

(2) An administrator of a board shall not be a voting member of that board.

(3) Notwithstanding ORS 670.306, an administrator of a board may employ persons as the board determines to be necessary for carrying out the business and responsibilities of the board. [1999 c.1084 §9(1),(2),(3)]

Note: See note under 182.454.

182.470 Accounts for and investment of moneys collected or received by semi-independent state agencies. (1) Notwithstanding ORS 670.335, except where otherwise specifically provided by statute pursuant to ORS 182.462 (1)(e), all moneys collected or received by a board, placed to the credit of that board and remaining unexpended and unobligated on the date that the board is established as a semi-independent state agency, and all moneys collected or received by a board after the date that the board is established as a semi-independent state agency, must be deposited into an account established by that board in accordance with ORS 295.001 to 295.108. All moneys in the account are continuously appropriated to the board making the deposit for the purpose of carrying out the functions of the board.

(2) Subject to the approval of the chairperson, president or administrator, a board may invest moneys collected or received by the board. Investments made by a board are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investment maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(3) Interest earned from any accounts invested under subsection (2) of this section shall be made available to a board in a manner consistent with the board's annual budget.

(4) Subject to the approval of the chairperson, president or administrator, all necessary board expenses shall be paid from the moneys collected or earned by a board. [1999 c.1084 §10; 2001 c.409 §3; 2003 c.405 §3; 2007 c.871 §25; 2011 c.110 §3; 2019 c.587 §34]

Note: See note under 182.454.

182.472 Reports. Not later than April 1 of each even-numbered year, each board subject to ORS 182.456 to 182.472 shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Legislative Fiscal Officer. The Legislative Fiscal Officer shall review the reports and shall prepare and submit a statement of findings and conclusions to the Joint Legislative Audit Committee and the Joint Committee on Ways and Means. The report must include the following:

(1) A copy of the most recent audit or financial review of the board.

(2) A copy of the actual budget for the prior biennium and a copy of the board's adopted budget for the biennium in which the report is made. The budget documents must show:

(a) The beginning balance and ending balance for each of the two biennia;

(b) A description of material changes between the two biennia;

(c) A description of the public hearing process used to establish the budget adopted for the current biennium; and

(d) A description of current fees and proposed changes to fees, along with information supporting the amounts of the current fees and any proposed changes to the fees.

(3) A description of all temporary and permanent rules adopted by the board during the prior biennium.

(4) A description of board actions promoting consumer protection that were taken during the prior biennium.

(5) If the board issues licenses, a description of the board's licensing activities performed during the prior biennium that is adequate to allow evaluation of the board's performance of its licensing responsibilities, including:

(a) The number of license applications;

(b) The number of licenses issued;

(c) The number of examinations conducted;

(d) The average time between application for and issuance of licenses;

(e) The number and types of complaints received about persons holding licenses;

(f) The number and types of investigations conducted;

(g) The number and types of resolutions of complaints;

(h) The number and type of sanctions imposed; and

(i) The number of days between beginning an investigation and reaching a resolution.

(6) A description of all other actions taken during the prior biennium in the performance of the board's statutory responsibilities that is adequate to allow evaluation of the board's performance. [1999 c.1084 §11; 2005 c.109 §1; 2007 c.218 §2; 2010 c.107 §2]

Note: See note under 182.454.

OMBUDSMAN SERVICES

182.500 Mandatory report to Governor by person performing ombudsman services; cooperation with ombudsman. (1) If an agency or officer of the executive department, as defined by ORS 174.112, designates a person to perform ombudsman services, the person shall report to the Governor in writing at least once each quarter. A report shall include a summary of the services that the person provided during the quarter and the person's recommendations for improving ombudsman services and the services for which the person provides assistance.

(2) All public bodies, as defined by ORS 174.109, shall cooperate with an ombudsman established or specifically authorized by law, or designated by the Governor, and shall promptly provide all information requested by the ombudsman that is relevant to the duties of the ombudsman. Any person that contracts with a public body, as defined by ORS 174.109, shall cooperate with an ombudsman established or authorized by law or designated by the Governor to the extent the ombudsman is investigating matters related to the contract, and shall promptly provide all information requested by the ombudsman that is related to the contract and relevant to the duties of the ombudsman. An agency or officer of the executive department, as defined by ORS 174.112, shall consult with the Attorney General if there is any legal dispute relating to:

(a) Whether confidential or other restricted information may be provided under this subsection to an ombudsman; or

(b) Whether the ombudsman is seeking information that is relevant to the duties of the ombudsman. [2003 c.591 §17; 2007 c.893 §1]

Note: 182.500 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.510 [1953 c.588 §1; repealed by 1957 c.624 §14]

EVIDENCE-BASED PROGRAMS

182.515 Definitions for ORS 182.515 and 182.525. As used in this section and ORS 182.525:

(1) "Agency" means:

(a) The Department of Corrections;

(b) The Oregon Youth Authority;

(c) The Youth Development Division; and

(d) That part of the Oregon Health Authority that deals with mental health and addiction issues.

(2) "Cost-effective" means that benefits realized over a reasonable period of time are greater than costs, as determined utilizing a cost-benefit analytical tool identified by the Oregon Criminal Justice Commission.

(3) "Evidence-based program" means a program that:

(a) Incorporates significant and relevant practices based on scientifically based research; and

(b) Is cost-effective.

(4)(a) "Program" means a treatment or intervention program or service that is intended to:

(A) Reduce the propensity of a person to commit crimes;

(B) Improve the mental health of a person with the result of reducing the likelihood that the person will commit a crime or need emergency mental health services; or

(C) Reduce the propensity of a person who is less than 18 years of age to engage in antisocial behavior with the result of reducing the likelihood that the person will become a juvenile offender.

(b) "Program" does not include:

(A) An educational program or service that an agency is required to provide to meet educational requirements imposed by state law; or

(B) A program that provides basic medical services.

(5) "Scientifically based research" means research that obtains reliable and valid knowledge by:

(a) Employing systematic, empirical methods that draw on observation or experiment;

(b) Involving rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(c) Relying on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations and across studies by the same or different investigators; and

(d) Utilizing randomized controlled trials when possible and appropriate. [2003 c.669 §3; 2005 c.503 §12; 2009 c.595 §162; 2012 c.37 §37; 2013 c.623 §10; 2013 c.649 §41]

Note: 182.515 and 182.525 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.520 [1953 c.588 §2; repealed by 1957 c.624 §14]

182.525 Mandatory expenditures for evidence-based programs; biennial report; rules. (1) An agency shall spend at least 75 percent of state moneys that the agency receives for programs on evidence-based programs.

(2) The agency shall submit a biennial report containing:

(a) An assessment of each program on which the agency expends funds, including but not limited to whether the program is an evidence-based program;

(b) The percentage of state moneys the agency receives for programs that is being expended on evidence-based programs;

(c) The percentage of federal and other moneys the agency receives for programs that is being expended on evidence-based programs; and

(d) A description of the efforts the agency is making to meet the requirement of subsection (1) of this section.

(3) The agency shall submit the report required by subsection (2) of this section no later than September 30 of each even-numbered year to the interim legislative committee dealing with judicial matters.

(4) If an agency, in any biennium, spends more than 25 percent of the state moneys that the agency receives for programs on programs that are not evidence based, the Legislative Assembly shall consider the agency's failure to meet the requirement of subsection (1) of this section in making appropriations to the agency for the following biennium.

(5) An agency may adopt rules necessary to carry out the provisions of this section. [2003 c.669 §7; 2005 c.22 §128; 2005 c.503 §13; 2013 c.649 §44]

Note: See note under 182.515.

182.530 [1953 c.588 §3; repealed by 1957 c.624 §14]

ENVIRONMENTAL JUSTICE COUNCIL

182.535 Definitions for ORS 182.535 to 182.557. As used in ORS 182.535 to 182.557:

(1) "Community-supported natural resource collaborative" means a group that works with a natural resource agency in a collaborative manner on natural resource issues affecting the community and that:

(a) Promotes public participation in natural resource decisions;

(b) Provides an open forum that allows for public deliberation of natural resource decisions affecting the community;

(c) Can demonstrate diverse representation and balance between interests, including but not limited to environmental organizations, industry organizations and community members;

(d) Has members who are individuals or organizations directly affected by the natural resource decisions discussed;

(e) Has a governance agreement that guides its operations; and

(f) Works in cooperation with local and tribal governments.

(2) "Environmental burden" means the environmental and health risks to communities caused by the combined historic, current and projected future effects of:

(a) Exposure to conventional pollution and toxic hazards in the air or in or on water or land;

(b) Adverse environmental conditions caused or made worse by other contamination or pollution; and

(c) Changes in the environment resulting from climate change, such as water insecurity, drought, flooding, wildfire, smoke and other air pollution, extreme heat, loss of traditional cultural resources or foods, ocean acidification, sea-level rise and increases in infectious disease.

(3) "Environmental justice" means the equal protection from environmental and health risks, fair treatment and meaningful involvement in decision making of all people regardless of race, color, national origin, immigration status, income or other identities with respect to the development, implementation and enforcement of environmental laws, regulations and policies that affect the environment in which people live, work, learn and practice spirituality and culture.

(4) "Environmental justice community" includes communities of color, communities experiencing lower incomes, communities experiencing health inequities, tribal communities, rural communities, remote communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

(5) "Equity analysis" means an analysis used to determine or evaluate environmental justice considerations.

(6) "Fair treatment" means that no one group of people, including racial, ethnic or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local and tribal environmental programs and policies.

(7) "Meaningful involvement" means:

(a) Members of vulnerable populations have appropriate opportunities to participate in decisions about a proposed activity that will affect their environment or health;

(b) Public involvement can influence a decision maker's decision;

(c) The concerns of all participants involved are considered in the decision-making process; and

(d) Decision makers seek out and facilitate the involvement of members of vulnerable populations.

(8) "Natural resource agency" means the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department, the State Department of Fish and Wildlife, the State Parks and Recreation Department, the State Department of Energy, the Oregon Watershed Enhancement Board, the State Forestry Department, the Department of State Lands, the State Department of Geology and Mineral Industries, the Department of Land Conservation and Development, the State Marine Board, the Public Utility Commission, the Department of Transportation, the Department of the State Fire Marshal and the Oregon Health Authority.

(9) "Remote community" means a community with low population density and high geographic remoteness. [2007 c.909 §1; 2009 c.595 §163; 2021 c.539 §108; 2022 c.58 §§10,11]

Note: 182.535 to 182.557 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.538 Environmental Justice Council. (1) The Environmental Justice Council is established within the office of the Governor. The council consists of 13 members appointed by the Governor. The members must be persons who, to the greatest extent practicable, represent minority communities, low-income communities, environmental interests, industry groups and geographically diverse areas of this state. The members shall be appointed as follows:

(a) Eight members shall be persons who have expertise and knowledge in environmental justice, as well as expertise in at least one of the following areas:

(A) Climate change, climate resilience or climate justice;

(B) Environmental laws, regulations and standards;

(C) Natural resources management;

(D) Land use planning and development;

(E) Sustainability;

(F) Community organizing;

(G) Civil rights and disability rights;

(H) Environmental health;

(I) Energy;

(J) Agricultural operations and food systems;

(K) Water planning and management; or

(L) Forest management.

(b) Of the members appointed under paragraph (a) of this subsection, at least one shall represent remote communities, at least one shall represent rural communities and at least one shall represent coastal communities. The Governor may solicit nominations for members described in this paragraph from community-supported natural resource collaboratives.

(c) One member shall be appointed from among persons nominated by the Commission on Asian and Pacific Islander Affairs.

(d) One member shall be appointed from among persons nominated by the Commission on Black Affairs.

(e) One member shall be appointed from among persons nominated by the Commission on Hispanic Affairs.

(f) One member shall be appointed from among persons nominated by the Commission on Indian Services.

(g) One member shall be appointed as a youth representative, who must be at least 16 but no more than 24 years of age when appointed.

(2) The council shall submit an annual report to the Governor and the interim committees of the Legislative Assembly related to the environment, in the manner provided under ORS 192.245, setting forth its view of the progress of natural resource agencies toward achieving the goals established pursuant to ORS 182.542 and identifying any other environmental issues that the council determines need attention.

(3) The term of office of each member is four years, except that the term of office of the member appointed as youth representative is two years. A member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 1 of the following year. A member may be reappointed. If there is a vacancy

for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the council is entitled to compensation and expenses in the manner and amounts provided for in ORS 292.495. Claims for compensation and expenses incurred in performing functions of the council shall be paid out of funds appropriated to the Governor for that purpose.

(5) The council shall elect one of its members as a chairperson and another as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the council determines.

(6) A majority of the members of the council constitutes a quorum for the transaction of business.

(7) The council shall meet at least once every three months at times and places specified by the chairperson. The council also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the council.

(8) The office of the Governor may enter into an interagency agreement under ORS 190.110 with the Department of Environmental Quality for purposes of providing clerical and administrative staff support to the council and for sharing in the administrative or other expenses of the council.

(9) Natural resource agencies and other state agencies as requested by the council are directed to assist the council in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the council consider necessary to perform their duties. [2007 c.909 §2; 2011 c.273 §5; 2022 c.58 §2]

Note: Section 19, chapter 58, Oregon Laws 2022, provides:

Sec. 19. Notwithstanding the amendments to ORS 182.538 by section 2 of this 2022 Act, members appointed to the Environmental Justice Task Force before the operative date specified in section 22 of this 2022 Act [August 1, 2022] shall continue to serve the remainder of their terms as members of the Environmental Justice Council unless replaced by the Governor in accordance with ORS 182.538 (3). [2022 c.58 §19]

Note: See note under 182.535.

182.540 [1953 c.588 §4; 1955 c.152 §1; repealed by 1957 c.624 §14]

182.542 Duties of council. (1) The Environmental Justice Council shall:

(a) Advise and provide a biannual report to the Governor on environmental justice issues;

(b) Advise natural resource agencies on environmental justice issues, including community concerns and public participation processes;

(c) Identify, in cooperation with natural resource agencies, environmental justice communities;

(d) Meet with environmental justice communities and make recommendations to the Governor regarding concerns raised by these communities;

(e) Define environmental justice issues in the state; and

(f) Upon the request of a natural resource agency, provide consultation and review of a natural resource agency's proposed administrative rules under ORS 183.333 (1).

(2) The council may form work groups or consult with stakeholders as necessary to carry out the duties of the council. [2007 c.909 §3; 2022 c.58 §3]

Note: See note under 182.535.

182.543 Reports by council. (1) The Environmental Justice Council, in consultation with natural resource agencies, shall identify in a report to the Governor and, in the manner required in ORS 192.245, the Legislative Assembly:

(a) Guidance for state agencies regarding how to use the environmental justice mapping tool developed under ORS 182.555 when adopting rules, policies or guidelines. The guidance must be flexible to accommodate differences in agency directives.

(b) Best practices for increasing public participation and engagement in policy decisions by providing meaningful involvement.

(c) Recommendations on how to best meaningfully consult environmental justice communities.

(d) Recommendations for establishing measurable goals for reducing environmental disparities across Oregon and ways in which state agencies may focus their work toward meeting those goals.

(e) Guidelines for identifying environmental justice communities, including guidelines for further defining environmental justice communities developed from the inclusive community engagement process described in ORS 182.555.

(f) Guidelines for evaluating socioeconomic benefits and burdens to environmental justice communities.

(2) The report prepared under this section may include:

(a) Recommendations for approaches to integrate an analysis of the distribution of environmental burdens and benefits across population groups into evaluations performed under state environmental laws;

(b) Equity analysis methods that may include a process for describing potential risks

to, benefits to and opportunities for investments and mitigation;

(c) Best practices for cataloging and collecting data on programs within natural resource agencies related to health and environmental factors; and

(d) Recommendations for criteria for identifying and addressing gaps in current research and data collection to inform state agency actions, to refine the environmental justice mapping tool and to identify factors that may impede the achievement of environmental justice.

(3) The council, in consultation with the natural resource agencies, shall review and update the report required under this section at least once every five years. [2022 c.58 §13]

Note: See note under 182.535.

182.545 Duties of natural resource agencies. In order to provide greater public participation and to ensure that all persons affected by decisions of the natural resource agencies have a voice in those decisions, each natural resource agency shall:

(1) In making a determination whether and how to act, consider the effects of the action on environmental justice issues.

(2) Hold hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from the hearings.

(3) Engage in public outreach activities in the communities that will be affected by decisions of the agency.

(4) Create a public advocate position that is responsible for:

(a) Encouraging public participation;

(b) Ensuring that the agency considers environmental justice issues; and

(c) Informing the agency of the effect of its decisions on environmental justice communities. [2007 c.909 §4; 2022 c.58 §15]

Note: See note under 182.535.

182.550 Reports by natural resource agencies. All directors of natural resource agencies, and other agency directors as the Governor may designate, shall report annually to the Environmental Justice Council and to the Governor on the results of the agencies' efforts to:

(1) Address environmental justice issues;

(2) Increase public participation of individuals and communities affected by agencies' decisions;

(3) Determine the effect of the agencies' decisions on environmental justice communities;

(4) Improve plans to further the progress of environmental justice in Oregon; and

(5) Utilize the environmental justice mapping tool developed under ORS 182.555. [2007 c.909 §5; 2022 c.58 §16]

Note: See note under 182.535.

182.555 Environmental justice mapping tool. (1) The Environmental Justice Council with staff support from the Department of Environmental Quality, in collaboration with the office of Enterprise Information Services, the Institute for Natural Resources, the Portland State University Population Research Center, and natural resource agencies with staff support from the department and the Oregon Health Authority, shall develop an environmental justice mapping tool.

(2) When developing the environmental justice mapping tool, the council shall develop and conduct an inclusive community engagement process to receive input from communities across this state and consult with natural resource agencies. The council shall hold at least six meetings in different regions of this state, including at least one meeting in a remote community, to:

(a) Present a work plan and proposals for the environmental justice mapping tool; and

(b) Receive input and feedback from communities throughout this state about:

(A) Environmental, health, socioeconomic and other factors that should be considered in the development of the mapping tool;

(B) How the mapping tool should be used to help distribute resources to communities that have experienced underinvestment;

(C) How socioeconomic benefits and burdens could be mapped and considered in addition to environmental, health and other data;

(D) Other uses for the mapping tool that can provide community benefits and diminish community burdens;

(E) Geospatial layers to further define environmental justice communities based on the prevalence of specific factors; and

(F) Community-generated data that may be included in the mapping tool.

(3) The mapping tool must:

(a) Be based on factors that are derived from direct input through the inclusive community engagement process described in subsection (2) of this section;

(b) Be sufficiently detailed to allow the assessment of environmental justice benefits and burdens;

(c) Include geospatial data layers that may be used to help better understand the nature of environmental justice communities;

(d) Include data from natural resource agencies or be compatible with other map-

ping tools developed by other state agencies; and

(e) Be accessible to the public.

(4) The office of Enterprise Information Services shall recommend data quality standards and methodologies for the development and maintenance of the mapping tool.

(5) The council shall enter into an agreement with the Institute for Natural Resources that provides that the institute will maintain the mapping tool and make the mapping tool publicly available in electronic form through the Oregon Explorer.

(6) The council shall review the mapping tool at least once every four years using the inclusive community engagement process described in subsection (2) of this section and update the mapping tool as necessary. [2022 c.58 §12]

Note: Section 18, chapter 58, Oregon Laws 2022, provides:

Sec. 18. (1) The Environmental Justice Council, the office of Enterprise Information Services, the Institute for Natural Resources, the Portland State University Population Research Center and natural resource agencies shall develop the environmental justice mapping tool under section 12 of this 2022 Act [182.555] no later than September 15, 2025.

(2) The Environmental Justice Council shall provide the initial report required under section 13 of this 2022 Act [182.543] to the Governor and the Legislative Assembly no later than September 15, 2025.

(3) The Environmental Justice Council shall provide a progress report to the Governor regarding the development of the environmental justice mapping tool and community input received under section 12 of this 2022 Act no later than September 15, 2024. [2022 c.58 §18]

Note: See note under 182.535.

182.557 Use of environmental justice mapping tool by natural resource agencies. (1) Subject to subsection (2) of this section, natural resource agencies may consider the results of the environmental justice mapping tool developed under ORS 182.555 when developing administrative rules or agency policies or programs. Natural resource agencies shall consider the recommendations in the report required by ORS 182.543 when utilizing the environmental justice mapping tool.

(2) A natural resource agency may use the environmental justice mapping tool to:

(a) Identify environmental justice communities affected by agency programs;

(b) Conduct outreach and engagement activities with environmental justice communities to inform the development, adoption, implementation or enforcement of environmental laws, administrative rules or agency policies;

(c) Establish measurable goals for reducing environmental health disparities within agency programs; and

(d) Prioritize agency funding to help address identified impacts on environmental justice communities.

(3)(a) The environmental justice mapping tool may inform agency policies and programs as they relate to community engagement and outreach, investments and funding and impacts to environmental justice communities, and may be a source of information to the public.

(b) The mapping tool is informational only and may not be used in agency decision-making on individual permits or applications unless otherwise required by federal or state law.

(c) Nothing in ORS 182.535 to 182.557 shall be construed to limit, affect or alter the authority of any state agency to act within the authority granted to the agency by any other provision of state or federal law. [2022 c.58 §14]

Note: See note under 182.535.

182.560 [2008 c.7 §5; repealed by 2017 c.532 §8]

182.562 [2008 c.7 §1; repealed by 2017 c.532 §8]

182.565 [2008 c.7 §2; repealed by 2017 c.532 §8]

182.568 [2008 c.7 §3; repealed by 2017 c.532 §8]

182.570 [2008 c.7 §4; repealed by 2017 c.532 §8]

182.605 [1977 c.842 §1; 1981 c.85 §10; 1981 c.438 §45; 1981 c.821 §1a; 1983 c.17 §28; 1987 c.414 §145; 1989 c.460 §2; 1989 c.721 §21; 1991 c.67 §43; 1993 c.45 §287; repealed by 1993 c.458 §1]

182.608 [Derived from 1983 c.17 §1; 1991 c.67 §44; repealed by 1993 c.458 §1]

182.609 [Derived from 1983 c.151 §24; 1987 c.31 §12; 1993 c.267 §18; repealed by 1993 c.458 §1]

182.610 [Derived from 1983 c.655 §11; repealed by 1989 c.586 §7]

182.615 [1977 c.842 §47; repealed by 1993 c.458 §1]

182.625 [1977 c.842 §48; repealed by 1993 c.458 §1]

182.635 [1977 c.842 §49; repealed by 1993 c.458 §1]

182.815 [1982 s.s.1 c.3 §1; renumbered 284.895 in 1989]

Chapter 183

2023 EDITION

Administrative Procedures Act; Review of Rules; Civil Penalties

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183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

183.090 [1991 c.734 §2; 1997 c.387 §3; 2001 c.621 §71; renumbered 183.745 in 2003]

ADMINISTRATIVE PROCEDURES ACT
(General Provisions)

183.310 Definitions for chapter. As used in this chapter:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "Hearing officer" includes an administrative law judge.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(6)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state;

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employee of the state; and

(C) Agency action under ORS 468B.050 to issue a permit.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(7) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(9) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which

do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10)(a) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees.

(b) "Small business" does not include a coordinated care organization as defined in ORS 414.025. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1; 2003 c.75 §71; 2005 c.523 §8; 2007 c.288 §9; 2019 c.529 §4]

183.315 Application of provisions of chapter to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, State Board of Parole and Post-Prison Supervision or Psychiatric Security Review Board with respect to its functions under ORS 161.315 to 161.351.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an adult in custody confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Except as provided in ORS 774.180, judicial review of an order issued by the commission in a contested case may be sought only by a party to the contested case.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190. [1971 c.734 §19; 1973 c.612 §3; 1973 c.621 §2; 1973 c.694 §1; 1975 c.759 §1; 1977 c.804 §45; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.373 §21; 1989 c.90 §1; 1997 c.26 §1; 1999 c.448 §6; 1999 c.679 §1; 2003 c.64 §8; 2005 c.512 §30; 2005 c.638 §1; 2007 c.239 §8; 2007 c.288 §10; 2011 c.708 §24; 2017 c.312 §1; 2017 c.442 §23; 2019 c.213 §54]

183.317 [1971 c.734 §187; repealed by 1979 c.593 §34]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §21]

(Adoption of Rules)

183.325 Delegation of rulemaking authority to named officer or employee. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation. A delegation under this section may be made only to one or more named individuals. The delegation of authority shall reflect the name of the authorized individual or individuals, and be signed in acknowledgment by the named individuals. Any officer or employee to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of this chapter. [1979 c.593 §10; 1993 c.729 §1]

183.330 Description of organization; service of order; rules coordinator; order not final until put in writing. (1) In addition to other rulemaking requirements im-

posed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency;

(b) Provide to the public, upon request, information pertaining to:

(A) All rulemaking proceedings of the agency;

(B) The status of the agency's rules; and

(C) All certificates and rules filed by the agency with the Secretary of State; and

(c) Keep and make available the mailing list required by ORS 183.335 (8).

(3) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8; 1993 c.729 §2; 2001 c.220 §3; 2017 c.518 §1]

183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless:

(1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

(2) A federal waiver has been granted that authorizes the adoption of the rule;

(3) Local or special conditions exist in this state that warrant a different rule;

(4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

(5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

(6) There is no corresponding federal regulation. [1997 c.602 §2]

183.333 Policy statement; public involvement in development of policy and drafting of rules; advisory committees. (1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee or use any other means of obtaining public views that will assist the agency in drafting the rule. The membership of an advisory committee appointed under this subsection must represent the interests of persons and communities likely to be affected by the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.

(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committee's recommendations on compliance with ORS 183.540.

(4) An agency shall consider an advisory committee's recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. The membership of the fiscal impact advisory committee must represent the interests of persons and communities likely to be affected by the rule. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend

the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) An agency may appoint the Small Business Rules Advisory Committee established in ORS 183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

(7) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding.

(8) If an agency is required by law to appoint an advisory committee or a fiscal impact advisory committee under this section, the agency may not appoint an officer, employee or other agent of the agency to serve as a member of the advisory committee or fiscal impact advisory committee. [2003 c.749 §4; 2005 c.807 §4; 2013 c.273 §1; 2018 c.20 §3; 2021 c.463 §1]

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section must include:

(A) A caption of not more than 15 words that reasonably identifies the subject matter of the agency's intended action. The agency shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.

(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) A statement identifying how adoption of the rule will affect racial equity in this state;

(G) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(H) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person

may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by adults in custody in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) If requested by at least five persons before the earliest date that the rule could become effective after the agency gives notice pursuant to subsection (1) of this section, the agency shall provide a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective.

(e) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Any public comment received in response to the request made under subsection (2)(b)(H) of this section and the agency's response to that comment.

(D) Any statements provided by the agency under paragraph (d) of this subsection.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division;

(c) Correcting spelling;

(d) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule;

(e) Correcting statutory or rule references;

(f) Correcting addresses or telephone numbers referred to in the rules; or

(g) Changing a term or phrase in order to conform with a change prescribed by law.

(8)(a) Any person may request in writing that an agency send to the person copies of the agency's notices of intended action issued under subsection (1) of this section. The person must provide an address where the person elects to receive notices. The address provided may be a postal mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing address.

(b) A request under this subsection must indicate that the person requests one of the following:

(A) The person may request that the agency mail paper copies of the proposed rule and other information required by subsection (2) of this section to the postal mailing address.

(B) If the agency posts notices of intended action on a website, the person may request that the agency mail the information required by subsection (2)(a) of this section to the postal mailing address with a reference to the website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(C) The person may request that the agency electronically mail the information required by subsection (2)(a) of this section to the electronic mailing address, and either provide electronic copies of the proposed rule and other information required by subsection (2) of this section or provide a reference to a website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(c) Upon receipt of any request under this subsection, the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing the mailing lists and keeping the mailing lists current. Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of the lists.

(d) Members of the Legislative Assembly who receive notices under subsection (15) of this section may request that an agency furnish paper copies of the notices.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

(11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection (1) of this section is delivered to the Secretary of State for the purpose of publication in the bulletin referred to in ORS 183.360.

(b) In addition to all other requirements with which rule adoptions must comply, a rule other than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and 183.715.

(c) A rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.

(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to

paragraph (b) of this subsection, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule.

(b) An agency may use an amended filing to correct a failure to include a fiscal impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS 183.333.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or cochairs of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2; 1993 c.729 §3; 1995 c.652 §5; 1997 c.602 §3; 1999 c.123 §1; 1999 c.334 §1; 2001 c.220 §1; 2001 c.563 §1; 2003 c.749 §5; 2003 c.794 §206; 2005 c.17 §1; 2005 c.18 §1; 2005 c.382 §1; 2005 c.807 §5; 2007 c.115 §1; 2007 c.768 §58; 2011 c.380 §2; 2017 c.518 §2; 2019 c.213 §126; 2021 c.463 §2; 2022 c.97 §6]

183.336 Cost of compliance effect on small businesses. (1) The statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) must include:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule;

(b) A brief description of the projected reporting, recordkeeping and other administrative activities required for compliance with the proposed rule, including costs of professional services;

(c) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule; and

(d) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule.

(2) An agency shall utilize available information in complying with the requirements of this section. [2005 c.807 §2]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the federal government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy

with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.338 Use of term "noncitizen" in rules and regulations. (1) As used in this section:

(a) "Noncitizen" means an individual who is not a citizen or national of the United States.

(b) "State agency" means any state officer, board, commission, department, division, institution, branch or agency of the state government.

(2) A state agency shall use the term "noncitizen" to reference an individual who is not a citizen or national of the United States when promulgating a rule or regulation that references an individual who is not a citizen or national of the United States. [2022 c.97 §1]

Note: 183.338 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.340 [1957 c.717 §3 (3); 1971 c.734 §6; repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Except as provided in ORS 183.630, any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.

(2) Except as provided in ORS 183.630, all agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of this chapter, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12; 1997 c.837 §1; 1999 c.849 §§24,25; 2003 c.75 §28]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies; fees; rules. (1) The Secretary of State shall by rule prescribe requirements for the manner and form for filing rules adopted, amended or repealed by agencies. The Secretary of State may refuse to accept for filing any rules that do not comply with the requirements.

(2)(a) Each agency shall file with the office of the Secretary of State each rule adopted by the agency.

(b) Unless otherwise provided by rule adopted by the Secretary of State, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(3) Each rule is effective upon filing as required by subsection (2) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(4) When a rule is amended or repealed by an agency, the agency shall file the amendment or notice of repeal with the Secretary of State.

(5) A certified copy of each executive order issued, prescribed or promulgated by the

Governor shall be filed in the office of the Secretary of State.

(6) A rule is not valid or effective against any person or party until the rule is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to the case and subsequent cases of like nature the agency may rely upon the decision in disposition of later cases.

(7) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, in the format requested, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290.

(8) The Secretary of State shall establish and collect fees from agencies filing rules under this section. The fees shall be established in amounts calculated to be necessary to generate revenues adequate to pay costs incurred by the Secretary of State in performing the following duties that are not paid for by subscriber fees or other fees prescribed by law:

(a) Publication of the compilation referred to in ORS 183.360 (1);

(b) Electronic publication of the bulletin referred to in ORS 183.360 (3); and

(c) Electronic publication of rules and other information relating to rules under ORS 183.365.

(9) All fees collected under subsection (8) of this section shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290.

(10) No later than 10 days after an agency files an adopted, amended or repealed rule with the Secretary of State, other than a rule amended for a purpose described in ORS 183.335 (7), the Secretary of State shall:

(a) Electronically transmit the rule to the Legislative Counsel in accordance with ORS 183.715; and

(b) Provide to the agency that filed the rule a written confirmation that the rule was transmitted to the Legislative Counsel. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13; 1991 c.169 §2; 2003 c.794 §207; 2009 c.289 §1; 2017 c.518 §3]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as are desirable. The Secretary of State may copyright the compilations prepared under this subsection, and may establish policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publication, sale and distribution of the compilations.

(2) The Secretary of State has discretion to omit from the compilation, if published in print, rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy of the omitted rule may be obtained. In preparing the compilation the Secretary of State may not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin that:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employee from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule;

(c) Contains executive orders of the Governor; and

(d) Contains orders issued by the Director of the Department of Revenue under ORS 305.157 extending tax statutes of limitation.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "OAR" with appropriate numerical indications.

(6) The Secretary of State may publish the compilation and bulletin required by this section in print, or by placing the compila-

tion and bulletin on the Internet. [1957 c.717 §4 (1),(2),(3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16; 1993 c.729 §13; 1995 c.79 §62; 2001 c.104 §63; 2003 c.168 §3; 2009 c.289 §2; 2017 c.518 §4]

183.362 [1993 c.729 §12; repealed by 2017 c.518 §9]

183.365 Publication of administrative rules in electronic form. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form administrative rules adopted or amended by state agencies and make the information available to the public and members of the Legislative Assembly.

(2) The Secretary of State shall determine the most cost-effective format and procedures for the timely release of the information described in subsection (1) of this section in electronic form.

(3) Pursuant to ORS 183.355, the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

(4) Although each state agency is responsible for its information resources, centralized information resource management must also exist to:

(a) Provide public access to the information described in subsection (1) of this section;

(b) Provide technical assistance to state agencies; and

(c) Ensure that the information resources needed to implement subsection (1) of this section are addressed along with the needs of the individual agencies.

(5) Personal information concerning a person who accesses the information identified in subsection (1) of this section may be maintained only for the purpose of providing service to the person.

(6) No fee or other charge may be imposed by the Secretary of State as a condition of accessing the information identified in subsection (1) of this section.

(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the State of Oregon relative to any of the information made available pursuant to subsection (1) of this section. [1995 c.614 §5; 2017 c.518 §5]

Note: 183.365 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4(4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. (1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule. [1957 c.717 §5; 1971 c.734 §8; 2003 c.749 §6]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have

jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

(a) The rule under review;

(b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact. The court's review of the master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

183.403 Agency report to Legislative Assembly regarding temporary rules. (1) As used in this section:

(a) "Agency" has the meaning given that term in ORS 183.310.

(b) "Rule" has the meaning given that term in ORS 183.310.

(c) "Statement of need" means the statement described in ORS 183.335 (5)(c).

(2) No later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed or suspended during the preceding 12-month period. The report must include:

(a) The number of rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3); and

(b) With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335 (5):

(A) The number of rules;

(B) A list of the rules;

(C) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned; and

(D) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3). [2016 c.44 §1]

Note: 183.403 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.405 Agency review of rules; report by Secretary of State. (1) Not later than five years after adopting a rule, an agency shall review the rule for the purpose of determining:

(a) Whether the rule has had the intended effect;

(b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;

(c) Whether subsequent changes in the law require that the rule be repealed or amended;

(d) Whether there is continued need for the rule; and

(e) What impacts the rule has on small businesses.

(2) Upon request of an agency, the Small Business Rules Advisory Committee established in ORS 183.407 may agree to complete the review and reporting required by this section for the agency.

(3) An agency or the Small Business Rules Advisory Committee shall utilize available information in complying with the requirements of subsection (1) of this section.

(4) An agency or the Small Business Rules Advisory Committee shall provide a report on each review of a rule conducted under this section:

(a) To the Secretary of State;

(b) To the Small Business Rules Advisory Committee, unless the committee completed

the review under subsection (2) of this section; and

(c) If the agency appointed an advisory committee pursuant to ORS 183.333 for consideration of a rule subject to the requirements of this section, to the advisory committee.

(5) The provisions of this section do not apply to the amendment or repeal of a rule.

(6) The provisions of this section do not apply to:

(a) Rules adopted to implement court orders or the settlement of civil proceedings;

(b) Rules that adopt federal laws or rules by reference;

(c) Rules adopted to implement legislatively approved fee changes; or

(d) Rules adopted to correct errors or omissions.

(7) The Secretary of State shall compile the reports submitted under this section during each calendar year and submit an annual report to the Legislative Assembly in the manner required by ORS 192.245 no later than February 1 of the following year. [2005 c.807 §3; 2017 c.518 §6; 2018 c.20 §4]

Note: 183.405 was added to and made a part of 183.325 to 183.410 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.407 Small Business Rules Advisory Committee. (1) The Small Business Rules Advisory Committee is established to serve as an advisory committee for agencies adopting new administrative rules and to review the effectiveness of existing administrative rules.

(2) The committee consists of nine members as follows:

(a) Two representatives of small businesses appointed by the Governor;

(b) Two representatives of small businesses appointed by the President of the Senate;

(c) Two representatives of small businesses appointed by the Speaker of the House;

(d) A representative of small businesses appointed by the Office of Small Business Assistance established in ORS 56.203;

(e) A representative of state agencies appointed by the Director of the Oregon Department of Administrative Services; and

(f) A member who is an expert in the rulemaking process appointed by the State Archivist.

(3) Upon request of an agency, the committee shall serve as the advisory committee or fiscal impact advisory committee for reviewing an agency's proposed administrative rules under ORS 183.333.

(4) Upon request of an agency, the committee may agree to complete the rules review and reporting required by ORS 183.405 in place of the agency.

(5) Members of the committee shall be appointed to serve for terms of two years, but a member serves at the pleasure of the appointing authority. The appointing authority shall appoint a person to fill any vacancy on the committee for the expired term. A member may be reappointed to the committee.

(6) The members of the committee shall elect a chairperson from among the members of the committee. In the absence of a chairperson, the member appointed by the State Archivist shall serve as acting chairperson.

(7) A majority of the members of the committee constitutes a quorum for the transaction of business.

(8) The committee shall meet upon the call of the chairperson or upon a request of a majority of the members of the committee. The committee may meet by phone or video conference with at least 24 hours' public notice.

(9) The State Archives shall provide administrative support to the committee.

(10) Members of the committee are not entitled to compensation, but may be reimbursed from funds available to the State Archives for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. [2018 c.20 §2]

Note: 183.407 was added to and made a part of 183.325 to 183.410 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for

their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

(Contested Cases)

183.411 Delegation of final order authority. Unless otherwise provided by law, an agency may delegate authority to enter a final order in a proceeding or class of proceedings to an officer or employee of the agency, or to a class of officers or employees of the agency. A delegation of authority under this section must be made in writing before the issuance of any order pursuant to the delegation and must be retained in the agency's records. [2007 c.116 §2]

Note: 183.411 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.413 Notice to parties before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that parties to a contested case hearing have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) and (3) of this section to set forth certain requirements of state agencies so that parties to contested case hearings shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall serve personally or by mail a written notice to each party to the hearing that includes the following:

(a) The time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A statement that generally identifies the issues to be considered at the hearing.

(d) A statement indicating that the party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources.

(e) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.

(f) A statement indicating whether discovery is permitted and, if so, how discovery may be requested.

(g) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(h) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(i) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(j) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(k) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(L) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(m) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(n) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(o) A description of the appeal process from the determination or order of the agency.

(p) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State

Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

(3) The failure of an agency to give notice of any item specified in subsection (2) of this section does not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37,38,39; 1995 c.79 §63; 2007 c.288 §1; 2013 c.295 §1]

183.415 Notice of right to hearing. (1) The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions.

(2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(3) Notice under this section must include:

(a) A statement of the party's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) A statement indicating whether and under what circumstances an order by default may be entered; and

(f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1; 1997 c.837 §2; 1999 c.849 §§27,28; 2003 c.75 §29; 2007 c.288 §2; 2013 c.295 §3]

183.417 Procedure in contested case hearing. (1) In a contested case proceeding, the parties may elect to be represented by counsel and to respond and present evidence and argument on all issues properly before the presiding officer in the proceeding.

(2) Agencies may adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.

(3)(a) Unless prohibited by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party and to the attorney of record if the party is represented. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(4) An order adverse to a party may be issued upon default only if a prima facie case is made on the record. The record on a default order includes all materials submitted by the party. The record on a default order may be made at the time of issuance of the order. If the record on the default order consists solely of an application and other materials submitted by the party, the agency shall so note in the order.

(5) At the commencement of a contested case hearing, the officer presiding at the hearing shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(6) Testimony at a contested case hearing shall be taken upon oath or affirmation of the witness. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(7) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut the

communication. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, the administrative law judge must comply with ORS 183.685.

(8) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of the law to those facts.

(9) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communication that must be disclosed under subsection (7) of this section and that was made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or an administrative law judge.

(10) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony in a contested case proceeding. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. Upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [2007 c.288 §4]

183.418 [1973 c.386 §6; 1989 c.224 §11; 1991 c.750 §5; repealed by 1999 c.1041 §9]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.421 [1991 c.750 §4; repealed by 1999 c.1041 §9]

183.425 Depositions or subpoena of material witness; discovery. (1) On petition of any party to a contested case, or upon the agency's own motion, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19; 1997 c.837 §6]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by this chapter before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by this chapter confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60

days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpoenas in contested cases. (1) An agency may issue subpoenas on its own motion in a contested case. In addition, an agency or hearing officer in a contested case may issue subpoenas upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the hearing officer, the agency or the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4; 1989 c.980 §10a; 1997 c.837 §3; 1999 c.849 §30]

183.445 Subpoena by agency or attorney of record of party when agency not subject to ORS 183.440. (1) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency.

(2) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued by the agency to compel the appearance of witnesses on behalf of the party, the agency may issue subpoenas on its own motion. [1981 c.174 §6; 1997 c.837 §4; 1999 c.849 §32]

183.450 Evidence in contested cases. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) The hearing officer and agency may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the hearing officer or agency. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer and agency may utilize the hearing officer's or agency's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1; 1995 c.272 §5; 1997 c.391 §1; 1997 c.801 §76; 1999 c.448 §5; 1999 c.849 §34]

183.452 Representation of agencies at contested case hearings. (1) Agencies may, at their discretion, be represented at contested case hearings by the Attorney General.

(2) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employee of the agency if:

(a) The Attorney General has consented to the representation of the agency by an agency representative in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of hearing being conducted.

(3) An agency representative acting under the provisions of this section may not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized by subsection (4) of this section.

(4) The officer presiding at a contested case hearing in which an agency representative appears under the provisions of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(5) Upon judicial review, no limitation imposed under this section on an agency representative is the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a party.

(6) The Attorney General may prepare model rules for agency representatives authorized under this section. [1999 c.448 §3]

Note: 183.452 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.453 Representation of Oregon Health Authority and Department of Human Services at contested case hearings. The Oregon Health Authority and the Department of Human Services may be represented at contested case hearings by an officer or employee of either the authority or the department, subject to the requirements of ORS 183.452. [2013 c.14 §1]

Note: 183.453 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.455 [1987 c.259 §3; repealed by 1999 c.448 §10]

183.457 Representation of persons other than agencies participating in contested case hearings. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The State Landscape Contractors Board in the administration of the Landscape Contractors Law.

(b) The State Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010.

(f) The Department of the State Fire Marshal.

(g) The Department of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

(i) The Water Resources Commission and the Water Resources Department.

(j) The Land Conservation and Development Commission and the Department of Land Conservation and Development.

(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

(L) The Bureau of Labor and Industries.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-

examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(5) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency. [1987 c.833 §3; 1989 c.453 §2; 1993 c.186 §4; 1995 c.102 §1; 1999 c.448 §1; 1999 c.599 §1; 2021 c.539 §109]

Note: 183.457 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.458 Nonattorney and out-of-state attorney representation of parties in certain contested case hearings. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support, public assistance as defined in ORS 411.010, medical assistance as defined in ORS 414.025 or the right to be free from potentially unusual or hazardous treatment procedures under ORS 426.385 (3), a party may be represented by any of the following persons:

(a) An attorney licensed to practice law in any state who is an employee of or contracts with a nonprofit legal services program that receives funding pursuant to ORS 9.572.

(b) An authorized representative who is an employee of a nonprofit legal services program that receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an attorney also employed by a legal services program.

(c) An authorized representative who is an employee of the system described in ORS 192.517 (1). The authorized representative must be supervised by an attorney also employed by the system.

(2) In any contested case hearing before a state agency involving child support, a party may be represented by a law student who is:

(a) Handling the child support matter as part of a law school clinical program in which the student is enrolled; and

(b) Supervised by an attorney employed by the program.

(3) In any contested case hearing before a state agency involving an applicant for or recipient of medical assistance, the claimant may be represented by a relative, friend or any other person of the claimant's choosing.

(4) A person authorized to represent a party under this section may present evidence in the proceeding, examine and cross-examine witnesses and present factual and legal arguments in the proceeding. [1999 c.448 §4; 2003 c.14 §86; 2005 c.498 §6; 2009 c.49 §1; 2013 c.688 §25]

Note: 183.458 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.459 Representation of home care worker by labor union representative. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, a home care worker or personal support worker, as defined in ORS 410.600, who is a party in a contested case hearing conducted by the Department of Human Services may be represented in the hearing by a labor union representative.

(2) Notwithstanding ORS 8.690, 9.160 and 9.320, a family child care provider, as defined in ORS 329A.430, who is a party in a contested case hearing conducted by the Department of Early Learning and Care may be represented in the hearing by a labor union representative.

(3) The hearing officer at a contested case hearing in which a labor union representative appears under the provisions of this section shall allow the representative to present evidence, examine and cross-examine witnesses and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing. [2009 c.424 §2; 2018 c.75 §9; 2021 c.631 §16; 2023 c.554 §43]

Note: 183.459 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearing officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearing officer is authorized or required by law or agency rule to issue a final order, the hearing officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption. [1979 c.593 §§36,36b; 1995 c.79 §64; 2001 c.104 §64]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

183.471 Preservation of orders in electronic format; fees. (1) When an agency issues a final order in a contested case, the agency shall maintain the final order in a digital format that:

(a) Identifies the final order by the date it was issued;

(b) Is suitable for indexing and searching; and

(c) Preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized or underlined writing in the document.

(2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its designee, with electronic copies of final orders issued by the agency in contested cases. The request must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS 192.338, 192.345 and 192.355, shall provide the Oregon State Bar, or its designee, with an electronic copy of all final orders identified in the request.

(3) Notwithstanding ORS 192.324, an agency may not charge a fee for the first two

requests submitted under this section in a calendar year. For any subsequent request, an agency may impose a fee in accordance with ORS 192.324 to reimburse the agency for the actual costs of complying with the request.

(4) For purposes of this section, a final order entered in a contested case by an administrative law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the administrative law judge to conduct the hearing.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

(a) The Department of Revenue;

(b) The State Board of Parole and Post-Prison Supervision;

(c) The Department of Corrections;

(d) The Employment Relations Board;

(e) The Public Utility Commission of Oregon;

(f) The Oregon Health Authority;

(g) The Land Conservation and Development Commission;

(h) The Land Use Board of Appeals;

(i) The Division of Child Support of the Department of Justice;

(j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;

(k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010;

(L) The Employment Department, if the final order relates to an assessment of unemployment tax for which a hearing was not held;

(m) The Employment Department, if the final order relates to:

(A) Benefits, as defined in ORS 657B.010;

(B) Employer and employee contributions under ORS 657B.150 for which a hearing was not held;

(C) Employer-offered benefit plans approved under ORS 657B.210 or terminated under ORS 657B.220; or

(D) Employer assistance grants under ORS 657B.200; or

(n) The Department of Human Services, if the final order was not related to licensing or certification. [2013 c.156 §2; 2023 c.292 §12]

Note: 183.471 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Judicial Review)

183.480 Judicial review of agency orders. (1) Except as provided in ORS 183.417 (3)(b), any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4; 1997 c.837 §5; 2007 c.288 §11]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter

case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay, the agency may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that the agency elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, the agency shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, and the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if the court finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure, including a failure by the presiding officer to comply with the requirements of ORS 183.417 (8).

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpreta-

tion compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2; 1989 c.453 §1; 1991 c.331 §44; 2007 c.659 §§2,5]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4) At any time subsequent to the filing of the petition for review and prior to the date set for hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(6) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3; 1999 c.113 §1]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's register.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment in the register of the court pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7; 1981 c.178 §11; 1985 c.540 §39; 2003 c.576 §193]

183.486 Form and scope of decision of reviewing court. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Appeals From Circuit Courts)

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the judgment of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76; 2003 c.576 §394]

(Alternative Dispute Resolution)

183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the

application of ORS 192.311 to 192.478 to the agency, or the application of ORS 192.610 to 192.705 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Mark O. Hatfield School of Government, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Mark O. Hatfield School of Government and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and

(c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall work cooperatively in designing the program under ORS 36.179 that is intended to provide services to, apply to or involve any state agency.

(b) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall enter into an interagency agreement that includes, but is not limited to, provisions on appropriate roles, reporting requirements and coordination of services provided to state agencies by the Mark O. Hatfield School of Government pursuant to ORS 36.179.

(c) Before providing dispute resolution services in a specific matter to a state agency under ORS 36.179, the Mark O. Hatfield School of Government shall notify the Department of Justice of any proposal to provide such services.

(7) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(8) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

(9) An agency may use the services of an employee of another agency or of the federal government to serve as a mediator or facilitator, and may provide the services of an agency employee to another agency or to the federal government to serve as a mediator or facilitator. An agency may enter into an agreement with another agency or with the federal government to determine reimbursement for services of an employee acting as a mediator or facilitator under the provisions of this subsection. This subsection does not apply to mediation under ORS 243.650 to 243.809. [1993 c.647 §2; 1995 c.515 §2; 1997 c.706 §5; 1997 c.801 §42; 1997 c.837 §7; 2001 c.581 §2; 2003 c.791 §§27,27a; 2005 c.334 §§1,2; 2005 c.817 §6]

Note: 183.502 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

(Housing Cost Impact Statement)

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

(1) The Oregon Housing Stability Council;

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

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

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

(7) The State Department of Energy. [1995 c.652 §2; 2015 c.180 §39]

Note: 183.530 to 183.538 were added to and made a part of ORS chapter 183 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. The Housing and Community Services Department shall adopt rules prescribing the form to be used when preparing the estimate and other such rules necessary to the implementation of this section and ORS 183.530 and 183.538.

(2) A housing cost impact statement:

(a) For an agency listed in ORS 183.530 shall be incorporated in the:

(A) Fiscal impact statement required by ORS 183.335 (2)(b)(E) for permanent rule adoption; or

(B) Statements required by ORS 183.335 (5) for temporary rule adoption.

(b) Shall not be required for the adoption of any procedural rule by an agency listed in ORS 183.530. [1995 c.652 §3; 1997 c.249 §54; 2015 c.180 §40; 2023 c.193 §12]

Note: See note under 183.530.

183.538 Effect of failure to prepare housing cost impact statement; judicial review. (1) Notwithstanding ORS 183.335 (12), 183.400 (4) or any other provision of law, the failure to prepare a housing cost impact statement shall not affect the validity or effective date of any rule or ordinance or any amendment to a rule or ordinance.

(2) If a rule or ordinance or any amendment to a rule or ordinance is challenged based on the failure to prepare a housing cost impact statement, the court or other reviewing authority shall remand the proposed rule or ordinance or any amendment to a rule or ordinance to the adopting or repealing entity if it determines that a housing cost impact statement is required.

(3) The court or other reviewing authority shall determine only whether a housing cost impact statement was prepared and shall not make any determination as to the sufficiency of the housing cost impact statement. [1995 c.652 §4; 2001 c.220 §4]

Note: See note under 183.530.

(Effects of Rules on Small Business)

183.540 Reduction of economic impact on small business. If the statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) shows that a rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards;

(4) Exempting small businesses from any or all requirements of the rule; or

(5) Otherwise establishing less intrusive or less costly alternatives applicable to small business. [1981 c.755 §4; 2003 c.749 §7; 2005 c.807 §6]

183.545 [1981 c.755 §5; repealed by 2003 c.749 §17]

183.550 [1981 c.755 §6; repealed by 2003 c.749 §17]

183.560 [2001 c.374 §1; 2003 c.740 §1; renumbered 183.700 in 2003]

183.562 [2001 c.374 §2; renumbered 183.702 in 2003]

183.600 [1999 c.849 §2; 2003 c.75 §1; repealed by 2009 c.866 §4]

(Office of Administrative Hearings)

183.605 Office of Administrative Hearings. (1) The Office of Administrative Hearings is established within the Employment Department. The office shall be managed by the chief administrative law judge appointed under ORS 183.610. The office shall make administrative law judges available to agencies under ORS 183.605 to 183.690. Administrative law judges assigned from the office under ORS 183.605 to 183.690 may:

(a) Conduct contested case proceedings on behalf of agencies in the manner provided by ORS 183.605 to 183.690;

(b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and

(c) Perform such other duties as may be authorized under ORS 183.605 to 183.690.

(2) All persons serving as administrative law judges in the office must meet the standards and training requirements of ORS 183.680.

(3) The Employment Department shall provide administrative services to the Office of Administrative Hearings, including budget services, accounting services, procurement services, contracting services, human resources services and information technology services. The services must be provided in a manner that is consistent with law, rules and state policies. The Office of Administrative Hearings shall reimburse the Employment Department for the costs of the services provided. [1999 c.849 §3; 2003 c.75 §2; 2009 c.866 §5]

183.610 Chief administrative law judge. (1)(a) The Governor shall appoint a person to serve as chief administrative law judge for the Office of Administrative Hearings. The appointment of the chief administrative law judge is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(b) At the time of appointment, the chief administrative law judge must be an active member of the Oregon State Bar with at least one year of employment experience in administrative law or administrative hearings. Within six months after the appointment, the chief administrative law judge must meet all qualifications required of an administrative law judge under ORS 183.615.

(c) The Governor shall consider recommendations by the Office of Administrative Hearings Oversight Committee in appointing or reappointing a chief administrative law judge.

(d) The chief administrative law judge has all the powers necessary and convenient to organize and manage the office. Subject to the State Personnel Relations Law, the chief administrative law judge shall employ all persons necessary for the administration of the office, prescribe the duties of those employees and fix their compensation.

(e) The chief administrative law judge shall serve for a term of four years.

(f) Upon a vacancy or expected vacancy in the office of chief administrative law judge, the Governor shall notify the Office of Administrative Hearings Oversight Committee and the Oregon State Bar of the vacancy and direct the Employment Department, in coordination with the oversight committee, to conduct a public candidate search, recruitment and application process to assist the oversight committee in making recommendations to the Governor to fill the vacancy. The Governor may appoint an acting chief administrative law judge until the vacancy is filled.

(g) Notwithstanding ORS 236.140, the Governor may remove the chief administrative law judge only for cause, but the Governor may decline to reappoint the chief administrative law judge at the end of the four-year term without cause.

(2) The chief administrative law judge shall employ administrative law judges. The chief administrative law judge shall ensure that administrative law judges employed for the office receive all training necessary to meet the standards required under the program created under ORS 183.680.

(3) The chief administrative law judge shall take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office. [1999 c.849 §4; 2003 c.75 §3; 2009 c.866 §1; 2023 c.52 §1]

183.615 Administrative law judges; duties; qualifications; rules. (1) An administrative law judge employed by or contracting with the chief administrative law judge shall conduct hearings on behalf of agencies as assigned by the chief administrative law judge. An administrative law judge shall be impartial in the performance of the administrative law judge's duties and shall remain fair in all hearings conducted by the administrative law judge. An administrative law judge shall develop the record in contested case proceedings in the manner provided by ORS 183.417 (8).

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief administrative law judge as administrative law judges. The chief administrative law judge by rule may establish additional qualifications for administrative law judges employed for the office. [1999 c.849 §5; 2003 c.75 §4; 2007 c.659 §§3,6]

183.620 Contract administrative law judges. (1) The chief administrative law judge for the Office of Administrative Hearings may contract for the services of persons to act as administrative law judges.

(2) Contract administrative law judges shall meet the same qualifications as administrative law judges regularly employed by the chief administrative law judge and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for administrative law judges regularly employed by the chief administrative law judge and conducting similar hearings. [1999 c.849 §6; 2003 c.75 §5]

183.625 Assignment of administrative law judges; conduct of hearings. (1) In assigning an administrative law judge to conduct hearings on behalf of an agency, the chief administrative law judge shall, whenever practicable, assign an administrative law judge that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to

use administrative law judges assigned from the Office of Administrative Hearings to conduct hearings must delegate responsibility for the conduct of the hearing to an administrative law judge assigned from the Office of Administrative Hearings, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize an administrative law judge assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use administrative law judges assigned from the office may contract with the chief administrative law judge for the assignment of an administrative law judge from the office for the purpose of conducting one or more contested cases on behalf of the agency. [1999 c.849 §7; 2003 c.75 §6]

183.630 Model rules of procedure; exemptions; depositions. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief administrative law judge, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) The Attorney General shall consult with an advisory group when adopting model rules of procedure for the purpose of contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings. The advisory group shall consist of:

(a) The chief administrative law judge;

(b) An officer or employee of a state agency, appointed by the Governor;

(c) An attorney who practices administrative law, appointed by the Oregon State Bar;

(d) A deputy or assistant attorney general appointed by the Attorney General; and

(e) A public member, appointed by the Governor, who is not an attorney or an officer or employee of a state agency.

(4) Except as may be expressly granted by the agency to an administrative law judge assigned from the office, or as may be expressly provided for by law, an administrative law judge conducting a hearing for an agency under ORS 183.605 to 183.690 may not authorize a party to take a deposition that is to be paid for by the agency. [1999 c.849 §8; 2003 c.75 §7; 2009 c.866 §6]

183.635 Agencies required to use administrative law judges from Office of Administrative Hearings; exceptions. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(d) Department of Corrections.

(e) Department of Education, State Board of Education and Superintendent of Public Instruction.

(f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(g) Department of Revenue.

(h) Department of State Police.

(i) Employment Appeals Board.

(j) Employment Relations Board.

(k) Energy Facility Siting Council.

(L) Fair Dismissal Appeals Board.

(m) Governor.

(n) Land Conservation and Development Commission.

(o) Land Use Board of Appeals.

(p) Local government boundary commissions created pursuant to ORS 199.430.

(q) Public universities listed in ORS 352.002.

(r) Oregon Youth Authority.

(s) Psychiatric Security Review Board.

(t) Public Utility Commission.

(u) State Accident Insurance Fund Corporation.

(v) State Apprenticeship and Training Council.

(w) State Board of Parole and Post-Prison Supervision.

(x) State Land Board.

(y) State Treasurer, except the State Treasurer shall use an administrative law judge for contested cases involving claims arising under ORS 98.302 to 98.436, 98.992 or 116.253 or any other claim to escheated or unclaimed property.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

(a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;

(b) ORS chapter 455;

(c) ORS chapter 674;

(d) ORS chapters 706 to 716;

(e) ORS chapter 717;

(f) ORS chapters 723, 725 and 726; and

(g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470. [1999 c.849 §9; 2001 c.900 §46; 2003 c.75 §8; 2005 c.22 §131; 2005 c.26 §18; 2007 c.239 §9; 2009 c.541 §6; 2009 c.762 §46; 2009 c.830 §147; 2009 c.866 §10; 2011 c.637 §64; 2011 c.708 §25; 2013 c.296 §19; 2015 c.767 §53; 2017 c.442 §24; 2019 c.678 §56]

183.640 Use of Office of Administrative Hearings by exempt agencies and by political subdivisions. (1) Upon request of an agency, the chief administrative law judge for the Office of Administrative Hearings may assign administrative law judges from the office to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of administrative law judges assigned from the office under ORS 183.635.

(2) The chief administrative law judge may contract with any political subdivision of this state to provide the services of administrative law judges to the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision. [1999 c. 849 §10; 2003 c.75 §9]

183.645 Request for change of administrative law judge; rules. (1) After assignment of an administrative law judge from the Office of Administrative Hearings to conduct a hearing on behalf of an agency, the chief administrative law judge shall assign a different administrative law judge for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief administrative law judge may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of administrative law judge under subsection (1) of this section may be granted by the chief administrative law judge without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to an administrative law judge assigned after a request for a different administrative law judge has been granted under subsection (1) of this section, the chief administrative law judge shall assign a different administrative law judge only upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, a different administrative law judge may not be assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges, except upon a showing of good cause. [1999 c.849 §11; 2001 c.294 §8; 2003 c.75 §10]

183.650 Form of order; modification of form of order by agency; finding of historical fact. (1) In any contested case hearing conducted by an administrative law judge assigned from the Office of Administrative Hearings, the administrative law judge shall prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The administrative law judge shall also prepare and serve a proposed order in the manner provided by ORS 183.464 un-

less the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings only if the agency determines that there is clear and convincing evidence in the record that the finding was wrong. For the purposes of this section, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) Notwithstanding ORS 19.415 (3), if a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the administrative law judge, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment. [1999 c.849 §12; 2003 c.75 §11; 2009 c.231 §5; 2009 c.866 §7]

183.655 Fees. The chief administrative law judge for the Office of Administrative Hearings shall establish a schedule of fees for services rendered by administrative law judges assigned from the office. The fee charged shall be in an amount calculated to recover the cost of providing the administrative law judge, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief administrative law judge under this section shall be paid into the Office of Administrative Hearings Operating Account created under ORS 183.660. [1999 c.849 §13; 2003 c.75 §12]

183.660 Office of Administrative Hearings Operating Account. (1) The Office of Administrative Hearings Operating Account is created within the General Fund. The account shall consist of moneys paid into the account under ORS 183.655. Moneys credited to the account are continuously appropriated to the chief administrative law judge for the Office of Administrative Hearings created under ORS 183.605 for the purpose of paying expenses incurred in the administration of the office.

(2) At the discretion of the chief administrative law judge, petty cash funds may be established and maintained for the purpose of administering the duties of the office. [1999 c.849 §14; 2003 c.75 §13]

183.665 Estimates of office expenses. The chief administrative law judge for the Office of Administrative Hearings shall estimate in advance the expenses that the office will incur during each biennium and shall notify each agency required to use the office's services of the agency's share of the anticipated expenses for periods within the biennium. [1999 c.849 §15; 2003 c.75 §14]

183.670 Rules. Subject to the provisions of the State Personnel Relations Law, the chief administrative law judge for the Office of Administrative Hearings may adopt rules to:

(1) Organize and manage the Office of Administrative Hearings established under ORS 183.605.

(2) Facilitate the performance of the duties of administrative law judges assigned from the office.

(3) Establish qualifications for persons employed as administrative law judges by the office.

(4) Establish standards and procedures for the evaluation and training of administrative law judges employed by the office, consistent with standards and training requirements established under ORS 183.680. [1999 c.849 §16; 2003 c.75 §15]

183.675 Alternative dispute resolution. ORS 183.605 to 183.690 do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of an administrative law judge from the Office of Administrative Hearings. [1999 c.849 §16a; 2003 c.75 §16]

183.680 Standards and training program. (1) The chief administrative law judge for the Office of Administrative Hearings, working in coordination with the Attorney General, shall design and implement a standards and training program for administrative law judges employed by the office and for persons seeking to be employed as administrative law judges by the office. The program shall include:

(a) The establishment of an ethical code for persons employed as administrative law judges by the office.

(b) Training for administrative law judges employed by the office that is designed to

assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.

(2) The program established by the chief administrative law judge under this section may include:

(a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief administrative law judge for administrative law judges employed by the office.

(b) The certification of courses offered by other persons for the purpose of any training required by the chief administrative law judge for administrative law judges employed by the office.

(c) The provision of specialized training for administrative law judges in subject matter areas affecting particular agencies required to use administrative law judges assigned from the office.

(3) The chief administrative law judge is bound by the ethical code established under this section and must satisfactorily complete training required of administrative law judges employed by the office other than specialized training in subject matter areas affecting particular agencies. [1999 c.849 §19; 2003 c.75 §17]

183.685 Ex parte communications. (1) An administrative law judge assigned from the Office of Administrative Hearings who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A copy of any written response to the communication made by the administrative law judge;

(d) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, an administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to an administrative law judge while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to an administrative law judge, or to any agent of an administrative law judge, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of an agency.

(5) The provisions of this section do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges; or

(b) Communications made to an administrative law judge by any person employed by the office to assist the administrative law judge. [1999 c.849 §20; 2003 c.75 §18; 2009 c.866 §9]

183.690 Office of Administrative Hearings Oversight Committee. (1) The Office of Administrative Hearings Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief administrative law judge for the Office of Administrative Hearings shall serve as an ex officio member of the committee. The chief administrative law judge may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study the operations of the Office of Administrative Hearings;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Office of Administrative Hearings;

(c) Make any recommendations for additional legislation governing the operations of the Office of Administrative Hearings;

(d) Make recommendations to the Governor for the appointment or reappointment of the chief administrative law judge; and

(e) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6)(a) The Office of Administrative Hearings shall provide the committee with staff.

(b) The Employment Department shall provide the committee with human resources services and assist the committee with candidate searches for appointment of the chief administrative law judge. [1999 c.849 §21; 2003 c.75 §19; 2005 c.22 §132; 2009 c.866 §3; 2023 c.52 §2]

PERMITS AND LICENSES

183.700 Permits subject to ORS 183.702. (1) As used in this section and ORS 183.702, "permit" means an individual and particularized license, permit, certificate, approval, registration or similar form of permission required by law to pursue any activity specified in this section, for which an agency must weigh information, make specific findings and make determinations on a case-by-case basis for each applicant.

(2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

(a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790, 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035, 468B.040, 468B.045, 468B.050 and 468B.095.

(b) The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.

(c) The Water Resources Department under ORS chapters 537 and 540, except those permits issued under ORS 537.747 to 537.765.

(d) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

(e) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140.

(f) The Department of Transportation pursuant to ORS 374.312. [Formerly 183.560]

Note: 183.700 and 183.702 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.702 Statement of criteria and procedures for evaluating permit application; documentation of decision on application; required signature. (1) At the time a person applies for a permit specified in ORS 183.700, the issuing agency shall offer a document to that applicant that specifies the criteria and procedures for evaluating a permit application.

(2) The agencies specified in ORS 183.700 must document in writing the basis for all decisions to deny a permit specified in ORS 183.700, including citation to the criteria applied by the agency and the manner in which agency standards were utilized in applying the criteria. The documentation required un-

der this section shall be made part of the record for the decision on the permit application.

(3) At least one officer or employee of the issuing agency who has authority to sign orders on behalf of the agency, or the officer or employee responsible for the decision to deny a permit specified in ORS 183.700, shall sign the documentation required under subsection (2) of this section.

(4) The issuing agency shall provide to the applicant a copy of the documentation required under subsection (2) of this section. [Formerly 183.562]

Note: See note under 183.700.

183.705 Extended term for renewed licenses; fees; continuing education; rules. (1) Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on an annual basis under the laws administered by the agency also may offer those licenses with terms of two, three, four or five years. Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on a biennial basis under the laws administered by the agency also may offer those licenses with terms of three, four or five years. Extended terms may be offered only for renewed licenses and may not be offered for initial applications for licenses.

(2) An agency may offer an extended term under this section for a license issued by the agency only after adopting a rule authorizing the extended term. An agency may adopt a rule authorizing an extended term only if the agency finds that the extended term is consistent with public safety and with the objectives of the licensing requirement. An agency by rule may prohibit extended terms based on prior license discipline of an applicant.

(3) An applicant must meet all qualifications established by the agency to be granted an extended term.

(4) An agency may not offer an extended term under this section if:

(a) Another agency or a local government, as defined by ORS 174.116, is authorized by statute to make a recommendation on the issuance of the license;

(b) The agency or the local government, as defined by ORS 174.116, that has authority to make a recommendation on the issuance of the license has recommended against the issuance of the license; and

(c) The recommendation of the agency or the local government, as defined by ORS 174.116, is based on licensing criteria established by statute or by rule.

(5) An extended term granted under this section may be revoked by an agency if the agency determines that the licensee is subject to discipline under the licensing criteria applicable to the licensee. An agency offering extended terms under this section by rule may establish other grounds for revoking an extended term under this section.

(6) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase the annual or biennial license fee established by statute by a percentage no greater than necessary to ensure that there is no revenue loss by reason of the extended term.

(7) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase any annual or biennial continuing education requirement established by statute as necessary to ensure that there is no reduction in the continuing education requirement for licensees by reason of the extended term. [2005 c.76 §2; 2007 c.768 §1]

REVIEW OF RULES

(Legislative Assembly)

183.710 Definitions for ORS 183.710 to 183.730. As used in ORS 183.710 to 183.730, unless the context requires otherwise:

(1) "Interim committee" means a committee of the Legislative Assembly that is scheduled to meet when the Legislative Assembly is not in session and that has subject-matter jurisdiction over the state agency that has adopted a rule, as set forth in the subject-matter jurisdiction list developed under ORS 183.724.

(2) "Rule" has the meaning given that term in ORS 183.310.

(3) "State agency" means an agency as defined in ORS 183.310. [Formerly 171.705; 2009 c.81 §1]

Note: 183.710 to 183.730 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.715 Submission of adopted rule to Legislative Counsel required. If a state agency adopts, amends or repeals a rule, the Secretary of State shall electronically submit a copy of the adopted, amended or repealed rule to the Legislative Counsel within 10 days after the agency files the rule in the office of the Secretary of State as provided in ORS 183.355. The electronic transmission of an amended rule that is submitted to the Legislative Counsel must show all changes to the rule by striking through material to be deleted and underlining all new material,

or by any other method that clearly shows all new and deleted material. [Formerly 171.707; 1991 c.94 §1; 1999 c.167 §1; 2005 c.18 §2; 2017 c.518 §7]

Note: See note under 183.710.

183.720 Procedure for review of agency rule; reports on rules claimed to be duplicative or conflicting. (1) The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the appropriate interim committee or, if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. If the Legislative Counsel determines that a rule is not within the intent and scope of the enabling legislation purporting to authorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the Legislative Counsel shall also send a copy of the determination to the agency. The Legislative Counsel may request that the state agency respond in writing to the determinations or appear at the meeting of the interim committee at which the committee will consider the determinations. The interim committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7)(a) A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule or regulation adopted by a federal agency.

(b)(A) Upon receipt of a written request by a member of the Legislative Assembly, the Legislative Counsel shall prepare a report to the interim committee that contains:

(i) A copy of the request, including copies of the two rules that the member asserts are conflicting or duplicative; and

(ii) Legislative Counsel's analysis of the requirements of the two rules.

(B) Upon receipt of a written request by a person affected by a rule adopted by a state agency, the Legislative Counsel may prepare a written report to the person and each state agency concerned that contains the Legislative Counsel's analysis of the requirements of the two rules.

(8) Upon receipt of a report under subsection (7)(b)(A) of this section, the interim committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Counsel under subsection (7)(b)(A) of this section, the Legislative Counsel shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned. The interim committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709; 1993 c.729 §7; 1997 c.602 §4; 2001 c.156 §1; 2009 c.81 §4]

Note: See note under 183.710.

183.722 Required agency response to Legislative Counsel determination; consideration of determination by interim committee. (1)(a) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation

purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided a copy of that determination to the state agency pursuant to 183.720 (6), the agency shall either make a written response to the determination or appear at the meeting of the interim committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(b) The interim committee shall consider the Legislative Counsel determination described in paragraph (a) of this subsection and any state agency response to the determination. If the interim committee adopts the Legislative Counsel determination, the Legislative Counsel shall post the determination on the Legislative Counsel website. Adopted determinations that are posted on the website shall be organized by OAR number and shall remain on the website until the earlier of the date that:

(A) The rule is modified and the Legislative Counsel determines that the modified rule is within the intent and scope of the enabling legislation;

(B) A court makes a final determination that the rule is within the intent and scope of the enabling legislation and is otherwise constitutional, all appeals of the court's determination are exhausted and the state agency notifies the Legislative Counsel of the determination; or

(C) The Legislative Assembly modifies the enabling legislation so as to bring the rule within the intent and scope of the enabling legislation, any other constitutional defect in the rule is cured and the state agency notifies the Legislative Counsel of the modification or cure.

(2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the interim committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the interim committee along with a representative of the Oregon Department of Administrative Services, the agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the state agency to the determinations. [1997 c.602 §7; 1999 c.31 §2; 2009 c.81 §5]

Note: See note under 183.710.

183.724 Designation of interim committees for purposes of considering rule reports. (1) As soon as is practicable after the end of each odd-numbered year regular legislative session, the Legislative Counsel shall develop a list of state agencies with areas of responsibility that are primarily within the subject-matter jurisdiction of interim committees of the Legislative Assembly. The Legislative Counsel shall assign all state agencies to at least one interim committee. The Legislative Counsel may modify the list to reflect changes in interim committees. The Legislative Counsel shall distribute the list to all state agencies whenever the list is developed or modified.

(2) If an interim committee of one house of the Legislative Assembly has overlapping subject-matter jurisdiction with an interim committee of the other house, the Legislative Counsel may assign a state agency to either committee or to both committees. The Legislative Counsel shall strive to assign state agencies so as to ensure that the rule review workload is approximately equally distributed between the interim committees of both houses of the Legislative Assembly.

(3) The consideration of the written findings prepared by the Legislative Counsel on a rule by any one interim committee of either house of the Legislative Assembly satisfies the requirements of ORS 183.710 to 183.730. [2009 c.81 §3; 2011 c.545 §13]

Note: See note under 183.710.

183.725 [Formerly 171.713; 1993 c.729 §8; 1997 c.602 §5; 1999 c.31 §1; 2009 c.81 §6; repealed by 2017 c.518 §9]

(Oregon Sunshine Committee)

183.730 Review of rule by Oregon Sunshine Committee. (1) As used in this section, "public record" has the meaning given that term in ORS 192.311.

(2) The Oregon Sunshine Committee shall include in the plan or schedule for review established under ORS 192.511 an adopted rule of a state agency upon the written request of any person affected by the rule if the adopted rule impacts the disclosure, or exemption from disclosure, of a public record. The request must specify the disclosure or exemption that is of concern.

(3) The committee shall include in the plan or schedule for review established under ORS 192.511 an adopted rule of a state

agency upon the written request of a member of the Legislative Assembly if the adopted rule impacts the disclosure, or exemption from disclosure, of a public record. [2017 c.654 §9]

Note: See note under 183.710.

CIVIL PENALTIES

183.745 Civil penalty procedures; notice; hearing; judicial review; exemptions; recording; enforcement. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. The agency may by rule provide for a longer period of time in which application for a hearing may be made. If no application for a hearing is made within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) This section does not apply to penalties:

(a) Imposed under the tax laws of this state;

(b) Imposed under the provisions of ORS 646.760 or 652.332;

(c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or

(d) Imposed by the Public Utility Commission.

(8) This section creates no new authority in any agency to impose civil penalties.

(9) This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

(10) The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

(11) Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

(12) In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(13) As used in this section:

(a) "Agency" has that meaning given in ORS 183.310.

(b) "Civil penalty" includes only those monetary penalties that are specifically denominated as civil penalties by statute. [Formerly 183.090]

Note: 183.745 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

READABILITY OF PUBLIC WRITINGS

183.750 State agency required to prepare public writings in readable form. (1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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2023 EDITION

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PUBLIC RECORDS POLICY

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent that the decision as to what records are retained or destroyed is a matter of statewide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to ensure orderly retention and destruction of all public records, whether current or noncurrent, and to ensure the preservation of public records of value for legal, administrative, fiscal, tribal cultural, historical or research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon in order to ensure the retention of records essential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its citizens, insofar as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds, and in order to ensure the prompt destruction of records without continuing value. All records not included in types described in this subsection shall be destroyed in accordance with rules adopted by the Secretary of State. [1973 c.439 §1; 1991 c.671 §3; 2015 c.27 §18; 2023 c.35 §1]

ARCHIVING OF PUBLIC RECORDS

192.005 Definitions for ORS 192.005 to 192.170. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record":

(a) Means any information that:

(A) Is prepared, owned, used or retained by a state agency or political subdivision;

(B) Relates to an activity, transaction or function of a state agency or political subdivision; and

(C) Is necessary to satisfy the legal, administrative, fiscal, tribal cultural or historical policies, requirements or needs of the state agency or political subdivision.

(b) Does not include:

(A) Records of the Legislative Assembly, its committees, officers and employees.

(B) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(C) Records or information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905.

(D) Extra copies of a document, preserved only for convenience of reference.

(E) A stock of publications.

(F) Messages on voice mail.

(G) Records of the Judicial Department or its officers and employees.

(H) Spoken communication that is not recorded.

(6) "State agency":

(a) Means any state officer, department, board or commission created by the Constitution or statutes of this state.

(b) Does not include:

(A) The Legislative Assembly or its committees, officers and employees; or

(B) The Judicial Department or its officers and employees. [1961 c.160 §2; 1965 c.302 §1; 1983 c.620 §11; 1989 c.16 §1; 1999 c.55 §1; 1999 c.140 §1; 2011 c.645 §1; 2023 c.35 §2]

192.010 [Repealed by 1973 c.794 §34]

192.015 Secretary of State as public records administrator. The Secretary of State is the public records administrator of this state, and it is the responsibility of the secretary to obtain and maintain uniformity in the application, operation and interpretation of the public records laws. [1973 c.439 §2]

192.018 Written policies on use, retention and ownership of public records; State Archivist approval. (1) Each state agency shall have a written policy that sets forth the agency's use, retention and ownership of public records. The policy shall ensure that public records are being maintained and managed consistently within the agency from the time of creation of a public record to the time of final disposition of the public record.

(2) Each state agency shall submit the written policy and any subsequent amendment of the policy to the State Archivist for approval before the policy takes effect or the

amendment to the policy takes effect. [2011 c.645 §3]

192.020 [Repealed by 1973 c.794 §34]

192.030 [Amended by 1961 c.160 §4; repealed by 1973 c.794 §34]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate. [Amended by 1961 c.160 §5]

192.050 Copying records; evidentiary effect. A state agency or political subdivision may, with the approval of the proper budgetary authority, cause any public records in its official custody to be photocopied or captured by digital imaging system, as in the case of original filings or recordings, or recorded by audio or video technology. Each photocopy, digital image, audio recording and video recording shall be made in accordance with the appropriate standard as determined by the State Archivist. Every such reproduction shall be deemed an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed a transcript, exemplification or certified copy, as the case may be, of the original. [Amended by 1961 c.160 §6; 1991 c.671 §4; 2023 c.35 §3]

192.060 Indexing and filing copied records. All photocopies, digital images, audio recordings and video recordings made under ORS 192.040 and 192.050 shall be properly indexed and filed so as to facilitate access and retrieval. Each roll of microfilm shall be deemed a book or volume and shall be designated and numbered and provision shall be made for preserving, examining and using the same. [Amended by 1961 c.160 §7; 1991 c.671 §5; 2023 c.35 §4]

192.070 Duplicate rolls of microfilm required; delivery to State Archivist. A duplicate of every roll of microfilm of documents recorded pursuant to law and the indexes therefor shall be made and kept safely. The State Archivist upon request may, pursuant to ORS 357.865, accept for safekeeping the duplicate microfilm. [Amended by 1961 c.160 §8]

192.072 State Archivist performing microfilm services for public body. Upon the request of a public body as defined by ORS 174.109, the State Archivist may perform microfilm services for the public body. The public body shall pay the cost of rendering the microfilm services to the State Archivist. The State Archivist shall deposit moneys received under this section with the State Treasurer, who shall give a receipt for the moneys. All moneys deposited under this section are continuously appropriated for the payment of expenses incurred by the Secretary of State in the administration of the office of the State Archivist. [1955 c.87 §1; 1961 c.172 §3; 1973 c.439 §8; 2003 c.803 §3]

192.074 [1955 c.87 §2; repealed by 1961 c.172 §7]

192.076 [1955 c.87 §3; repealed by 1961 c.172 §7]

192.080 [Amended by 1961 c.160 §9; repealed by 1971 c.508 §4]

192.090 [Repealed by 1961 c.160 §24]

192.100 [Repealed by 1961 c.160 §24]

192.105 State Archivist authorization for state officials to dispose of records; legislative records excepted; local government policy on disposing of public records; limitations; records officer; standards for State Records Center. (1) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision specific or continuing authorization for the retention or disposition of public records that are in their custody, after the records have been in existence for a specified period of time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative, fiscal, tribal cultural, historical or research purposes and shall establish rules for procedure for the retention or disposition of the public records.

(2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be those officers identified in ORS 205.110. The State Archivist shall require periodic reports

from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410. [1953 c.224 §1; 1961 c.160 §10; subsection (3) enacted as 1961 c.150 §5; 1971 c.508 §1; 1977 c.146 §1; 1991 c.671 §6; 1993 c.660 §1; 1999 c.59 §43; 2003 c.255 §1; 2003 c.803 §10; 2023 c.35 §5]

192.108 Retention schedules. Each state agency or political subdivision shall maintain a public record or accurate copy of a public record in accordance with a retention schedule authorized under ORS 192.018 or 192.105, without regard to the technology or medium used to create or communicate the record. [2011 c.645 §4]

192.110 [Amended by 1961 c.160 §11; repealed by 1971 c.508 §4]

192.120 [Repealed by 1971 c.508 §4]

192.130 Disposition of valueless records in custody of State Archivist; notice prior to disposition. If the State Archivist determines that any public records of a state agency or political subdivision in the official custody of the State Archivist prove to have insufficient legal, administrative, fiscal, tribal cultural, historical or research value to warrant permanent preservation, the State Archivist shall submit a statement or summary thereof to the records officer of the state agency or political subdivision, or successor agency or body, certifying the type and nature thereof and giving prior notification of the destruction. [Amended by 1961 c.160 §12; 1971 c.508 §2; 1991 c.671 §7; 2023 c.35 §6]

192.140 [Amended by 1961 c.160 §13; repealed by 1977 c.146 §2]

192.150 [Amended by 1961 c.160 §14; repealed by 1977 c.146 §2]

192.160 [Amended by 1961 c.160 §15; repealed by 1977 c.146 §2]

192.170 Disposition of materials without authorization. The destruction or other disposal of the following materials do not require specific authorization:

(1) Inquiries and requests from the public and answers thereto not required by law to be preserved or not required as evidence of a public or private legal right or liability.

(2) Public records which are duplicates by reason of their having been photocopied.

(3) Letters of transmittal and acknowledgment, advertising, announcements and correspondence or notes pertaining to reservations of accommodations or scheduling of personal visits or appearances. [Amended by 1961 c.160 §16; 1971 c.508 §3]

RECORDS AND REPORTS IN ENGLISH

192.173 Records and reports required by law to be in English; penalty. (1) With the exception of prescriptions, all records, reports and proceedings required to be kept by law shall be in the English language or in a machine language capable of being converted to the English language by a data processing device or computer.

(2) Violation of this section is a Class C misdemeanor. [Formerly 192.310]

EXECUTIVE DEPARTMENT

192.180 Coordination of executive department response to public records request. (1) As used in this section, "executive department" has the meaning given that term in ORS 174.112, except that "executive department" does not include the Secretary of State in performing the duties of the constitutional office of Secretary of State or the State Treasurer in performing the duties of the constitutional office of State Treasurer.

(2) The Oregon Department of Administrative Services shall coordinate the efforts of each executive department agency for which the department is the custodian of the public records of the agency that are retained in electronic form, in fulfilling public records requests made of the agency.

(3) The department shall provide technical assistance to each executive department agency for which the department is not the custodian of the public records of the agency that are retained in electronic form, in fulfilling public records requests made of the agency.

(4) When an executive department agency is aware that the same public records request has been made of itself and one or more other executive department agencies, the agency shall consult with the department prior to producing records in order to ensure

consistency between agencies in the production of records.

(5) In providing coordination and technical assistance under this section, the department shall apply the standards, protocols and procedures that the State Chief Information Officer develops under ORS 276A.203 (4)(a)(O). [2016 c.48 §2]

Note: 192.180 and 192.183 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.183 Compiling public records stored in electronic form; rules. The State Chief Information Officer and the Oregon Department of Administrative Services may adopt rules to implement the provisions of ORS 276A.203 (4)(a)(O), as amended by section 1, chapter 48, Oregon Laws 2016, and ORS 192.180, including but not limited to rules establishing procedures for compiling public records that are stored in electronic form. [2016 c.48 §4]

Note: See note under 192.180.

192.190 [1983 c.232 §1; repealed by 2015 c.277 §15]

192.191 Department of Justice information sharing guide. (1) The Department of Justice shall maintain an information sharing guide setting forth the applicable state and federal laws governing the release of educational, juvenile justice, adult correctional, mental health treatment, substance abuse treatment and health care information. The guide must set forth the applicable laws according to discipline, including but not limited to the release of information by child welfare agencies, law enforcement, juvenile justice agencies, schools, mental health treatment providers, health care providers, substance abuse treatment providers and human services providers.

(2) The guide must be made available on the Department of Justice website and updated annually in accordance with changes in the law. [2017 c.647 §3; 2017 c.647 §4]

Note: 192.191 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PUBLIC REPORTS

(Standardized Form)

192.210 Definitions for ORS 192.210 and 192.220. As used in ORS 192.210 and 192.220, unless the context requires otherwise:

(1) "Issuing agency" means:

(a) Every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid from public funds and includes the Legislative Assembly, the officers and committees thereof, and the courts and the officers and committees thereof; or

(b) Any county, special district, school district or public or quasi-public corporation.

(2) "Printing" includes any form of reproducing written material.

(3) "Report" means any report or other publication of an issuing agency that is required by law to be submitted to the public or to a receiving agency.

(4) "Receiving agency" means any state officer or state board, commission, department, institution or agency or branch of government that is required by law to receive any report from an issuing agency. If the branch of government is the Legislative Assembly, the receiving agency is the Legislative Administration Committee and if the branch is the judicial branch, the receiving agency is the Supreme Court. [1969 c.456 §1; 1971 c.638 §11]

192.220 Standardized report forms; exemptions. (1) Except where form and frequency of reports are specified by law, every receiving agency shall prescribe by rule standardized forms for all reports and shall fix the frequency with which reports shall be submitted.

(2) Receiving agencies in the executive or administrative branch of government shall consult with the Oregon Department of Administrative Services in preparing rules under this section.

(3) With the consent of the Governor, a receiving agency in the executive or administrative branch may exempt any issuing agency from the requirements imposed under subsection (1) of this section. The Legislative Administration Committee may exempt any issuing agency from such requirements for any report required to be submitted to the Legislative Assembly. The Supreme Court may exempt any issuing agency from such requirements for any report required to be submitted to the courts. [1969 c.456 §2; 1971 c.638 §12]

(Policy; Compliance)

192.230 Definitions for ORS 192.235 to 192.245. As used in ORS 192.235 to 192.245:

(1) "Report" means informational matter that is published as an individual document at state expense or as required by law. "Report" does not include documents prepared strictly for agency administrative or operational purposes.

(2) "State agency" has the meaning given that term in ORS 192.311. [1991 c.842 §1; 2001 c.153 §1]

Note: 192.230 to 192.250 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.235 Policy for ORS 192.230 to 192.250. (1) The Legislative Assembly finds that:

(a) Many state agency reports are published for reasons that are historical and no longer based on the public's need to be informed.

(b) The format of many state agency reports is not economical or well suited to providing needed information in easily understandable form.

(c) State agency reports containing information that is useful but not to the general public should be placed on a self-supporting schedule.

(2) It is the policy of the Legislative Assembly to encourage state agencies to inform the public, the Legislative Assembly and the Governor of matters of public interest and concern. It is further the policy of this state to guarantee to its citizens the right to know about the activities of their government, to benefit from the information developed by state agencies at public expense and to enjoy equal access to the information services of state agencies. It is further state policy to encourage agencies to consider whether needed information is most effectively and economically presented by means of printed reports. [1991 c.842 §2]

Note: See note under 192.230.

192.240 Duties of state agency issuing report. To comply with the state policy relating to reports outlined in ORS 192.235, a state agency shall do the following:

(1) Use electronic communications whenever the agency determines that such use reduces cost and still provides public access to information.

(2) Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and use recycled paper, as defined in ORS 279A.010 and rules adopted pursuant thereto.

(3) Insure that public documents are furnished to the State Librarian, as required in ORS 357.090. [1991 c.842 §3; 1995 c.69 §10; 2003 c.794 §212]

Note: See note under 192.230.

192.243 Availability of report on Internet; rules. (1) In accordance with rules adopted by the Oregon Department of Administrative Services and to reduce the amount of paper used by state agencies, by June 30, 2005, each state agency shall make available on the Internet any report that the state agency is required by law to publish. If a statute or rule requires a state agency to issue a printed report, that requirement is satisfied if the state agency makes the report available on the Internet. A state agency may issue printed copies of a report upon request.

(2) The Oregon Department of Administrative Services shall adopt rules in accordance with subsection (1) of this section requiring each state agency to make available on the Internet any report that the state agency is required by law to publish.

(3) This section may not be construed to require the disclosure of a public record that is exempt from disclosure under ORS 192.311 to 192.478 or other law. [2001 c.153 §3]

Note: See note under 192.230.

192.245 Form of report to legislature. (1) Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly by electronic mail and one copy of the report to the Legislative Administrator. This requirement does not preclude providing a copy of any report to a specific legislative committee if required by law. The requirements of this subsection are not met if the executive summary is distributed to members of the Legislative Assembly in paper format.

(2) The executive summary described in subsection (1) of this section shall include an explanation of how a member of the Legislative Assembly may obtain a copy of the report. If the report is also available on the Internet, the executive summary shall include the online location of the report.

(3) Notwithstanding subsection (1) of this section, if a member of the Legislative Assembly requests a paper copy of a report or executive summary, the agency or other entity responsible for submitting the report or executive summary to the Legislative Assembly shall supply a paper copy of the report or executive summary to the member. [1991 c.842 §4; 2009 c.416 §1; 2011 c.380 §1]

Note: See note under 192.230.

192.250 Director of Oregon Department of Administrative Services to report to legislature on ORS 192.230 to 192.250. The Director of the Oregon Department of Administrative Services shall report to the Legislative Assembly by appearing at least once during each biennium before the appropriate interim committees designated by the Speaker of the House of Representatives and the President of the Senate. The director shall testify as to the effectiveness of ORS 171.206, 192.230 to 192.250 and 292.956, including any cost savings realized or projected

and any recommendations for further legislative action. [1991 c.842 §5; 2003 c.803 §4]

Note: See note under 192.230.

(Distribution)

192.270 Definitions for ORS 192.270 and 192.275. As used in ORS 192.270 and 192.275:

(1) "Public" does not include any state officer or board, commission, committee, department, institution, branch or agency of state government to which a report is specifically required by law to be submitted but does include any such to which a copy is sent for general informational purposes or as a courtesy.

(2) "Report" means informational matter published as a report or other document by a state agency but does not include an order as defined in ORS 183.310.

(3) "State agency" means any state officer or board, commission, department, institution or agency of the executive, administrative or legislative branches of state government. [1993 c.181 §1]

Note: 192.270 and 192.275 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.275 Notice when report required; content; effect. Notwithstanding ORS 192.230 to 192.245, if any state or federal law requires a state agency to send, mail or submit a report to the public, the state agency may meet this requirement by mailing notice of the report to the public. The notice shall state that if the recipient returns an attached or enclosed postcard to the state agency, the state agency will supply a copy of the report. The postcard may contain a checkoff to indicate whether the person wants to continue receiving a copy of complete reports. [1993 c.181 §2]

Note: See note under 192.270.

192.310 [1971 c.743 §294; 2014 c.45 §32; renumbered 192.173 in 2017]

INSPECTION OF PUBLIC RECORDS

(Definitions)

192.311 Definitions for ORS 192.311 to 192.478. As used in ORS 192.311 to 192.478:

(1) "Business day" means a day other than Saturday, Sunday or a legal holiday and on which at least one paid employee of the public body that received the public records request is scheduled to and does report to work. In the case of a community college district, community college service district, public university, school district or education service district, "business day" does not include any day on which the central administration offices of the district or university are closed.

(2) "Custodian" means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available.

(3) "Person" includes any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.

(4) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(5)(a) "Public record" includes any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(b) "Public record" does not include any writing that does not relate to the conduct of the public's business and that is contained on a privately owned computer.

(6) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

(7) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. [Formerly 192.410]

(Public Records Request Processing)

192.314 Right to inspect public records; notice to public body attorney. (1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.338, 192.345 and 192.355.

(2)(a) If a person who is a party to a civil judicial proceeding to which a public body is a party, or who has filed a notice under ORS 30.275 (5)(a), asks to inspect or to receive a

copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the attorney for the public body.

(b) For purposes of this subsection:

(A) The attorney for a state agency is the Attorney General in Salem.

(B) "Person" includes a representative or agent of the person. [Formerly 192.420]

192.318 Functions of custodian of public records; rules. (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access.

(2) The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. [Formerly 192.430]

192.324 Copies or inspection of public records; public body response; fees; procedure for records requests. (1) A public body that is the custodian of any public record that a person has a right to inspect shall give the person, upon receipt of a written request:

(a) A copy of the public record if the public record is of a nature permitting copying; or

(b) A reasonable opportunity to inspect or copy the public record.

(2) If an individual who is identified in a public body's procedure described in subsection (7)(a) of this section receives a written request to inspect or receive a copy of a public record, the public body shall within five business days after receiving the request acknowledge receipt of the request or complete the public body's response to the request. An acknowledgment under this subsection must:

(a) Confirm that the public body is the custodian of the requested record;

(b) Inform the requester that the public body is not the custodian of the requested record; or

(c) Notify the requester that the public body is uncertain whether the public body is the custodian of the requested record.

(3) If the public record is maintained in a machine readable or electronic form, the public body shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the public body shall make the public record available in the form in which the public body maintains the public record.

(4)(a) The public body may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the request.

(b) The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.311 to 192.478.

(c) The public body may not establish a fee greater than $25 under this section unless the public body first provides the requester with a written notification of the estimated amount of the fee and the requester confirms that the requester wants the public body to proceed with making the public record available.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of the public records are the fees established by the Secretary of State by rule under ORS chapter 79 or ORS 80.100 to 80.130.

(5) The custodian of a public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(6) A requester who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a requester who petitions when inspection of a public record is denied under ORS 192.311 to 192.478. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as when inspection of a public record is denied.

(7) A public body shall make available to the public a written procedure for making public records requests that includes:

(a) The name of one or more individuals within the public body to whom public records requests may be sent, with addresses; and

(b) The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.

(8) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973. [Formerly 192.440]

192.329 Public body's response to public records request. (1) A public body shall complete its response to a written public records request that is received by an individual identified in the public body's procedure described in ORS 192.324 as soon as practicable and without unreasonable delay.

(2) A public body's response to a public records request is complete when the public body:

(a) Provides access to or copies of all requested records within the possession or custody of the public body that the public body does not assert are exempt from public disclosure, or explains where the records are already publicly available;

(b) Asserts any exemptions from disclosure that the public body believes apply to any requested records and, if the public body cites ORS 192.355 (8) or (9), identifies the state or federal law that the public body relied on in asserting the exemptions;

(c) Complies with ORS 192.338;

(d) To the extent that the public body is not the custodian of records that have been requested, provides a written statement to that effect;

(e) To the extent that state or federal law prohibits the public body from acknowledging whether any requested record exists or that acknowledging whether a requested record exists would result in the loss of federal benefits or imposition of another sanction, provides a written statement to that effect, citing the state or federal law that the public body relies on, unless the written statement itself would violate state or federal law; and

(f) If the public body asserts that one or more requested records are exempt from public disclosure, includes a statement that the requester may seek review of the public body's determination pursuant to ORS 192.401, 192.411, 192.415, 192.418, 192.422, 192.427 and 192.431.

(3)(a) If a public body has informed a requester of a fee permitted under ORS 192.324 (4), the obligation of the public body to complete its response to the request is suspended until the requester has paid the fee, the fee has been waived by the public body pursuant to ORS 192.324 (5) or the fee otherwise has been ordered waived.

(b) If the requester fails to pay the fee within 60 days of the date on which the public body informed the requester of the fee, or fails to pay the fee within 60 days of the date on which the public body informed the requester of the denial of the fee waiver, the public body shall close the request.

(4)(a) A public body may request additional information or clarification from a requester of public records for the purpose of expediting the public body's response to the request. If the public body has requested additional information or clarification in good faith, the public body's obligation to further complete its response to the request is suspended until the requester provides the requested information or clarification or affirmatively declines to provide that information or clarification.

(b) If the requester fails to respond within 60 days to a good faith request from the public body for information or clarification, the public body shall close the request.

(5) As soon as reasonably possible but not later than 10 business days after the date by which a public body is required to acknowledge receipt of the request under ORS 192.324, a public body shall:

(a) Complete its response to the public records request; or

(b) Provide a written statement that the public body is still processing the request and a reasonable estimated date by which the public body expects to complete its response based on the information currently available.

(6) The time periods established by ORS 192.324 and subsection (5) of this section do not apply to a public body if compliance would be impracticable because:

(a) The staff or volunteers necessary to complete a response to the public records request are unavailable;

(b) Compliance would demonstrably impede the public body's ability to perform other necessary services; or

(c) Of the volume of public records requests being simultaneously processed by the public body.

(7) For purposes of this section, staff members or volunteers who are on leave or are not scheduled to work are considered to be unavailable.

(8) A public body that cannot comply with the time periods established by ORS

192.324 and subsection (5) of this section for a reason listed in subsection (6) of this section shall, as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response to the request. [2017 c.456 §4]

Note: 192.329, 192.335 and 192.340 were added to and made a part of 192.311 to 192.478 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.335 Immunity from liability for disclosure of public record; effect of disclosure on privilege. (1) A public body that, acting in good faith, discloses a public record in response to a request for public records is not liable for any loss or damages based on the disclosure unless the disclosure is affirmatively prohibited by state or federal law or by a court order applicable to the public body. Nothing in this subsection shall be interpreted to create liability on the part of a public body, or create a cause of action against a public body, based on the disclosure of a public record.

(2) A public body that discloses any information or record in response to a written request for public records under ORS 192.311 to 192.478 that is privileged under ORS 40.225 to 40.295 does not waive its right to assert the applicable privilege to prevent the introduction of the information or record as evidence pursuant to ORS 40.225 to 40.295. [2017 c.456 §8]

Note: See note under 192.329.

192.338 Exempt and nonexempt public record to be separated. If any public record contains material which is not exempt under ORS 192.345 and 192.355, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [Formerly 192.505]

Note: 192.338, 192.345 and 192.355 were made a part of 192.311 to 192.478 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Exemptions)

192.340 Attorney General catalog of exemptions from disclosure. (1) The Attorney General shall maintain and regularly update a catalog of exemptions created by Oregon statute from the disclosure requirements of ORS 192.311 to 192.478. The catalog must be as comprehensive as reasonably possible and must be freely available to the public in an electronic format that facilitates sorting and searching of the catalog.

(2) The catalog required by subsection (1) of this section must include the following information for each exemption:

(a) A citation to the Oregon statute or statutes creating the exemption from the disclosure requirements of ORS 192.311 to 192.478;

(b) The relevant text of each statute creating the exemption;

(c) If the exemption has been construed by a decision of the Oregon Supreme Court or Court of Appeals, a citation to that decision;

(d) To the extent that the exemption is specific to a particular public body or particular types of public bodies, a description of the public body or bodies to which the exemption relates; and

(e) Additional information as the Attorney General deems appropriate.

(3) To help ensure that the catalog required by subsection (1) of this section is as comprehensive as possible:

(a) The Legislative Counsel shall provide the Attorney General with an electronic copy of any Act passed by the Legislative Assembly that, in the judgment of the Legislative Counsel, creates an exemption from the disclosure requirements of ORS 192.311 to 192.478; and

(b) When a district attorney issues an order pursuant to ORS 192.415, the district attorney shall send the Attorney General an electronic copy of that order.

(4) The purpose of the catalog required by subsection (1) of this section is to assist public officials and members of the public in ascertaining what information is exempt from the public disclosure requirements of ORS 192.311 to 192.478. The catalog is not intended to provide legal advice to public bodies or to members of the public.

(5) A public body may assert that an Oregon statute exempts a public record in the custody of the public body from disclosure even if that statute is not listed in the catalog or the catalog does not include that public body in the catalog's description of the public bodies to which that exemption applies. [2017 c.456 §7]

Note: See note under 192.329.

192.345 Public records conditionally exempt from disclosure. The following public records are exempt from disclosure under ORS 192.311 to 192.478 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded,

and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form that would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use that can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Information relating to the appraisal of real estate prior to its acquisition.

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections.

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850.

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180.

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732.

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction.

(12) A personnel discipline action, or materials or documents supporting that action.

(13) Fish and wildlife information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species.

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually.

(16) Data and information provided by participants to mediation under ORS 36.256.

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation.

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier, as defined in ORS 133.721.

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967.

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed of as part of the project, but only after the transactions have closed and are concluded;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests.

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property;

(b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or

(c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body.

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6).

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or a public university listed in ORS 352.002 about a person who has or who is interested in donating money or property to the Oregon Health and Science University or a public university, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation.

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to a public university listed in ORS 352.002.

(26) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.

(27) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number.

(28) Social Security numbers as provided in ORS 107.840.

(29) The electronic mail address of a student who attends a public university listed in ORS 352.002 or Oregon Health and Science University.

(30) The name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents. This subsection does not apply to Oregon Health and Science University press releases, websites or other publications circulated to the general public.

(31) If requested by a public safety officer, as defined in ORS 181A.355, or a county juvenile department employee who is charged with and primarily performs duties related to the custody, control or supervision of adjudicated youths confined in a detention facility, as defined in ORS 419A.004:

(a) The home address and home telephone number of the public safety officer or county juvenile department employee contained in the voter registration records for the officer or employee.

(b) The home address and home telephone number of the public safety officer or county juvenile department employee contained in records of the Department of Public Safety Standards and Training.

(c) The name of the public safety officer or county juvenile department employee contained in county real property assessment or taxation records. This exemption:

(A) Applies only to the name of the officer or employee and any other owner of the property in connection with a specific property identified by the officer or employee in a request for exemption from disclosure;

(B) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(C) Applies until the officer or employee requests termination of the exemption;

(D) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(E) May not result in liability for the county if the name of the officer or employee is disclosed after a request for exemption from disclosure is made under this subsection.

(32) Unless the public records request is made by a financial institution, as defined in ORS 706.008, consumer finance company licensed under ORS chapter 725, mortgage banker or mortgage broker licensed under ORS 86A.095 to 86A.198, or title company for business purposes, records described in paragraph (a) of this subsection, if the exemption from disclosure of the records is sought by an individual described in paragraph (b) of this subsection using the procedure described in paragraph (c) of this subsection:

(a) The home address, home or cellular telephone number or personal electronic mail address contained in the records of any public body that has received the request that is set forth in:

(A) A warranty deed, deed of trust, mortgage, lien, deed of reconveyance, release, satisfaction, substitution of trustee, easement, dog license, marriage license or military discharge record that is in the possession of the county clerk; or

(B) Any public record of a public body other than the county clerk.

(b) The individual claiming the exemption from disclosure must be a district attorney, a deputy district attorney, the Attorney General or an assistant attorney general, the United States Attorney for the District of

Oregon or an assistant United States attorney for the District of Oregon, a city attorney who engages in the prosecution of criminal matters or a deputy city attorney who engages in the prosecution of criminal matters.

(c) The individual claiming the exemption from disclosure must do so by filing the claim in writing with the public body for which the exemption from disclosure is being claimed on a form prescribed by the public body. Unless the claim is filed with the county clerk, the claim form shall list the public records in the possession of the public body to which the exemption applies. The exemption applies until the individual claiming the exemption requests termination of the exemption or ceases to qualify for the exemption.

(33) The following voluntary conservation agreements and reports:

(a) Land management plans required for voluntary stewardship agreements entered into under ORS 541.973; and

(b) Written agreements relating to the conservation of greater sage grouse entered into voluntarily by owners or occupiers of land with a soil and water conservation district under ORS 568.550.

(34) Sensitive business records or financial or commercial information of the State Accident Insurance Fund Corporation that is not customarily provided to business competitors. This exemption does not:

(a) Apply to the formulas for determining dividends to be paid to employers insured by the State Accident Insurance Fund Corporation;

(b) Apply to contracts for advertising, public relations or lobbying services or to documents related to the formation of such contracts;

(c) Apply to group insurance contracts or to documents relating to the formation of such contracts, except that employer account records shall remain exempt from disclosure as provided in ORS 192.355 (35); or

(d) Provide the basis for opposing the discovery of documents in litigation pursuant to the applicable rules of civil procedure.

(35) Records of the Department of Public Safety Standards and Training relating to investigations conducted under ORS 181A.640 or 181A.870 (6), until the department issues the report described in ORS 181A.640 or 181A.870.

(36) A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117.

(37) Any document or other information related to an audit of a public body, as defined in ORS 174.109, that is in the custody of an auditor or audit organization operating under nationally recognized government auditing standards, until the auditor or audit organization issues a final audit report in accordance with those standards or the audit is abandoned. This exemption does not prohibit disclosure of a draft audit report that is provided to the audited entity for the entity's response to the audit findings.

(38)(a) Personally identifiable information collected as part of an electronic fare collection system of a mass transit system.

(b) The exemption from disclosure in paragraph (a) of this subsection does not apply to public records that have attributes of anonymity that are sufficient, or that are aggregated into groupings that are broad enough, to ensure that persons cannot be identified by disclosure of the public records.

(c) As used in this subsection:

(A) "Electronic fare collection system" means the software and hardware used for, associated with or relating to the collection of transit fares for a mass transit system, including but not limited to computers, radio communication systems, personal mobile devices, wearable technology, fare instruments, information technology, data storage or collection equipment, or other equipment or improvements.

(B) "Mass transit system" has the meaning given that term in ORS 267.010.

(C) "Personally identifiable information" means all information relating to a person that acquires or uses a transit pass or other fare payment medium in connection with an electronic fare collection system, including but not limited to:

(i) Customer account information, date of birth, telephone number, physical address, electronic mail address, credit or debit card information, bank account information, Social Security or taxpayer identification number or other identification number, transit pass or fare payment medium balances or history, or similar personal information; or

(ii) Travel dates, travel times, frequency of use, travel locations, service types or vehicle use, or similar travel information.

(39)(a) If requested by a civil code enforcement officer:

(A) The home address and home telephone number of the civil code enforcement officer contained in the voter registration records for the officer.

(B) The name of the civil code enforcement officer contained in county real property assessment or taxation records. This exemption:

(i) Applies only to the name of the civil code enforcement officer and any other owner of the property in connection with a specific property identified by the officer in a request for exemption from disclosure;

(ii) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(iii) Applies until the civil code enforcement officer requests termination of the exemption;

(iv) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(v) May not result in liability for the county if the name of the civil code enforcement officer is disclosed after a request for exemption from disclosure is made under this subsection.

(b) As used in this subsection, "civil code enforcement officer" means an employee of a public body, as defined in ORS 174.109, who is charged with enforcing laws or ordinances relating to land use, zoning, use of rights-of-way, solid waste, hazardous waste, sewage treatment and disposal or the state building code.

(40) Audio or video recordings, whether digital or analog, resulting from a law enforcement officer's operation of a video camera worn upon the officer's person that records the officer's interactions with members of the public while the officer is on duty. When a recording described in this subsection is subject to disclosure, the following apply:

(a) Recordings that have been sealed in a court's record of a court proceeding or otherwise ordered by a court not to be disclosed may not be disclosed.

(b) A request for disclosure under this subsection must identify the approximate date and time of an incident for which the recordings are requested and be reasonably tailored to include only that material for which a public interest requires disclosure.

(c) A video recording disclosed under this subsection must, prior to disclosure, be edited in a manner as to render the faces of all persons within the recording unidentifiable.

(41) The contents of tips reported to a tip line, as defined in ORS 339.329. However, personally identifiable information, as defined in ORS 339.329, is not subject to public interest balancing under this section and remains exempt from disclosure except as provided in ORS 339.329.

(42) Residential addresses of individuals with intellectual or developmental disabilities residing in adult foster homes as defined in ORS 443.705 or residential training facilities or residential training homes as those terms are defined in ORS 443.400.

(43) The name, home address, professional address or location of an individual who is authorized to provide physical and behavioral health care services in this state and who provides reproductive and gender-affirming health care services. [Formerly 192.501; 2019 c.61 §1; 2019 c.130 §2; 2019 c.532 §§3,4; 2021 c.318 §§1,2; 2021 c.489 §§22,23; 2023 c.228 §§39,40]

Note: See note under 192.338.

192.355 Public records exempt from disclosure. The following public records are exempt from disclosure under ORS 192.311 to 192.478:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2)(a) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) Images of a dead body, or parts of a dead body, that are part of a law enforcement agency investigation, if public disclosure would create an unreasonable invasion of privacy of the family of the deceased person, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Upon compliance with ORS 192.363, public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in ~~personnel~~ records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.368;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance pursuant to ORS 192.363;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.809.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9)(a) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(b) Subject to ORS 192.360, paragraph (a) of this subsection does not apply to factual information compiled in a public record when:

(A) The basis for the claim of exemption is ORS 40.225;

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.311 to 192.478;

(C) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A or by another retirement system operated by a public body.

(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the agents of the treasurer or the council relating to active or proposed publicly traded investments under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or liquidation of the investments. For the purposes of this subsection:

(a) The exemption does not apply to:

(A) Information in investment records solely related to the amount paid directly into an investment by, or returned from the investment directly to, the treasurer or council; or

(B) The identity of the entity to which the amount was paid directly or from which the amount was received directly.

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset including but not limited to records regarding the solicitation, acquisition, deployment, exchange or liquidation of the investments including but not limited to:

(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership or to their respective investment vehicles.

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

(C) Meeting materials of an investment fund, an asset ownership or their respective investment vehicles.

(D) Records containing information regarding the portfolio positions in which an investment fund, an asset ownership or their respective investment vehicles invest.

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

(b) The exemption under this subsection does not apply to:

(A) The name, address and vintage year of each privately placed investment fund.

(B) The dollar amount of the commitment made to each privately placed investment fund since inception of the fund.

(C) The dollar amount of cash contributions made to each privately placed investment fund since inception of the fund.

(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer, council or board from each privately placed investment fund.

(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer, council or board.

(F) The net internal rate of return of each privately placed investment fund since inception of the fund.

(G) The investment multiple of each privately placed investment fund since inception of the fund.

(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis to each privately placed investment fund.

(I) The dollar amount of cash profit received from each privately placed investment fund on a fiscal year-end basis.

(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(16) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(17)(a) The following records, communications and information submitted to the Oregon Business Development Commission, the Oregon Business Development Department, the State Department of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS 777.005, or a county or city governing body and any board, department, commission, council or agency thereof, by applicants for investment funds, grants, loans, services or economic development moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(b) The following records, communications and information submitted to the State Department of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(18) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

(a) Circulation records, showing use of specific library material by a named person;

(b) The name of a library patron together with the address or telephone number of the patron; and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed of as part of the project, but only after the transactions have closed and are concluded.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(31) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(32) A county elections security plan developed and filed under ORS 254.074.

(33) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

(E) Sewage; or

(F) Water.

(b) Telecommunication systems, including cellular, wireless or radio systems.

(c) Data transmissions by whatever means provided.

(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court designates the information as confidential by rule under ORS 1.002.

(35)(a) Employer account records of the State Accident Insurance Fund Corporation.

(b) As used in this subsection, "employer account records" means all records maintained in any form that are specifically re-

lated to the account of any employer insured, previously insured or under consideration to be insured by the State Accident Insurance Fund Corporation and any information obtained or developed by the corporation in connection with providing, offering to provide or declining to provide insurance to a specific employer. "Employer account records" includes, but is not limited to, an employer's payroll records, premium payment history, payroll classifications, employee names and identification information, experience modification factors, loss experience and dividend payment history.

(c) The exemption provided by this subsection may not serve as the basis for opposition to the discovery documents in litigation pursuant to applicable rules of civil procedure.

(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

(b) As used in this subsection, "claimant files" includes, but is not limited to, all records held by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all records pertaining to such a claim.

(c) The exemption provided by this subsection may not serve as the basis for opposition to the discovery documents in litigation pursuant to applicable rules of civil procedure.

(37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge or other separation from military service.

(38) Records of or submitted to a domestic violence service or resource center that relate to the name or personal information of an individual who visits a center for service, including the date of service, the type of service received, referrals or contact information or personal information of a family member of the individual. As used in this subsection, "domestic violence service or resource center" means an entity, the primary purpose of which is to assist persons affected by domestic or sexual violence by providing referrals, resource information or other assistance specifically of benefit to domestic or sexual violence victims.

(39) Information reported to the Oregon Health Authority under ORS 431A.860, except as provided in ORS 431A.865 (3)(b), information disclosed by the authority under ORS 431A.865 and any information related to disclosures made by the authority under ORS 431A.865, including information identifying the recipient of the information.

(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of the executive department, as defined in ORS 174.112, the legislative department, as defined in ORS 174.114, a local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

(b) This subsection does not apply to electronic mail addresses assigned by a public body to public employees for use by the employees in the ordinary course of their employment.

(c) This subsection and ORS 244.040 do not prohibit the campaign office of the current officeholder or current candidates who have filed to run for that elective office from receiving upon request the electronic mail addresses used by the current officeholder's legislative office for newsletter distribution, except that a campaign office that receives electronic mail addresses under this paragraph may not make a further disclosure of those electronic mail addresses to any other person.

(41) Residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers of individuals currently or previously certified or licensed by the Department of Public Safety Standards and Training contained in the records maintained by the department.

(42) Personally identifiable information and contact information of veterans as defined in ORS 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the United States, National Guard or other reserve component that was obtained by the Department of Veterans' Affairs in the course of performing its duties and functions, including but not limited to names, residential and employment addresses, dates of birth, driver license numbers, telephone numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the character of discharge from military service, military rating or rank, that the person is a veteran or has provided military service, information relating to an application for or receipt of federal or state benefits, information relating to the basis for receipt or denial of federal or state benefits and information relating to a home loan or grant application, including but not limited to financial information provided in connection with the application.

(43) Business, commercial, financial, operational and research data and information, including but not limited to pricing, intellectual property and customer records, furnished to, developed by or generated in connection with the ownership and operation

of an unmanned aerial system test range, if disclosure of the information would cause a competitive disadvantage to the test range or its users.

(44) Personally identifiable information about a child under the age of 16 years that is submitted to the State Fish and Wildlife Commission or an agent of the commission to obtain a license, tag or permit under the wildlife laws.

(45) Proprietary information subject to a nondisclosure agreement that is provided to the Oregon Broadband Office pursuant to ORS 285A.176.

(46) With respect to records held by the State Treasurer relating to unclaimed properties under ORS 98.302 to 98.436:

(a) All materials or communications received during an examination under ORS 98.412 (2) and (3), except to the extent that the information in the materials or communications appears within a report under ORS 98.412 (4) or 98.352 and the information is not otherwise exempt under ORS 98.352 (4).

(b) All materials or communications assembled or used by the state or its auditor during the preparation of a report under ORS 98.412 (4), including drafts, correspondence, working papers and other preparatory documents.

(c) Information obtained during an examination under ORS 98.412 (2) and (3) concerning an unclaimed property holder's potential liability in a state other than Oregon, even if that information is included in a report under ORS 98.412 (4) or 98.352.

(d) Information in or supporting claims to unclaimed property under ORS 98.392, except to the extent that the claimant consents to the information's disclosure.

(47) Any document, record or plan for protection relating to the existence, nature, location or function of cybersecurity devices, programs or systems designed to protect computer, information technology or communications systems against threat or attack, including but not limited to:

(a) Records pertaining to devices, programs or systems that depend for their effectiveness in whole or part upon a lack of public knowledge; and

(b) Contractual records or insurance records that set forth cybersecurity specifications, insurance application and coverage details. [Formerly 192.502; 2019 c.470 §10; 2021 c.174 §1; 2021 c.657 §1; 2022 c.60 §5; 2023 c.50 §1; 2023 c.238 §8; 2023 c.307 §1]

Note: See note under 192.338.

192.360 Condensation of public record subject to disclosure; petition to review denial of right to inspect public record; adequacy of condensation. (1) When a public record is subject to disclosure under ORS 192.355 (9)(b), in lieu of making the public record available for inspection by providing a copy of the record, the public body may prepare and release a condensation from the record of the significant facts that are not otherwise exempt from disclosure under ORS 192.311 to 192.478. The release of the condensation does not waive any privilege under ORS 40.225 to 40.295.

(2) The person seeking to inspect or receive a copy of any public record for which a condensation of facts has been provided under this section may petition for review of the denial to inspect or receive a copy of the records under ORS 192.311 to 192.478. In such a review, the Attorney General, district attorney or court shall, in addition to reviewing the records to which access was denied, compare those records to the condensation to determine whether the condensation adequately describes the significant facts contained in the records. [Formerly 192.423]

Note: 192.360 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Records Containing Personal Information)

192.363 Contents of certain requests for disclosure. (1) A request for the disclosure of records described in ORS 192.355 (3) or 192.365 must include the following information:

(a) The names of the individuals for whom personal information is sought;

(b) A statement describing the personal information being sought; and

(c) A statement that satisfies subsection (2) of this section.

(2) The party seeking disclosure shall show by clear and convincing evidence that the public interest requires disclosure in a particular instance.

(3) Upon receiving a request described in subsection (1) of this section, a public body shall forward a copy of the request and any materials submitted with the request to the individuals whose personal information is being sought or to any representatives of each class of persons whose personal information is the subject of the request.

(4) For purposes of subsection (3) of this section, the public body has sole discretion to determine the classes of persons whose personal information is the subject of the re-

quest and to identify the representatives for each class.

(5) The public body may not disclose information pursuant to the request for at least seven days after forwarding copies of the request under subsection (3) of this section.

(6) The public body shall consider all information submitted under this section and shall disclose requested information only if the public body determines that the party seeking disclosure has demonstrated by clear and convincing evidence that the public interest requires disclosure in a particular instance. [Formerly 192.437]

Note: 192.363 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.365 Disclosure of information pertaining to home care worker, personal support worker, operator of child care facility, exempt child care provider or operator of adult foster home. (1) Upon compliance with ORS 192.363, a public body that is the custodian of or is otherwise in possession of the following information pertaining to a home care worker or personal support worker as defined in ORS 410.600, an operator of a child care facility as defined in ORS 329A.250, an exempt family child care provider as defined in ORS 329A.430 or an operator of an adult foster home as defined in ORS 443.705 shall disclose that information in response to a request to inspect public records under ORS 192.311 to 192.478:

(a) Residential address and telephone numbers;

(b) Personal electronic mail addresses and personal cellular telephone numbers;

(c) Social Security numbers and employer-issued identification card numbers; and

(d) Emergency contact information.

(2) Subsection (1) of this section does not apply to the Judicial Department or the Department of Transportation or to any records in the custody of the Judicial Department or the Department of Transportation. [Formerly 192.435; 2018 c.75 §10]

Note: 192.365 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.368 Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable. (1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. A public body may not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address, telephone number or electronic mail address of the individual would constitute a danger to personal safety. The evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address, personal telephone number or electronic mail address of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section remains effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must update the individual's voter registration, at which time the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address, personal telephone number or electronic mail address of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body may not be held liable for granting or denying an exemption from

disclosure under this section or any other unauthorized release of a home address, personal telephone number or electronic mail address granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [Formerly 192.445]

Note: 192.368 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.371 Nondisclosure of public employee identification badge or card. (1) As used in this section, "public body" has the meaning given that term in ORS 174.109.

(2) A public body may not disclose the identification badge or card of an employee of the public body without the written consent of the employee if:

(a) The badge or card contains the photograph of the employee; and

(b) The badge or card was prepared solely for internal use by the public body to identify employees of the public body.

(3) The public body may not disclose a duplicate of the photograph used on the badge or card. [Formerly 192.447]

Note: 192.371 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.374 Nondisclosure of concealed handgun license records or information; exceptions; limitations; rules. (1) A public body may not disclose records or information that identifies a person as a current or former holder of, or applicant for, a concealed handgun license, unless:

(a) The disclosure is made to another public body and is necessary for criminal justice purposes;

(b) A court enters an order in a criminal or civil case directing the public body to disclose the records or information;

(c) The holder of, or applicant for, the concealed handgun license consents to the disclosure in writing;

(d) The public body determines that a compelling public interest requires disclosure in the particular instance and the disclosure is limited to the name, age and county of residence of the holder or applicant;

(e)(A) The disclosure is limited to confirming or denying that a person convicted of a person crime, or restrained by a protective order, is a current holder of a concealed handgun license; and

(B) The disclosure is made to a victim of the person crime or to a person who is protected by the protective order, in response to a request for disclosure that provides the public body with the name and age of the person convicted of the person crime or restrained by the protective order; or

(f)(A) The disclosure is limited to confirming or denying that a person convicted of a crime involving the use or possession of a firearm is a current holder of a concealed handgun license; and

(B) The disclosure is made to a bona fide representative of the news media in response to a request for disclosure that provides the name and age of the person convicted of the crime involving the use or possession of a firearm.

(2) A public body may not confirm or deny that a person described in subsection (1)(e)(A) or (f)(A) of this section is a current holder of a concealed handgun license unless the person seeking disclosure:

(a) Under subsection (1)(e) of this section provides the public body with written proof that the person is a victim of the person crime or is protected by the protective order.

(b) Under subsection (1)(f) of this section provides the public body with written proof that the person is a bona fide representative of the news media.

(3) Notwithstanding any other provision of law, a public body that receives a request for disclosure under subsection (1)(e) or (f) of this section may conduct an investigation, including a criminal records check, to determine whether a person described in subsection (1)(e)(A) or (f)(A) of this section has been convicted of a person crime or a crime involving the use or possession of a firearm or is restrained by a protective order.

(4) The Attorney General shall adopt rules to carry out the provisions of this section. The rules must include a description of:

(a) The procedures for submitting the written request described in subsection (1)(d) of this section; and

(b) The materials an individual must provide to the public body to establish a compelling public interest that supports the disclosure of the name, age and county of residence of the holder or applicant.

(5) The prohibition described in subsection (1) of this section does not apply to the Judicial Department.

(6) As used in this section:

(a) "Convicted" does not include a conviction that has been reversed, vacated or set aside or a conviction for which the person has been pardoned.

(b) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon

Criminal Justice Commission, or any other crime constituting domestic violence, as defined in ORS 135.230.

(c) "Protective order" has the meaning given that term in ORS 135.886.

(d) "Victim" has the meaning given that term in ORS 131.007. [Formerly 192.448]

Note: 192.374 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.377 Required redaction of certain personal information. A public body that is the custodian of or is otherwise in possession of information that was submitted to the public body in confidence and is not otherwise required by law to be submitted, must redact all of the following information before making a disclosure described in ORS 192.355 (4):

(1) Residential address and telephone numbers;

(2) Personal electronic mail addresses and personal cellular telephone numbers;

(3) Social Security numbers and employer-issued identification card numbers; and

(4) Emergency contact information. [Formerly 192.504]

Note: 192.377 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.380 Immunity from liability for disclosure of certain personal information; recovery of costs. (1) A public body or any official of the public body that determines that a party requesting information under ORS 192.355 (3), 192.363 or 192.365 has demonstrated by clear and convincing evidence that the public interest requires disclosure in a particular instance is immune from civil or criminal liability associated with the disclosure.

(2) A public body that receives a request for disclosure of records under ORS 192.355 (3) or 192.365 is entitled to recover the cost of complying with ORS 192.363 without regard to whether the public body determines that the party requesting disclosure has demonstrated by clear and convincing evidence that the public interest requires disclosure in a particular instance. [Formerly 192.497]

Note: 192.380 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Investigation Records)

192.385 Nondisclosure of certain public safety officer investigation records; exceptions. (1) As used in this section:

(a) "Law enforcement unit" has the meaning given that term in ORS 181A.355.

(b) "Public body" has the meaning given that term in ORS 192.311.

(c) "Public safety officer" has the meaning given that term in ORS 181A.355.

(2) A public body may not disclose audio or video records of internal investigation interviews of public safety officers.

(3) Subsection (2) of this section does not prohibit disclosure of the records described in subsection (2) of this section to:

(a) A law enforcement unit for purposes of the investigation;

(b) An attorney representing a public safety officer who is the subject of the investigation;

(c) The Department of Public Safety Standards and Training as required by ORS 181A.670;

(d) A district attorney, as defined in ORS 131.005;

(e) A public safety officer who is the subject of the investigation;

(f) An attorney for a defendant in a criminal proceeding related to the investigation, for use in preparation for the criminal proceeding;

(g) A labor organization, as defined in ORS 243.650, for use in an action by an employer against a member of the labor organization for the purpose of punishing the member;

(h) A public body responsible for civilian oversight or a citizen review body designated by the public body for the purposes of fulfilling the investigative and oversight functions of the body;

(i) A federal law enforcement agency for purposes of the investigation; or

(j) The Attorney General.

(4) The disclosure of records under subsection (3) of this section does not make the records subject to further disclosure. [Formerly 192.405]

Note: 192.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Old Records)

192.390 Inspection of records more than 25 years old. Notwithstanding ORS 192.338, 192.345 and 192.355 and except as

otherwise provided in ORS 192.398, public records that are more than 25 years old shall be available for inspection. [Formerly 192.495]

Note: 192.390 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Health Records)

192.395 Health services costs. A record of an agency of the executive department as defined in ORS 174.112 that contains the following information is a public record subject to inspection under ORS 192.314 and is not exempt from disclosure under ORS 192.345 or 192.355 except to the extent that the record discloses information about an individual's health or is proprietary to a person:

(1) The amounts determined by an independent actuary retained by the agency to cover the costs of providing each of the following health services under ORS 414.591, 414.631 and 414.688 to 414.745 for the six months preceding the report:

(a) Inpatient hospital services;

(b) Outpatient hospital services;

(c) Laboratory and X-ray services;

(d) Physician and other licensed practitioner services;

(e) Prescription drugs;

(f) Dental services;

(g) Vision services;

(h) Mental health services;

(i) Chemical dependency services;

(j) Durable medical equipment and supplies; and

(k) Other health services provided under a coordinated care organization contract under ORS 414.591 or a contract with a prepaid managed care health services organization, as defined in ORS 414.025;

(2) The amounts the agency and each contractor have paid under each coordinated care organization contract under ORS 414.591 or prepaid managed care health services organization contract for administrative costs and the provision of each of the health services described in subsection (1) of this section for the six months preceding the report;

(3) Any adjustments made to the amounts reported under this section to account for geographic or other differences in providing the health services; and

(4) The numbers of individuals served under each coordinated care organization contract or prepaid managed care health services organization contract, listed by category of individual. [Formerly 192.493]

Note: 192.395 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.398 Medical records; sealed records; records of individual in custody or under supervision; student records. The following public records are exempt from disclosure:

(1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

(2) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

(3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

(4) Student records required by state or federal law to be exempt from disclosure. [Formerly 192.496]

Note: 192.398 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.401 Records of health professional regulatory boards, Health Licensing Office. (1)(a) A person denied the right to inspect or to receive a copy of a public record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, and petitioning the Attorney General to review the public record shall, on or before the date of filing the petition with the Attorney General, send a copy of the petition by first class mail to the health professional regulatory board. Not more than 48 hours after the board receives a copy of the petition, the board shall send a copy of the petition by first class mail to the licensee or applicant who is the subject of a public record for

which disclosure is sought. When sending a copy of the petition to the licensee or applicant, the board shall include a notice informing the licensee or applicant that a written response by the licensee or applicant may be filed with the Attorney General not later than seven days after the date that the notice was sent by the board. Immediately upon receipt of any written response from the licensee or applicant, the Attorney General shall send a copy of the response to the petitioner by first class mail.

(b) A person denied the right to inspect or to receive a copy of a public record of the Health Licensing Office that contains information concerning an individual who holds, or an applicant for, an authorization to practice a profession to which ORS 676.595 applies, and petitioning the Attorney General to review the public record shall, on or before the date of filing the petition with the Attorney General, send a copy of the petition by first class mail to the office. Not more than 48 hours after the office receives a copy of the petition, the office shall send a copy of the petition by first class mail to the holder of the authorization or the applicant who is the subject of a public record for which disclosure is sought. When sending a copy of the petition to the holder of the authorization or the applicant, the office shall include a notice informing the holder of the authorization or the applicant that a written response by the holder of the authorization or the applicant may be filed with the Attorney General not later than seven days after the date that the notice was sent by the office. Immediately upon receipt of any written response from the holder of the authorization or the applicant, the Attorney General shall send a copy of the response to the petitioner by first class mail.

(2)(a) The person seeking disclosure of a public record of a health professional regulatory board, as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or 676.175 shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. The Attorney General shall issue an order denying or granting the petition, or denying or granting it in part, not later than the 15th day following the day that the Attorney General receives the petition. A copy of the Attorney General's order granting a petition or part of a petition shall be served by first class mail on the health professional regulatory board, the petitioner and the licensee or applicant who is the subject of a public record ordered to be disclosed. The health professional regulatory board shall not disclose a public record prior to the seventh day following the service of the Attorney General's order on a licensee or applicant entitled to receive notice under this paragraph.

(b) The person seeking disclosure of a public record of the Health Licensing Office that is confidential or exempt from disclosure as described in ORS 676.595 shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. The Attorney General shall issue an order denying or granting the petition, or denying or granting the petition in part, not later than the 15th day following the day that the Attorney General receives the petition. A copy of the Attorney General's order granting a petition or part of a petition shall be served by first class mail on the office, the petitioner and the holder of the authorization or the applicant who is the subject of a public record ordered to be disclosed. The office shall not disclose a public record prior to the seventh day following the service of the Attorney General's order on a holder of an authorization or an applicant entitled to receive notice under this paragraph.

(3)(a) If the Attorney General grants or denies the petition for a public record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, the board, a person denied the right to inspect or receive a copy of the public record or the licensee or applicant who is the subject of the public record may institute proceedings for injunctive or declaratory relief in the circuit court for the county where the public record is held. The party seeking disclosure of the public record shall have the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(b) If the Attorney General grants or denies the petition for a public record of the Health Licensing Office that contains information concerning a holder of an authorization to practice a profession or an applicant, the office, a person denied the right to inspect or receive a copy of the public record or the holder of the authorization or the applicant who is the subject of the public record may institute proceedings for injunctive or declaratory relief in the circuit court for the county where the public record is held. The party seeking disclosure of the public record shall have the burden of

demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(4) The Attorney General may comply with a request of a health professional regulatory board or the Health Licensing Office to be represented by independent counsel in any proceeding under subsection (3) of this section. [Formerly subsections (4) to (7) of 192.450]

192.405 [2011 c.485 §1; renumbered 192.385 in 2017]

(Appeals)

192.407 When petition for review of public records request allowed; order granting petition; penalty. (1) A person who has submitted a written public records request in compliance with a public body's policy may seek review of the following, in the same manner as a person petitions when inspection of a public record is denied under ORS 192.311 to 192.478:

(a) The failure of a public body to provide the response required by ORS 192.329 within the prescribed period. A failure of the public body to timely respond shall be treated as a denial of the request unless the public body demonstrates that compliance was not required under ORS 192.329.

(b) An estimate of time provided by a public body pursuant to ORS 192.329, if the person believes that the estimated time frame for the response is unreasonably long and will result in undue delay of disclosure.

(c) Any other instance in which the person believes that the public body has failed to comply with ORS 192.329.

(2) Except as provided in subsection (3) of this section, the Attorney General, the district attorney and the court have the same authority with respect to petitions under this section as when inspection of a public record is denied.

(3) If the Attorney General, the district attorney or a court grants a petition filed under this section, the order granting the petition:

(a) May require disclosure of nonexempt material responsive to the request within seven days, or within any other period that the Attorney General, district attorney or court concludes is appropriate to comply with ORS 192.329;

(b) May require the public body to pay a penalty of $200 to the requester if the Attorney General, district attorney or court determines that the public body responded to the request with undue delay or failed to respond to the request; and

(c) May order a fee waiver or a fee reduction if a public body has responded to the request with undue delay or has failed to respond to the request in the time and manner prescribed in ORS 192.329. Nothing in this subsection prohibits a reviewing body from finding an unreasonable denial of a fee waiver or a fee reduction on other grounds.

(4) Nothing in this section limits the authority of a court to act under ORS 192.431. [2017 c.456 §5; 2019 c.205 §1]

Note: 192.407 was added to and made a part of 192.311 to 192.478 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.410 [1973 c.794 §2; 1989 c.377 §1; 1993 c.787 §4; 2001 c.237 §1; 2005 c.659 §4; 2017 c.456 §2; renumbered 192.311 in 2017]

192.411 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection. (1) Subject to ORS 192.401 (1) and 192.427, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. Except as provided in ORS 192.401 (2), the burden is on the agency to sustain its action. Except as provided in ORS 192.401 (2), the Attorney General shall issue an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the public record, or if the Attorney General grants the petition in part and orders the state agency to disclose a portion of the public record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as provided in ORS 192.401 (3), in the circuit court of the county where the public record is held. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the public record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit

arises out of a determination by the Attorney General that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with the order of the Attorney General requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel. [Formerly subsections (1) to (3) of 192.450]

192.415 Procedure to review denial of right to inspect other public records; effect of disclosure. (1) ORS 192.401 and 192.411 apply to the case of a person denied the right to inspect or to receive a copy of any public record of a public body other than a state agency, except that:

(a) The district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General;

(b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of this subsection; and

(c) The district attorney may not serve as counsel for the public body, in the cases permitted under ORS 192.411 (3), unless the district attorney ordinarily serves as counsel for the public body.

(2) Disclosure of a record to the district attorney in compliance with subsection (1) of this section does not waive any privilege or claim of privilege regarding the record or its contents.

(3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled disclosure for purposes of ORS 40.285. [Formerly 192.460]

192.418 Effect of failure of Attorney General, district attorney or elected official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.401, 192.411 or 192.415 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.401, 192.411 or 192.415.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.401, 192.411 or 192.415. [Formerly 192.465]

192.420 [1973 c.794 §3; 1999 c.574 §1; 2003 c.403 §1; renumbered 192.314 in 2017]

192.422 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting the Attorney General or district attorney to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

_____

_____
(Date)

I (we), _____ (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order_____ (name of governmental body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)

2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address). The request was denied by the following person(s):

1. _____
(Name of public officer or employee; title or position, if known)

2. _____
(Name of public officer or employee; title or position, if known)

_____
(Signature(s))

_____

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together

with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General. [Formerly 192.470]

192.423 [2007 c.513 §2; renumbered 192.360 in 2017]

192.427 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.401, 192.411 or 192.415, and the Attorney General or district attorney may upon request serve or decline to serve, in the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed. [Formerly 192.480]

192.430 [1973 c.794 §4; 1989 c.546 §1; renumbered 192.318 in 2017]

192.431 Court authority in reviewing action denying right to inspect public records; docketing; costs and attorney fees. (1) In any suit filed under ORS 192.401, 192.411, 192.415, 192.422 or 192.427, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.401, 192.411, 192.415, 192.422 or 192.427 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial and on appeal. If the person prevails in part, the court may in its discretion award the person costs and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to ORS 192.411 (2) within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein. [Formerly 192.490]

192.435 [2015 c.26 §3; 2015 c.805 §2; renumbered 192.365 in 2017]

192.437 [2015 c.805 §3; renumbered 192.363 in 2017]

192.440 [1973 c.794 §5; 1979 c.548 §4; 1989 c.111 §12; 1989 c.377 §2; 1989 c.546 §2; 1999 c.824 §5; 2001 c.445 §168; 2005 c.272 §1; 2007 c.467 §1; 2017 c.456 §3; renumbered 192.324 in 2017]

192.445 [1993 c.787 §5; 1995 c.742 §12; 2003 c.807 §1; renumbered 192.368 in 2017]

192.447 [2003 c.282 §1; renumbered 192.371 in 2017]

192.448 [2012 c.93 §2; 2012 c.93 §5; renumbered 192.374 in 2017]

192.450 [1973 c.794 §6; 1975 c.308 §2; 1997 c.791 §8; 1999 c.751 §4; 2017 c.101 §4; subsections (1) to (3) renumbered 192.411 and subsections (4) to (7) renumbered 192.401 in 2017]

192.460 [1973 c.794 §7; 2007 c.513 §4; renumbered 192.415 in 2017]

PUBLIC RECORDS ADVOCATE

192.461 Public Records Advocate. (1) The office of the Public Records Advocate is created as an independent office within the executive department, separate and distinct from any other state agency.

(2) The Public Records Advocate shall be appointed by the Public Records Advisory Council under ORS 192.481.

(3) The Public Records Advocate shall be a member in good standing of the Oregon State Bar.

(4) The term of office of the Public Records Advocate shall be four years, except that the advocate may be removed for cause by the Public Records Advisory Council. A determination to remove for cause may be appealed as a contested case proceeding under ORS chapter 183.

(5) The advocate may be reappointed to consecutive terms.

(6) The Public Records Advocate is in the exempt service.

(7)(a) The Public Records Advocate shall select, appoint and fix the compensation of a Deputy Public Records Advocate. The Deputy Public Records Advocate shall be a member in good standing of the Oregon State Bar.

(b) The Public Records Advocate may delegate to the Deputy Public Records Advocate any authority, power or duty to act possessed by the Public Records Advocate except the power to delegate set forth in this paragraph.

(c) If the position of the Public Records Advocate becomes vacant, the Deputy Public Records Advocate shall serve as the acting Public Records Advocate until a new Public Records Advocate has been appointed.

(8)(a) The Public Records Advocate may hire and fix the compensation of other professional staff to assist in performing the duties assigned to the Public Records Advocate.

(b) Officers and employees of the office of the Public Records Advocate are in the exempt service.

(9) The Public Records Advocate may seek out office facilities and administrative support from other state agencies or local public bodies. State agencies shall assist the advocate. Local public bodies may assist the advocate. [2017 c.728 §1; 2017 c.728 §16; 2019 c.107 §1; 2021 c.582 §1]

192.464 Facilitated dispute resolution services of Public Records Advocate. (1)(a) The Public Records Advocate shall provide facilitated dispute resolution services when requested by a person described in subsection (2) of this section or by a state agency under the conditions described in subsection (3) of this section.

(b) The Public Records Advocate may provide facilitated dispute resolution services when requested by a person described in subsection (6) of this section and a city.

(2) A person may seek facilitated dispute resolution services under this section when seeking to inspect or receive copies of public records from a state agency and the person:

(a) Has been denied access to all or a portion of the records being sought;

(b) Has been denied a fee waiver or reduction in fees after asserting under ORS 192.324 (5) that a fee waiver or reduction of fees is in the public interest; or

(c) Received a written fee estimate under ORS 192.324 (4) that the person believes exceeds the actual cost to be incurred by the public body in producing the requested records.

(3)(a) A state agency may seek facilitated dispute resolution services under this section if, in response to a request for public records, the agency asserts:

(A) That the records being sought are not public records;

(B) That the records being sought are exempt from mandatory disclosure; or

(C) That the agency is, under ORS 192.324, entitled to the fees the agency is seeking in order to produce the records being requested.

(b) A person seeking to inspect or receive copies of public records may opt out of facilitated dispute resolution services being sought by a state agency by giving written notice of the requester's election within five days of the requester's receipt of the agency's request for facilitated dispute resolution. If written notice is given under this paragraph, the state agency may not determine under subsection (4)(a) of this section that the person seeking to inspect or receive copies of public records has failed to engage in good faith in the facilitated dispute resolution process.

(4) Notwithstanding any other provision of ORS 192.311 to 192.478:

(a) The failure of a person seeking to inspect or receive copies of public records to engage in good faith in the facilitated dispute resolution process described in this section upon being authorized to do so under subsection (2) of this section shall be grounds for the state agency to deny the request and refuse to disclose the requested records.

(b) The failure of a state agency to engage in good faith in the facilitated dispute resolution process described in this section after a public records requester seeks facilitated dispute resolution services under subsection (2) of this section shall be grounds for the award of costs and attorney fees to the public records requester for all costs and attorney fees incurred in pursuing the request after a good faith determination under subsection (5) of this section.

(5)(a) Either party to the facilitated dispute resolution may request that the Public Records Advocate make a determination concerning whether a party is acting in good faith for purposes of applying the remedies described in subsection (4) of this section.

(b) A determination by the advocate that a party failed to engage in good faith facilitated dispute resolution and an award of costs and attorney fees are subject to review by the Circuit Court of Marion County as a proceeding under ORS 183.484.

(6) In the case of a person seeking to inspect or obtain copies of public records from a city, either the person seeking records or the city may seek facilitated dispute resolution services under this section, but only if both the person seeking records and the city

agree to have the Public Records Advocate facilitate resolution of the dispute and the advocate consents to facilitated resolution of the dispute. A dispute described in this subsection is not subject to subsections (4) and (5) of this section.

(7) Facilitated dispute resolution shall be requested by submitting a written request for facilitated dispute resolution and such other information as may be required by the Public Records Advocate. Facilitated dispute resolution between parties shall be conducted and completed within 21 days following receipt by the advocate of the request for facilitated dispute resolution. The facilitated dispute resolution period may be extended by unanimous agreement among the public records requester, the public body and the advocate.

(8) If the facilitated dispute resolution results in an agreement between the public records requester and the state agency or city, the advocate shall prepare a written document memorializing the agreement. The written agreement shall be executed by the public records requester and an authorized representative of the state agency or city. The written agreement shall control the resolution of the records request. [2017 c.728 §2]

192.465 [1975 c.308 §5; renumbered 192.418 in 2017]

192.468 Discretion of Public Records Advocate in dispute resolution services. Consistent with ORS 192.464 and rules adopted thereunder, the Public Records Advocate possesses sole discretion over the conduct of facilitated dispute resolution sessions. [2017 c.728 §3]

192.470 [1973 c.794 §10; renumbered 192.422 in 2017]

192.472 Confidentiality of Public Records Advocate records. Written records, documents, notes or statements of any kind prepared for or submitted to the Public Records Advocate, prepared by the advocate or exchanged between parties seeking a facilitated dispute resolution are subject to ORS 36.220 to 36.238. The Public Records Advocate may claim any exemption from disclosure under ORS 192.311 to 192.478 that a public body that is a party to the facilitated dispute resolution may claim with respect to a request for public records described in this section. [2017 c.728 §4]

192.475 Public records request training. (1) The Public Records Advocate shall provide training for state agencies and local governments on the requirements and best practices for processing and responding to public records requests.

(2) The Public Records Advocate shall perform training sessions throughout this state.

(3) Upon the written request of a state agency or local government, the Public Records Advocate may provide guidance and advice on matters pertaining to public records request processing and the disclosure and applicability of exemptions from disclosure of public records.

(4) Guidance and advice provided pursuant to subsection (3) of this section is purely advisory and must cease when the particular advice sought relates to a matter that is referred to facilitated dispute resolution under ORS 192.464. [2017 c.728 §5]

192.476 Estimate of expenses; rules. (1) On or before January 1 preceding the start of a biennium, the Public Records Advocate shall estimate the expenses the advocate will incur for the upcoming biennium in carrying out the provisions of ORS 192.461 to 192.477. The advocate shall report the estimate to the Oregon Department of Administrative Services and the Legislative Fiscal Officer.

(2) The advocate shall charge an assessment to each public body in state government so as to recoup the costs estimated under subsection (1) of this section. Each public body in state government shall pay to the credit of the advocate the amount the public body was assessed under this subsection as an administrative expense from funds or appropriations available to the public body in the same manner as other claims against the public body are paid.

(3) The advocate shall adopt rules specifying the method for allocating the expenses described in subsection (1) of this section among public bodies in state government and for collecting the assessments described in this section.

(4) As used in this section, "state government" has the meaning given that term in ORS 174.111. [2023 c.155 §1]

192.477 Public Records Advocate Fund. (1) The Public Records Advocate Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Public Records Advocate Fund shall be credited to the Public Records Advocate Fund.

(2) The Public Records Advocate Fund shall consist of:

(a) Moneys collected under ORS 192.476;

(b) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly; and

(c) Interest earnings of the fund.

(3) Moneys in the Public Records Advocate Fund are continuously appropriated to the Public Records Advocate for the purpose of funding the operations of the office of the Public Records Advocate and the Public Records Advisory Council. [2021 c.582 §4; 2023 c.155 §2]

192.478 Exemption for Judicial Department. The Judicial Department is not subject to ORS 192.464 and 192.475. [2017 c.728 §6]

192.480 [1973 c.794 §8; renumbered 192.427 in 2017]

PUBLIC RECORDS ADVISORY COUNCIL

192.481 Public Records Advisory Council. (1) The Public Records Advisory Council is created.

(2) The Public Records Advisory Council consists of:

(a) The Secretary of State or a designee of the Secretary of State;

(b) The Attorney General or a designee of the Attorney General;

(c) The Director of the Oregon Department of Administrative Services or a designee of the director;

(d) A representative of the news media who is a member in good standing of a professional journalism association and who is appointed by the Governor;

(e) Two additional representatives of the news media who are appointed by the Governor;

(f) A representative of the cities of this state who is appointed by the Governor;

(g) A representative of the counties of this state who is appointed by the Governor;

(h) A representative of the special districts of this state who is appointed by the Governor;

(i) A representative of the public sector workforce who is appointed by the Governor;

(j) A member of the public who is appointed by the Governor;

(k) A Senator who is appointed by the President of the Senate and who serves as an ex officio nonvoting member;

(L) A Representative who is appointed by the Speaker of the House of Representatives and who serves as an ex officio nonvoting member; and

(m) The Public Records Advocate.

(3) The council shall elect a chairperson and a vice chairperson, who each shall serve in that capacity for a two-year term, or until their membership on the council ends, whichever is of shorter duration. A chairperson or vice chairperson may be reelected to their positions.

(4) At any time when the office of Public Records Advocate is vacant:

(a) The council shall convene at the time and place designated by the chairperson but within 30 days of the vacancy of the office of Public Records Advocate;

(b) The council shall take up the question of the process, selection and appointment of a new Public Records Advocate; and

(c) The individual who had vacated the office of Public Records Advocate may participate in deliberations and vote on the slate of nominees unless the individual vacated the office for reasons described in ORS 192.461 (4).

(5) The appointment of a member of the council described in subsection (2)(d) to (j) of this section is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(6) A member of the council described in subsection (2)(d), (e) or (j) of this section is entitled to compensation and expenses as provided in ORS 292.495.

(7) The members of the council described in subsection (2)(d) to (L) of this section shall each serve two-year terms and may be reappointed to successive terms.

(8) A majority of the voting members of the council constitutes a quorum for the transaction of business.

(9) The council shall meet at least once every six months. The council also may meet at other times and places specified by the call of the chairperson or of a majority of the members of the council.

(10) All public bodies, as defined in ORS 192.311, shall assist the council in the performance of its duties and, to the extent permitted by laws relating to confidentiality, furnish such information, including public records, and advice as the members of the council consider necessary to perform their duties.

(11)(a) The council may support or oppose legislation relating to public records law.

(b) The council may request that one or more legislators introduce legislation relating to public records law. [2017 c.728 §8; 2019 c.107 §2; 2021 c.582 §2]

192.483 Duties of Public Records Advisory Council; rules. (1) The Public Records Advisory Council created under ORS 192.481 shall periodically perform all of the following:

(a) Survey state agency and other public body practices and procedures for:

(A) Receiving public records requests, identifying the existence of records responsive to the requests and gathering and disclosing responsive records;

(B) Determining fee estimates and imposing or waiving fees under ORS 192.324; and

(C) Determining and applying exemptions from required disclosure of public records.

(b) Examine practices similar to those described in paragraph (a) of this subsection in other jurisdictions.

(c) Identify inefficiencies and inconsistencies in application of the public records law that impede transparency in public process and government.

(d) Make recommendations on changes in law, policy or practice that could enhance transparency in public process and government, and facilitate rapid dissemination of public records to requesters.

(e) Make recommendations on the role of the Public Records Advocate as facilitator in disputes between custodians of public records and public record requesters.

(2) No later than December 1 of each even-numbered year, the council shall submit to the Governor, and to the Legislative Assembly in the manner provided by ORS 192.245, a report that describes the findings of the council since the council's last report. The report may include recommendations for legislation.

(3) The council or the Public Records Advocate may prepare reports and studies more frequently than required under subsection (2) of this section.

(4) The council may adopt rules governing the operations of the office of the Public Records Advocate, including but not limited to rules establishing procedures for the conduct of facilitated dispute resolution under ORS 192.464. The council shall consider efficiencies and the preference for a policy of transparency and openness in government in this state in adopting rules under this subsection.

(5) The Public Records Advocate shall serve as the custodian of all council records. [2017 c.728 §10; 2021 c.582 §3]

PUBLIC RECORDS OVERSIGHT

192.485 Definitions for ORS 192.485 to 192.513. As used in ORS 192.485 to 192.513, "public record" has the meaning given that term in ORS 192.311. [2017 c.654 §1]

Note: 192.485 to 192.513 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.488 Open government impact statement. (1) The Legislative Counsel shall prepare an open government impact statement for each measure reported out of a committee of the Legislative Assembly if the measure affects the disclosure, or exemption from disclosure, of a public record.

(2) An open government impact statement must:

(a) State whether the measure conforms to any standards adopted by the Legislative Counsel for drafting measures that establish exemptions from disclosure of public records; and

(b) Describe how the measure would alter existing standards regarding the disclosure or exemption from disclosure of public records and how the measure would impact public interests in disclosure that would be served if the public record were subject to mandatory disclosure. [2017 c.654 §2]

Note: See note under 192.485.

192.490 [1973 c.794 §9; 1975 c.308 §3; 1981 c.897 §40; renumbered 192.431 in 2017]

192.492 Notification of change to public records laws. The Legislative Counsel shall notify the Legislative Counsel Committee, or its designee, and the Oregon Sunshine Committee if a measure that changes an exemption from disclosure for public records or existing standards of disclosure for public records is introduced. [2017 c.654 §3]

Note: See note under 192.485.

192.493 [2003 c.803 §27; 2011 c.602 §33; 2015 c.792 §3; renumbered 192.395 in 2017]

192.495 [1979 c.301 §2; renumbered 192.390 in 2017]

192.496 [1979 c.301 §3; renumbered 192.398 in 2017]

192.497 [2015 c.805 §4; renumbered 192.380 in 2017]

192.499 Public records subcommittee. (1) The Legislative Counsel Committee shall establish a public records subcommittee.

(2) The President of the Senate and the Speaker of the House of Representatives shall appoint to the subcommittee four members of the Legislative Assembly from among the members of the committee as follows:

(a) The President of the Senate shall appoint:

(A) One member who is a member of the Senate and a member of the majority party; and

(B) One member who is a member of the Senate and a member of the minority party.

(b) The Speaker of the House of Representatives shall appoint:

(A) One member who is a member of the House of Representatives and a member of the majority party; and

(B) One member who is a member of the House of Representatives and a member of the minority party.

(c) The President of the Senate and the Speaker of the House of Representatives shall each appoint a cochair from the members described in paragraphs (a) and (b) of this subsection.

(3) The subcommittee shall review and may accept, modify or reject the plan or schedule for review of exemptions from dis-

closure for public records established by the Oregon Sunshine Committee under ORS 192.511.

(4) The subcommittee shall review the Oregon Sunshine Committee reports required by ORS 192.511 and may accept, modify or reject the Oregon Sunshine Committee reports as the reports of the subcommittee. On or before September 1 of each even-numbered year, the subcommittee shall submit the subcommittee report, with the original Oregon Sunshine Committee report as an appendix, to the Legislative Counsel Committee.

(5) The subcommittee shall cooperate with and invite advice and comment from:

(a) The Attorney General;

(b) The Governor;

(c) The Secretary of State;

(d) The State Treasurer;

(e) Any committee or task force appointed by the Attorney General, the Governor or the Secretary of State to examine any aspect of ORS 192.311 to 192.478 or of the disclosure of public records; and

(f) The Oregon Sunshine Committee.

(6) Interested members of the public may provide comment to the subcommittee. [2017 c.654 §4]

Note: See note under 192.485.

192.500 [1973 c.794 §11; 1975 c.308 §1; 1975 c.582 §150; 1975 c.606 §41a; 1977 c.107 §1; 1977 c.587 §1; 1977 c.793 §5a; 1979 c.190 §400; 1981 c.107 §1; 1981 c.139 §8; 1981 c.187 §1; 1981 c.892 §92; 1981 c.905 §7; 1983 c.17 §29; 1983 c.198 §1; 1983 c.338 §902; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9; 1985 c.413 §1; 1985 c.602 §13; 1985 c.657 §1; 1985 c.762 §179a; 1985 c.813 §1; 1987 c.94 §100; 1987 c.109 §3; 1987 c.320 §145; 1987 c.373 §23; 1987 c.520 §12; 1987 c.610 §24; 1987 c.731 §2; 1987 c.839 §1; 1987 c.898 §26; repealed by 1987 c.764 §1 (192.501, 192.502 and 192.505 enacted in lieu of 192.500)]

192.501 [1987 c.373 §§23c,23d; 1987 c.764 §2 (enacted in lieu of 192.500); 1989 c.70 §1; 1989 c.171 §26; 1989 c.967 §§11,13; 1989 c.1083 §10; 1991 c.636 §§1,2; 1991 c.678 §§1,2; 1993 c.616 §§4,5; 1993 c.787 §§1,2; 1995 c.604 §§2,3; 1999 c.155 §3; 1999 c.169 §§1,2; 1999 c.234 §§1,2; 1999 c.291 §§21,22; 1999 c.380 §§1,2; 1999 c.1093 §§3,4; 2001 c.104 §66; 2001 c.621 §85; 2001 c.915 §1; 2003 c.217 §1; 2003 c.380 §2; 2003 c.524 §1; 2003 c.604 §98; 2003 c.674 §26; 2003 c.803 §12; 2003 c.807 §§2,3; 2005 c.203 §§1,2; 2005 c.232 §§33,34; 2005 c.455 §1; 2007 c.608 §6; 2007 c.687 §1; 2008 c.48 §1; 2009 c.57 §2; 2009 c.135 §1; 2009 c.222 §2; 2009 c.769 §1; 2011 c.9 §14; 2011 c.285 §1; 2011 c.637 §68; 2013 c.325 §1; 2013 c.768 §107; 2014 c.37 §§1,2; 2014 c.64 §§1,2; 2015 c.14 §2; 2015 c.313 §§1,2; 2015 c.550 §§5,6; 2015 c.767 §§56,57; renumbered 192.345 in 2017]

192.502 [1987 c.373 §23e; 1987 c.764 §3; 1987 c.898 §27 (enacted in lieu of 192.500); 1989 c.6 §17; 1989 c.925 §1; 1991 c.825 §7; 1993 c.694 §27; 1993 c.817 §1; 1995 c.79 §70; 1995 c.162 §62a; 1995 c.604 §1; 1997 c.44 §1; 1997 c.559 §1; 1997 c.825 §1; 1999 c.274 §17; 1999 c.291 §24; 1999 c.379 §1; 1999 c.666 §1; 1999 c.683 §3; 1999 c.811 §2; 1999 c.855 §4; 1999 c.955 §23; 1999 c.1059 §§12,16; 2001 c.377 §§17,18; 2001 c.915 §3; 2001 c.922 §§12,13; 2001 c.962 §§80,81; 2001 c.965 §§62,63; 2003 c.14 §§90,91; 2003 c.524 §§2,3; 2003 c.733 §§49,50; 2003 c.803 §§5,6; 2005 c.397 §1; 2005 c.561 §3; 2005 c.659 §1; 2007 c.152 §1; 2007 c.181 §1; 2007 c.513 §5; 2007 c.687 §7; 2009 c.57 §4; 2009 c.500 §1; 2009 c.541 §7; 2009 c.604 §22; 2010 c.76 §15; 2011 c.9 §16; 2011 c.424 §1; 2011 c.645 §6; 2012 c.45 §26; 2012 c.90 §§19,30; 2013 c.325 §3; 2013 c.550 §5; 2013 c.587 §1; 2013 c.732 §5; 2015 c.26 §1; 2015 c.313 §5; 2015 c.383 §1; 2015 c.481 §2; 2015 c.805 §1; 2017 c.340 §1; 2017 c.475 §1; renumbered 192.355 in 2017]

192.503 [1993 c.224 §3; repealed by 1997 c.678 §15]

192.504 [2015 c.26 §4; renumbered 192.377 in 2017]

192.505 [1987 c.764 §4 (enacted in lieu of 192.500); renumbered 192.338 in 2017]

192.508 Rules. (1) The Legislative Counsel Committee and the public records subcommittee established under ORS 192.499 may adopt rules applicable to deliberations of the committee and subcommittee under ORS 192.485 to 192.513. The rules may enhance the opportunity for public participation in the deliberations of the committee and subcommittee, including through the live-streaming of meetings.

(2) All deliberations of the Legislative Counsel Committee and the public records subcommittee shall be conducted in accordance with the open meeting requirements of Article IV, section 14, of the Oregon Constitution, and rules adopted thereunder. [2017 c.654 §5]

Note: See note under 192.485.

192.511 Oregon Sunshine Committee; membership; duties; rules. (1) The Oregon Sunshine Committee is established, consisting of 15 members as follows:

(a) The members of the public records subcommittee established under ORS 192.499 shall be ex officio nonvoting members of the committee.

(b) The Governor and the Attorney General, or their designees, shall be voting members of the committee.

(c) The State Archivist, or a designee of the State Archivist, shall be a voting member of the committee.

(d) The Attorney General shall appoint to the committee as voting members:

(A) A person with information technology expertise;

(B) Three representatives of local government to represent the interests of counties, cities, school districts and special districts;

(C) A representative of broadcasters;

(D) A representative of professional journalists;

(E) A representative of newspaper publishers; and

(F) A representative from a nonprofit open government or public interest group.

(2)(a) The term of each voting committee member appointed by the Attorney General is four years, but a member so appointed serves at the pleasure of the Attorney General.

(b) Before the expiration of a term of a member appointed by the Attorney General, the Attorney General shall reappoint the member to a new term or appoint a successor.

(c) If there is a vacancy for any cause in a position that is appointed by the Attorney General, the Attorney General shall make an appointment to become immediately effective.

(3) The Oregon Sunshine Committee shall do all of the following:

(a) Establish, and adjust as necessary, a plan or schedule to review all exemptions from disclosure for public records included in the Attorney General's catalog required by ORS 192.340 that provides for review not later than December 31, 2026, except that the following exemptions need not be considered:

(A) Exemptions required by federal law;

(B) Evidentiary privileges described in ORS 40.225 to 40.295, other than the lawyer-client privilege described in ORS 40.225;

(C) The exemption for trade secrets as described in the public records law, ORS 192.311 to 192.478, or the Uniform Trade Secrets Act, ORS 646.461 to 646.475;

(D) Security records described in ORS 192.345 (23) or 192.355 (11), (32) or (33);

(E) Personal information of certain scientific workers described in ORS 192.345 (30), care workers described in ORS 192.363 and 192.365 or public safety workers or county juvenile department employees described in ORS 192.345 (31); and

(F) Public safety plans described in ORS 192.345 (18).

(b) Include in the review required by this subsection any administrative rule for which a review was requested under ORS 183.730.

(c) Study and identify any inefficiencies and inconsistencies in the application of public records laws that impede transparency in public process and government.

(d) Make recommendations on changes in existing law, policy and practice to enhance transparency and facilitate rapid fulfillment of public records requests made to public bodies.

(e) On or before July 1 of each even-numbered year, submit a report to the public records subcommittee established under ORS 192.499 and include in the report the recommendations described in paragraph (d) of this subsection and recommendations to amend or repeal the exemptions from disclosure reviewed by the committee during the period since the last report submitted by the committee under this section.

(4) The Oregon Sunshine Committee may take all lawful actions and exercise any lawful powers the committee deems reasonable for facilitating its work, including but not limited to conducting public hearings and creating subcommittees. Any subcommittees created by the committee are subject to the public meetings and public records requirements that apply to the committee.

(5) A majority of the voting members of the Oregon Sunshine Committee constitutes a quorum for the transaction of business.

(6) Official action by the committee requires the approval of a majority of the voting members of the committee.

(7) The committee shall select one of its members to serve as chairperson.

(8) The committee shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the committee and shall meet at least three times per year.

(9) All meetings of the committee must be open to the public. Any public records created by the committee are subject to disclosure, and any privilege or exemption from disclosure that would otherwise be applicable may not be claimed.

(10) The committee may adopt rules necessary for the operation of the committee.

(11) The Department of Justice shall provide administrative support to the committee.

(12) Members of the committee who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the committee shall be paid out of funds appropriated to the Department of Justice for purposes of the committee.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of the committee's duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the committee consider necessary to perform their duties. [2017 c.654 §6; 2019 c.61 §2]

Note: See note under 192.485.

192.513 Review of exemptions from disclosure by Oregon Sunshine Committee. (1) Pursuant to a plan or schedule for review accepted by the public records subcommittee of the Legislative Counsel Committee under ORS 192.499, the Oregon Sunshine Committee may review exemptions from disclosure of public records previously enacted into law for which an open government impact statement was not prepared.

(2) On or before July 1 of each even-numbered year, the Oregon Sunshine Committee shall deliver to the public records subcommittee the results of any review performed pursuant to this section. [2017 c.654 §7]

Note: See note under 192.485.

RECORDS OF INDIVIDUAL WITH DISABILITY OR MENTAL ILLNESS

192.515 Definitions for ORS 192.515 and 192.517. As used in this section and ORS 179.505 and 192.517:

(1) "Facilities" includes, but is not limited to, hospitals, nursing homes, facilities defined in ORS 430.205, board and care homes, homeless shelters, juvenile training schools, youth care centers, juvenile detention centers, jails and prisons.

(2) "Individual" means:

(a) An individual with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15002) as in effect on January 1, 2003;

(b) An individual with mental illness as defined in the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10802) as in effect on January 1, 2003; or

(c) An individual with disabilities as described in 29 U.S.C. 794e as in effect on January 1, 2006, other than:

(A) An adult in custody in a facility operated by the Department of Corrections whose only disability is drug or alcohol addiction; and

(B) A person confined in a youth correction facility, as that term is defined in ORS 420.005, whose only disability is drug or alcohol addiction.

(3)(a) "Other legal representative" means a person who has been granted or retains legal authority to exercise an individual's power to permit access to the individual's records.

(b) "Other legal representative" does not include a legal guardian, the state or a political subdivision of this state.

(4) "Records" includes, but is not limited to, reports prepared or received by any staff of a facility rendering care or treatment, any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner, reports prepared by an agency or staff person charged with investigating reports of incidents of abuse, neglect, injury or death occurring at the facility that describe such incidents and the steps taken to investigate the incidents and discharge planning records or any information to which the individual would be entitled access, if capable. [1993 c.262 §1; 1995 c.504 §1; 2003 c.14 §92; 2003 c.803 §7; 2005 c.498 §7; 2019 c.213 §55]

Note: 192.515 and 192.517 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.517 Access to records of individual with disability or individual with mental illness. (1) The system designated to protect and advocate for the rights of individuals shall have access to all records of:

(a) Any individual who is a client of the system if the individual or the legal guardian or other legal representative of the individual has authorized the system to have such access;

(b) Any individual, including an individual who has died or whose whereabouts are unknown:

(A) If the individual by reason of the individual's mental or physical condition or age is unable to authorize such access;

(B) If the individual does not have a legal guardian or other legal representative, or the state or a political subdivision of this state is the legal guardian of the individual; and

(C) If a complaint regarding the rights or safety of the individual has been received by the system or if, as a result of monitoring or other activities which result from a complaint or other evidence, there is probable cause to believe that the individual has been subject to abuse or neglect; and

(c) Any individual who has a legal guardian or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal representative:

(A) Has been contacted by the system upon receipt of the name and address of the legal guardian or other legal representative;

(B) Has been offered assistance by the system to resolve the situation; and

(C) Has failed or refused to act on behalf of the individual.

(2) The system shall have access to the name, address and telephone number of any legal guardian or other legal representative of an individual.

(3) The system that obtains access to records under this section shall maintain the confidentiality of the records to the same extent as is required of the provider of the

services, except as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806) as in effect on January 1, 2003.

(4) The system shall have reasonable access to facilities, including the residents and staff of the facilities.

(5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 (7). [1993 c.262 §2; 1995 c.504 §2; 2003 c.14 §93; 2003 c.803 §8; 2005 c.498 §8; 2009 c.595 §165; 2009 c.792 §72]

Note: See note under 192.515.

192.518 [2003 c.86 §1; renumbered 192.553 in 2011]

192.519 [2003 c.86 §2; 2005 c.253 §1; 2009 c.442 §34; 2009 c.595 §166; 2009 c.833 §29; 2009 c.867 §39; 2011 c.703 §30; 2011 c.715 §17; renumbered 192.556 in 2011]

192.520 [2003 c.86 §3; renumbered 192.558 in 2011]

192.521 [2003 c.86 §4; 2007 c.812 §1; renumbered 192.563 in 2011]

192.522 [2003 c.86 §5; renumbered 192.566 in 2011]

192.523 [2003 c.86 §6; renumbered 192.568 in 2011]

192.524 [2003 c.86 §7; renumbered 192.571 in 2011]

192.525 [1977 c.812 §1; 1997 c.635 §1; 1999 c.537 §2; 2001 c.104 §67; repealed by 2003 c.86 §8]

192.526 [2005 c.253 §3; renumbered 192.573 in 2011]

192.527 [2007 c.798 §2; 2009 c.595 §167; repealed by 2010 c.16 §1]

192.528 [2007 c.798 §3; repealed by 2010 c.16 §1]

192.529 [2007 c.800 §5; renumbered 192.581 in 2011]

192.530 [1977 c.812 §2; 1995 c.79 §71; repealed by 2003 c.86 §8]

GENETIC PRIVACY

192.531 Definitions for ORS 192.531 to 192.549. As used in ORS 192.531 to 192.549:

(1) "Anonymous research" means scientific or medical genetic research conducted in such a manner that any DNA sample or genetic information used in the research is unidentified.

(2) "Blanket informed consent" means that the individual has consented to the use of the individual's DNA sample or health information for any future research, but has not been provided with a description of or consented to the use of the sample in genetic research or any specific genetic research project.

(3) "Blood relative" means a person who is:

(a) Related by blood to an individual; and

(b) A parent, sibling, son, daughter, grandparent, grandchild, aunt, uncle, first cousin, niece or nephew of the individual.

(4) "Clinical" means relating to or obtained through the actual observation, diagnosis or treatment of patients and not through research.

(5) "Coded" means identifiable only through the use of a system of encryption that links a DNA sample or genetic information to an individual or the individual's blood relative. A coded DNA sample or genetic information is supplied by a repository to an investigator with a system of encryption.

(6) "Deidentified" means lacking, or having had removed, the identifiers or system of encryption that would make it possible for a person to link a DNA sample or genetic information to an individual or the individual's blood relative, and neither the investigator nor the repository can reconstruct the identity of the individual from whom the sample or information was obtained. Deidentified DNA samples and genetic information must meet the standards provided in 45 C.F.R. 164.502(d) and 164.514(a) to (c), as in effect on July 17, 2007.

(7) "Disclose" means to release, publish or otherwise make known to a third party a DNA sample or genetic information.

(8) "DNA" means deoxyribonucleic acid.

(9) "DNA sample" means any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to perform a genetic test. "DNA sample" includes DNA extracted from the specimen.

(10) "Genetic characteristic" includes a gene, chromosome or alteration thereof that may be tested to determine the existence or risk of a disease, disorder, trait, propensity or syndrome, or to identify an individual or a blood relative. "Genetic characteristic" does not include family history or a genetically transmitted characteristic whose existence or identity is determined other than through a genetic test.

(11) "Genetic information" means information about an individual or the individual's blood relatives obtained from a genetic test.

(12) "Genetic privacy statutes" means ORS 192.531 to 192.549, 659A.303 and 746.135 and the provisions of ORS 659A.300 relating to genetic testing.

(13) "Genetic research" means research using DNA samples, genetic testing or genetic information.

(14) "Genetic test" means a test for determining the presence or absence of genetic characteristics in an individual or the individual's blood relatives, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.

(15) "Health care provider" has the meaning given that term in ORS 192.556.

(16) "Identifiable" means capable of being linked to the individual or a blood relative

of the individual from whom the DNA sample or genetic information was obtained.

(17) "Identified" means having an identifier that links, or that could readily allow the recipient to link, a DNA sample or genetic information directly to the individual or a blood relative of the individual from whom the sample or information was obtained.

(18) "Identifier" means data elements that directly link a DNA sample or genetic information to the individual or a blood relative of the individual from whom the sample or information was obtained. Identifiers include, but are not limited to, names, telephone numbers, electronic mail addresses, Social Security numbers, driver license numbers and fingerprints.

(19) "Individually identifiable health information" has the meaning given that term in ORS 192.556.

(20) "Obtain genetic information" means performing or getting the results of a genetic test.

(21) "Person" has the meaning given in ORS 433.045.

(22) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(23) "Retain a DNA sample" means the act of storing the DNA sample.

(24) "Retain genetic information" means making a record of the genetic information.

(25) "Unidentified" means deidentified or not identifiable. [Formerly 659.700; 2003 c.333 §1; 2005 c.678 §1; 2007 c.800 §6]

Note: 192.531 to 192.549 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.533 Legislative findings; purposes. (1) The Legislative Assembly finds that:

(a) The DNA molecule contains information about the probable medical future of an individual and the individual's blood relatives. This information is written in a code that is rapidly being broken.

(b) Genetic information is uniquely private and personal information that generally should not be collected, retained or disclosed without the individual's authorization.

(c) The improper collection, retention or disclosure of genetic information can lead to significant harm to an individual and the individual's blood relatives, including stigmatization and discrimination in areas such as employment, education, health care and insurance.

(d) An analysis of an individual's DNA provides information not only about the individual, but also about blood relatives of the individual, with the potential for impacting family privacy, including reproductive decisions.

(e) Current legal protections for medical information, tissue samples and DNA samples are inadequate to protect genetic privacy.

(f) Laws for the collection, storage and use of identifiable DNA samples and private genetic information obtained from those samples are needed both to protect individual and family privacy and to permit and encourage legitimate scientific and medical research.

(2) The purposes of the genetic privacy statutes are as follows:

(a) To define the rights of individuals whose genetic information is collected, retained or disclosed and the rights of the individuals' blood relatives.

(b) To define the circumstances under which an individual may be subjected to genetic testing.

(c) To define the circumstances under which an individual's genetic information may be collected, retained or disclosed.

(d) To protect against discrimination by an insurer or employer based upon an individual's genetic characteristics.

(e) To define the circumstances under which a DNA sample or genetic information may be used for research. [Formerly 659.705; 2003 c.333 §2]

Note: See note under 192.531.

192.535 Informed consent for obtaining genetic information. (1) A person may not obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent of the individual or the individual's representative, except:

(a) As authorized by ORS 181A.155 or comparable provisions of federal criminal law relating to the identification of persons, or for the purpose of establishing the identity of a person in the course of an investigation conducted by a law enforcement agency, a district attorney, a medical examiner or the Criminal Justice Division of the Department of Justice;

(b) For anonymous research or coded research conducted under conditions described in ORS 192.537 (2), after notification pursuant to ORS 192.538 or pursuant to ORS 192.547 (7)(b);

(c) As permitted by rules of the Oregon Health Authority for identification of deceased individuals;

(d) As permitted by rules of the Oregon Health Authority for newborn screening procedures;

(e) As authorized by statute for the purpose of establishing parentage; or

(f) For the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent.

(2) Except as provided in subsection (3) of this section, a physician licensed under ORS chapter 677 shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 677.097. Except as provided in subsection (3) of this section, any other licensed health care provider or facility must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in a manner substantially similar to that provided by ORS 677.097 for physicians.

(3) A person conducting research shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 192.547.

(4) Except as provided in ORS 746.135 (1), any person not described in subsection (2) or (3) of this section must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the Oregon Health Authority.

(5) The Oregon Health Authority may not adopt rules under subsection (1)(d) of this section that would require the providing of a DNA sample for the purpose of obtaining complete genetic information used to screen all newborns. [Formerly 659.710; 2003 c.333 §3; 2005 c.678 §2; 2009 c.595 §168; 2017 c.651 §39]

Note: See note under 192.531.

192.537 Individual's rights in genetic information; retention of information; destruction of information. (1) Subject to the provisions of ORS 192.531 to 192.549, 659A.303 and 746.135, an individual's genetic information and DNA sample are private and must be protected, and an individual has a right to the protection of that privacy. Any person authorized by law or by an individual or an individual's representative to obtain, retain or use an individual's genetic information or any DNA sample must maintain the confidentiality of the information or sample and protect the information or sample from unauthorized disclosure or misuse.

(2)(a) A person may use an individual's DNA sample or genetic information that is derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research only if the individual:

(A) Has granted informed consent for the specific anonymous research or coded research project;

(B) Has granted consent for genetic research generally;

(C) Was notified in accordance with ORS 192.538 that the individual's biological specimen or clinical individually identifiable health information may be used for anonymous research or coded research and the individual did not, at the time of notification, request that the biological specimen or clinical individually identifiable health information not be used for anonymous research or coded research; or

(D) Was not notified, due to emergency circumstances, in accordance with ORS 192.538 that the individual's biological specimen or clinical individually identifiable health information may be used for anonymous research or coded research and the individual died before receiving the notice.

(b) Paragraph (a) of this subsection does not apply to biological specimens or clinical individually identifiable health information obtained before July 29, 2005, if an institutional review board operating under ORS 192.547 (1)(b) meets the requirements described in ORS 192.547 (7)(b).

(3) A person may not retain another individual's genetic information or DNA sample without first obtaining authorization from the individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181A.155 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a county child abuse multidisciplinary team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Retention is permitted by rules of the Oregon Health Authority for identification of, or testing to benefit blood relatives of, deceased individuals;

(d) Retention is permitted by rules of the authority for newborn screening procedures; or

(e) Retention is for anonymous research or coded research conducted after notification or with consent pursuant to subsection (2) of this section or ORS 192.538.

(4) The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181A.155 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a county child abuse multidisciplinary team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions; or

(c) Retention is for anonymous research or coded research conducted after notification or with consent pursuant to subsection (2) of this section or ORS 192.538.

(5) A DNA sample from an individual that is the subject of a research project, other than an anonymous research project, shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.

(6) A DNA sample from an individual for insurance or employment purposes shall be destroyed promptly after the purpose for which the sample was obtained has been accomplished unless retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil, criminal and juvenile proceedings.

(7) An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual.

(8) Subject to the provisions of ORS 192.531 to 192.549, and to policies adopted by the person in possession of a DNA sample, an individual or the individual's representative may request that the individual's DNA sample be made available for additional genetic testing for medical diagnostic purposes. If the individual is deceased and has not designated a representative to act on behalf of the individual after death, a request under this subsection may be made by the closest surviving blood relative of the decedent or, if there is more than one surviving blood relative of the same degree of relationship to the decedent, by the majority of the surviving closest blood relatives of the decedent.

(9) The Oregon Health Authority shall coordinate the implementation of this section.

(10) Subsections (3) to (8) of this section apply only to a DNA sample or genetic information that is coded, identified or identifiable.

(11) This section does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from an individual's DNA sample. [Formerly 659.715; 2003 c.333 §4; 2005 c.562 §21; 2005 c.678 §3; 2009 c.595 §169; 2019 c.141 §10; 2021 c.97 §17]

Note: Section 10, chapter 333, Oregon Laws 2003, provides:

Sec. 10. Notwithstanding ORS 192.537 (2)(a)(C), a person may use an individual's DNA sample or genetic information for anonymous research if the DNA sample or genetic information was obtained prior to the effective date of this 2003 Act [June 12, 2003] and the individual was not notified the sample or genetic information may be used for anonymous research. [2003 c.333 §10]

Note: See note under 192.531.

192.538 Notice by health care provider regarding anonymous or coded research. (1) A health care provider that is a covered entity as defined in ORS 192.556 (2)(c) and that obtains an individual's biological specimen or clinical individually identifiable health information shall notify the individual that the biological specimen or clinical individually identifiable health information may be disclosed or retained by the provider for anonymous research or coded research.

(2) A health care provider that is not a covered entity as defined in ORS 192.556 (2)(c) and that obtains an individual's biological specimen or clinical individually identifiable health information may notify the individual that the biological specimen or clinical individually identifiable health information may be disclosed or retained by the provider for anonymous research or coded research.

(3) A health care provider described in subsection (1) of this section shall provide a notice to the individual describing how the biological specimen or clinical individually identifiable health information may be used and allowing the individual to request that the specimen or information not be disclosed or retained for anonymous research or coded research. The notice must contain a place where the individual may mark the individual's request that the specimen or information not be disclosed or retained for anonymous research or coded research before returning the notice to the health care provider.

(4) The notice described in subsection (3) of this section:

(a) Must be given no later than when the provider obtains an individual's biological specimen or clinical individually identifiable health information; and

(b) May be given at the same time and in the same manner as the notice of privacy practices required under the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164. [2005 c.678 §5]

Note: See note under 192.531.

192.539 Disclosure of genetic information; exceptions. (1) Regardless of the manner of receipt or the source of genetic information, including information received from an individual or a blood relative of the individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or the identity of a blood relative of the individual, or to disclose genetic information about the individual or a blood relative of the individual in a manner that permits identification of the individual, unless:

(a) Disclosure is authorized by ORS 181A.155 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a county child abuse multidisciplinary team;

(b) Disclosure is required by specific court order entered pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Disclosure is authorized by statute for the purpose of establishing parentage;

(d) Disclosure is specifically authorized by the tested individual or the tested individual's representative by signing a consent form prescribed by rules of the Oregon Health Authority;

(e) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent; or

(f) Disclosure is for the purpose of identifying bodies.

(2) The prohibitions of this section apply to any redisclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed, or has disclosed genetic information or the identity of a blood relative of the individual.

(3) A release or publication is not a disclosure if:

(a) It involves a good faith belief by the person who caused the release or publication that the person was not in violation of this section;

(b) It is not due to willful neglect;

(c) It is corrected in the manner described in ORS 192.541 (4);

(d) The correction with respect to genetic information is completed before the information is read or heard by a third party; and

(e) The correction with respect to DNA samples is completed before the sample is retained or genetically tested by a third party. [Formerly 659.720; 2005 c.562 §22; 2009 c.595 §170; 2017 c.651 §40; 2019 c.141 §11]

Note: See note under 192.531.

192.540 Use of deceased individual's DNA sample or genetic information for research. Notwithstanding ORS 192.535 and 192.537 (2), a person may use an individual's DNA sample or genetic information that is derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research if the individual was deceased when the individual's biological specimen or clinical individually identifiable health information was obtained. [2005 c.678 §8]

Note: See note under 192.531.

192.541 Private right of action; remedies; affirmative defense; attorney fees. (1) An individual or an individual's blood relative, representative or estate may bring a civil action against any person who violates ORS 192.535, 192.537, 192.539 or 192.547.

(2) For a violation of ORS 192.537 or 192.547, the court shall award the greater of actual damages or:

(a) $100, for an inadvertent violation that does not arise out of the negligence of the defendant;

(b) $500, for a negligent violation;

(c) $10,000, for a knowing or reckless violation;

(d) $15,000, for a knowing violation based on a fraudulent misrepresentation; or

(e) $25,000, for a knowing violation committed with intent to sell, transfer or use for commercial advantage, personal gain or malicious harm.

(3) For a violation of ORS 192.535 or 192.539, the court shall award the greater of actual damages or:

(a) $1,000, for an inadvertent violation that does not arise out of the negligence of the defendant;

(b) $5,000, for a negligent violation;

(c) $100,000, for a knowing or reckless violation;

(d) $150,000, for a knowing violation based on a fraudulent misrepresentation; or

(e) $250,000, for a knowing violation committed with intent to sell, transfer or use for commercial advantage, personal gain or malicious harm.

(4) It is an affirmative defense to an action described in subsection (2)(a) or (b) or (3)(a) or (b) of this section that the defendant corrected the violation through destruction of illegally retained or obtained samples or information, or took other action to correct the violation, if the correction was completed within 120 days after the defendant knew or should have known that the violation occurred.

(5) The court may provide such equitable relief as it deems necessary or proper.

(6)(a) The court may award attorney fees to a defendant only if the court finds that the plaintiff had no objectively reasonable basis for asserting a claim or for appealing an adverse decision of the trial court.

(b) The court shall award attorney fees to a plaintiff if the court finds that the defendant committed a violation described in subsection (2)(c), (d) or (e) or (3)(c), (d) or (e) of this section.

(7) An action authorized by subsection (1) of this section must be commenced within three years after the date the plaintiff knew or should have known of the violation, but in no instance more than 10 years after the date of the violation.

(8) A plaintiff may recover damages provided by subsections (2) and (3) of this section for each violation by a defendant.

(9) ORS 31.725, 31.730, 31.735 and 31.740 do not apply to amounts awarded in actions under this section. [2001 c.588 §2]

Note: See note under 192.531.

192.543 Criminal penalty. (1) A person commits the crime of unlawfully obtaining, retaining or disclosing genetic information if the person knowingly, recklessly or with criminal negligence, as those terms are defined in ORS 161.085, obtains, retains or discloses genetic information in violation of ORS 192.531 to 192.549.

(2) Unlawfully obtaining, retaining or disclosing genetic information is a Class A misdemeanor. [2001 c.588 §3]

Note: See note under 192.531.

192.545 Enforcement; Attorney General or district attorney; intervention. (1) The Attorney General or a district attorney may bring an action against a person who violates ORS 192.535, 192.537, 192.539 or 192.547. In addition to remedies otherwise provided in ORS 192.541, the court shall award to the Attorney General or district attorney the costs of the investigation.

(2) The Attorney General may intervene in a civil action brought under ORS 192.541 if the Attorney General certifies that, in the opinion of the Attorney General, the action is of general public importance. In the action, the Attorney General shall be entitled to the same relief as if the Attorney General instituted the action under this section. [2001 c.588 §4]

Note: See note under 192.531.

192.547 Oregon Health Authority rules; procedures. (1)(a) The Oregon Health Authority shall adopt rules for conducting research using DNA samples, genetic testing and genetic information. Rules establishing minimum research standards shall conform to the Federal Policy for the Protection of Human Subjects, 45 C.F.R. 46, that is current at the time the rules are adopted. The rules may be changed from time to time as may be necessary.

(b) The rules adopted by the Oregon Health Authority shall address the operation and appointment of institutional review boards. The rules shall conform to the compositional and operational standards for such boards contained in the Federal Policy for the Protection of Human Subjects that is current at the time the rules are adopted. The rules must require that research conducted under paragraph (a) of this subsection be conducted with the approval of the institutional review board.

(c) Persons proposing to conduct anonymous research, coded research or genetic research that is otherwise thought to be exempt from review must obtain from an institutional review board prior to conducting such research a determination that the proposed research is exempt from review.

(2) A person proposing to conduct research under subsection (1) of this section, including anonymous research or coded research, must disclose to the institutional review board the proposed use of DNA samples, genetic testing or genetic information.

(3) The Oregon Health Authority shall adopt rules requiring that all institutional review boards operating under subsection (1)(b) of this section register with the department. The Advisory Committee on Genetic Privacy and Research shall use the registry to educate institutional review boards about the purposes and requirements of the genetic privacy statutes and administrative rules relating to genetic research.

(4) The Oregon Health Authority shall consult with the Advisory Committee on Genetic Privacy and Research before adopting the rules required under subsections (1) and (3) of this section, including rules identifying

those parts of the Federal Policy for the Protection of Human Subjects that are applicable to this section.

(5) Genetic research in which the DNA sample or genetic information is coded shall satisfy the following requirements:

(a)(A) The subject has granted informed consent for the specific research project;

(B) The subject has consented to genetic research generally; or

(C) The DNA sample or genetic information is derived from a biological specimen or from clinical individually identifiable health information that was obtained or retained in compliance with ORS 192.537 (2).

(b) The research has been approved by an institutional review board after disclosure by the investigator to the board of risks associated with the coding.

(c) The code is:

(A) Not derived from individual identifiers;

(B) Kept securely and separately from the DNA samples and genetic information; and

(C) Not accessible to the investigator unless specifically approved by the institutional review board.

(d) Data is stored securely in password protected electronic files or by other means with access limited to necessary personnel.

(e) The data is limited to elements required for analysis and meets the criteria in 45 C.F.R 164.514(e) for a limited data set.

(f) The investigator is a party to the data use agreement as provided by 45 C.F.R. 164.514(e) for limited data set recipients.

(6) Research conducted in accordance with this section is rebuttably presumed to comply with ORS 192.535 and 192.539.

(7)(a) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained, with blanket informed consent, before June 25, 2001, for genetic research.

(b) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained without specific informed consent and derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research if an institutional review board operating under subsection (1)(b) of this section:

(A) Waives or alters the consent requirements pursuant to the Federal Policy for the Protection of Human Subjects; and

(B) Waives authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164.

(c) Except as provided in subsection (5)(a) of this section or paragraph (b) of this subsection, a person must have specific informed consent from an individual to use a DNA sample or genetic information of the individual obtained on or after June 25, 2001, for genetic research.

(8) Except as otherwise allowed by rule of the Oregon Health Authority, if DNA samples or genetic information obtained for either clinical or research purposes is used in research, a person may not recontact the individual or the physician, physician assistant, naturopathic physician or nurse practitioner of the individual by using research information that is identifiable or coded. The Oregon Health Authority shall adopt by rule criteria for recontacting an individual or the physician, physician assistant, naturopathic physician or nurse practitioner of an individual. In adopting the criteria, the department shall consider the recommendations of national organizations such as those created by executive order by the President of the United States and the recommendations of the Advisory Committee on Genetic Privacy and Research.

(9) The requirements for consent to, or notification of, obtaining a DNA sample or genetic information for genetic research are governed by the provisions of ORS 192.531 to 192.549 and the administrative rules that were in effect on the effective date of the institutional review board's most recent approval of the study. [2001 c.588 §6; 2003 c.333 §5; 2005 c.678 §6; 2009 c.595 §171; 2014 c.45 §33; 2017 c.356 §25]

Note: See note under 192.531.

192.549 Advisory Committee on Genetic Privacy and Research. (1) The Advisory Committee on Genetic Privacy and Research is established consisting of 15 members. The President of the Senate and the Speaker of the House of Representatives shall each appoint one member and one alternate. The Director of the Oregon Health Authority shall appoint one representative and one alternate from each of the following categories:

(a) Academic institutions involved in genetic research;

(b) Physicians licensed under ORS chapter 677;

(c) Voluntary organizations involved in the development of public policy on issues related to genetic privacy;

(d) Hospitals;

(e) The Department of Consumer and Business Services;

(f) The Oregon Health Authority;

(g) Health care service contractors involved in genetic and health services research;

(h) The biosciences industry;

(i) The pharmaceutical industry;

(j) Health care consumers;

(k) Organizations advocating for privacy of medical information;

(L) Public members of institutional review boards; and

(m) Organizations or individuals promoting public education about genetic research and genetic privacy and public involvement in policymaking related to genetic research and genetic privacy.

(2) Organizations and individuals representing the categories listed in subsection (1) of this section may recommend nominees for membership on the advisory committee to the President, the Speaker and the director.

(3) Members and alternate members of the advisory committee serve two-year terms and may be reappointed.

(4) Members and alternate members of the advisory committee serve at the pleasure of the appointing entity.

(5) Notwithstanding ORS 171.072, members and alternate members of the advisory committee who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the advisory committee. Other members and alternate members of the advisory committee are not entitled to compensation or reimbursement for expenses and serve as volunteers on the advisory committee.

(6) The Oregon Health Authority shall provide staff for the advisory committee.

(7) The advisory committee shall report biennially to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include the activities and the results of any studies conducted by the advisory committee. The advisory committee may make any recommendations for legislative changes deemed necessary by the advisory committee.

(8) The advisory committee shall study the use and disclosure of genetic information and shall develop and refine a legal framework that defines the rights of individuals whose DNA samples and genetic information are collected, stored, analyzed and disclosed.

(9) The advisory committee shall create opportunities for public education on the scientific, legal and ethical development within the fields of genetic privacy and research. The advisory committee shall also elicit public input on these matters. The advisory committee shall make reasonable efforts to obtain public input that is representative of the diversity of opinion on this subject. The advisory committee's recommendations to the Legislative Assembly shall take into consideration public concerns and values related to these matters. [2001 c.588 §7; 2003 c.333 §6; 2009 c.595 §172; 2011 c.272 §4]

Note: See note under 192.531.

192.550 [1977 c.517 §1; 1985 c.762 §180; 1987 c.373 §24; 1987 c.414 §146; 1997 c.631 §422; 2003 c.803 §9; 2005 c.130 §1; renumbered 192.583 in 2011]

MISCELLANEOUS HEALTH CARE RECORDS

192.551 Health care records at colleges, universities. (1) A public or private college or university health center, mental health center or counseling center that provides health care, mental health care or counseling services to students, or a health professional retained by a college or university to provide health care, mental health care or counseling services to students, may disclose records of health care, mental health care or counseling provided to a student to any other person within the college or university, affiliated with the college or university or acting on behalf of the college or university, only to the extent that a person unaffiliated with the college or university would be lawfully authorized to disclose the records when providing health care, mental health care or counseling services.

(2) As used in this section, "person" means a natural individual. [2016 c.20 §1]

Note: 192.551 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PROTECTED HEALTH INFORMATION

192.553 Policy for protected health information. (1) It is the policy of the State of Oregon that an individual has:

(a) The right to have protected health information of the individual safeguarded from unlawful use or disclosure; and

(b) The right to access and review protected health information of the individual.

(2) In addition to the rights and obligations expressed in ORS 192.553 to 192.581, the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, establish additional rights and obligations regarding the use and disclosure of protected health information and the rights of individuals regarding the protected health information of the individual. [Formerly 192.518]

Note: 192.553 to 192.581 were enacted into law by the Legislative Assembly but were not added to or made

a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.555 [1977 c.517 §§2,8(1); 1985 c.565 §24; 1987 c.373 §25; 1987 c.438 §4; 1993 c.131 §3; 1993 c.274 §1; 1993 c.695 §1; 1997 c.142 §1; 1999 c.80 §68; 1999 c.506 §5; 2009 c.541 §8; renumbered 192.586 in 2011]

192.556 Definitions for ORS 192.553 to 192.581. As used in ORS 192.553 to 192.581:

(1) "Authorization" means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:

(A) The individual's right to revoke the authorization in writing;

(B) The exceptions to the right to revoke the authorization;

(C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and

(D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.

(2) "Covered entity" means:

(a) A state health plan;

(b) A health insurer;

(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.553 to 192.581; or

(d) A health care clearinghouse.

(3) "Health care" means care, services or supplies related to the health of an individual.

(4) "Health care operations" includes but is not limited to:

(a) Quality assessment, accreditation, auditing and improvement activities;

(b) Case management and care coordination;

(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;

(d) Underwriting activities;

(e) Arranging for legal services;

(f) Business planning;

(g) Customer services;

(h) Resolving internal grievances;

(i) Creating deidentified information; and

(j) Fundraising.

(5) "Health care provider" includes but is not limited to:

(a) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;

(b) A physician or physician assistant licensed under ORS chapter 677, an acupuncturist licensed under ORS 677.759 or an employee of the physician, physician assistant or acupuncturist;

(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(g) An emergency medical services provider licensed under ORS chapter 682;

(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical imaging licensee;

(o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory care practitioner;

(p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the polysomnographic technologist;

(q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;

(s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(t) A health care facility as defined in ORS 442.015;

(u) A home health agency as defined in ORS 443.014;

(v) A hospice program as defined in ORS 443.850;

(w) A clinical laboratory as defined in ORS 438.010;

(x) A pharmacy as defined in ORS 689.005; and

(y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) "Health information" means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(7) "Health insurer" means an insurer as defined in ORS 731.106 who offers:

(a) A health benefit plan as defined in ORS 743B.005;

(b) A short term health insurance policy, the duration of which does not exceed three months including renewals;

(c) A student health insurance policy;

(d) A Medicare supplemental policy; or

(e) A dental only policy.

(8) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(9) "Payment" includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(10) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

(c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.573.

(11)(a) "Protected health information" means individually identifiable health infor-

mation that is maintained or transmitted in any form of electronic or other medium by a covered entity.

(b) "Protected health information" does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(12) "State health plan" means:

(a) Medical assistance as defined in ORS 414.025;

(b) The Cover All People program; or

(c) Any medical assistance or premium assistance program operated by the Oregon Health Authority.

(13) "Treatment" includes but is not limited to:

(a) The provision, coordination or management of health care; and

(b) Consultations and referrals between health care providers. [Formerly 192.519; 2013 c.129 §24; 2013 c.681 §42; 2013 c.698 §30; 2017 c.152 §§1,2; 2017 c.206 §§12,13; 2021 c.554 §3]

Note: See note under 192.553.

192.557 [1987 c.438 §2; 1999 c.80 §69; 2003 c.73 §59; renumbered 192.588 in 2011]

192.558 Use or disclosure by health care provider or state health plan. A health care provider or state health plan:

(1) May use or disclose protected health information of an individual in a manner that is consistent with an authorization provided by the individual or a personal representative of the individual.

(2) May use or disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) For the provider's or plan's own treatment, payment or health care operations; or

(b) As otherwise permitted or required by state or federal law or by order of the court.

(3) May disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) To another covered entity for health care operations activities of the entity that receives the information if:

(A) Each entity has or had a relationship with the individual who is the subject of the protected health information; and

(B) The protected health information pertains to the relationship and the disclosure is for the purpose of:

(i) Health care operations as listed in ORS 192.556 (4)(a) or (b); or

(ii) Health care fraud and abuse detection or compliance;

(b) To another covered entity or any other health care provider for treatment activities of a health care provider;

(c) To another covered entity or any other health care provider for the payment activities of the entity that receives that information; or

(d) In accordance with ORS 192.567 or 192.577. [Formerly 192.520; 2015 c.473 §5; 2017 c.484 §4]

Note: See note under 192.553.

192.559 [1991 c.825 §2; 1993 c.274 §2; 2001 c.962 §82; renumbered 192.591 in 2011]

192.560 [1977 c.517 §3; renumbered 192.593 in 2011]

192.561 Disclosure by health care provider in coordinated care organization. (1) Notwithstanding ORS 179.505, a health care provider that is a participant in a coordinated care organization, as defined in ORS 414.025, shall disclose protected health information:

(a) To other health care providers participating in the coordinated care organization for treatment purposes, and to the coordinated care organization for health care operations and payment purposes, as permitted by ORS 192.558; and

(b) To public health entities as required for health oversight purposes.

(2) The disclosures described in subsection (1) of this section may be provided without the authorization of the patient or the patient's personal representative.

(3) Subsection (1) of this section does not apply to psychotherapy notes, as defined in ORS 179.505. [2012 c.8 §16]

Note: See note under 192.553.

192.563 Health care provider and state health plan charges. A health care provider or state health plan that receives an authorization to disclose protected health information may charge:

(1)(a) No more than $30 for copying 10 or fewer pages of written material, no more than 50 cents per page for pages 11 through 50 and no more than 25 cents for each additional page; and

(b) A bonus charge of $5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(2) Postage costs to mail copies of protected health information or an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual; and

(3) Actual costs of preparing an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual. [Formerly 192.521]

Note: See note under 192.553.

192.565 [1977 c.517 §4; 1999 c.80 §30; renumbered 192.596 in 2011]

192.566 Authorization form. A health care provider may use an authorization that contains the following provisions in accordance with ORS 192.558:

AUTHORIZATION
TO USE AND DISCLOSE
PROTECTED HEALTH INFORMATION

I authorize: _____ (Name of person/entity disclosing information) to use and disclose a copy of the specific health information described below regarding: _____ (Name of individual) consisting of: (Describe information to be used/disclosed)

_____

_____

_____

to: _____ (Name and address of recipient or recipients) for the purpose of: (Describe each purpose of disclosure or indicate that the disclosure is at the request of the individual)

_____

_____

_____

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the use and disclosure of the information may apply. I understand and agree that this information will be disclosed if I place my initials in the applicable space next to the type of information.

_____ HIV/AIDS information
_____ Mental health information
_____ Genetic testing information
_____ Drug/alcohol diagnosis, treatment, or referral information.

I understand that the information used or disclosed pursuant to this authorization may be subject to redisclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict redisclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, treatment or referral information.

PROVIDER INFORMATION

You do not need to sign this authorization. Refusal to sign the authorization will not adversely affect your ability to receive health care services or reimbursement for services. The only circumstance when refusal to sign means you will not receive health care services is if the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure.

You may revoke this authorization in writing at any time. If you revoke your authorization, the information described above may no longer be used or disclosed for the purposes described in this written authorization. The only exception is when a covered entity has taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage.

To revoke this authorization, please send a written statement to _____ (contact person) at _____ (address of person/entity disclosing information) and state that you are revoking this authorization.

SIGNATURE

I have read this authorization and I understand it. Unless revoked, this authorization expires _____ (insert either applicable date or event).

By: _____

(individual or personal representative)

Date: _____

Description of personal representative's authority:

_____

_____

[Formerly 192.522]

Note: See note under 192.553.

192.567 Disclosure without authorization form. (1)(a) A health care provider may use or disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual if the conditions in paragraph (b) of this subsection are met and:

(A) The disclosure is to a family member, other relative, a close personal friend or

other person identified by the individual, and the protected health information is directly relevant to the person's involvement with the individual's health care; or

(B) The disclosure is for the purpose of notifying a family member, a personal representative of the individual or another person responsible for the care of the individual of the individual's location, general condition or death.

(b) A health care provider may make the disclosures described in paragraph (a) of this subsection if:

(A)(i) The individual is not present or obtaining the individual's authorization is not practicable due to the individual's incapacity or an emergency circumstance; and

(ii) In the exercise of professional judgment and based on reasonable inferences, the health care provider determines that the disclosure is in the best interests of the individual; or

(B) The individual is present and the health care provider gives the individual an opportunity to object to the disclosure and the individual does not express an objection or the health care provider reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

(2) A health care provider may disclose protected health information to a person if the health care provider, consistent with standards of ethical conduct, believes in good faith that the disclosure is necessary to prevent or lessen a serious threat to the health or safety of any person or the public, and if the information is disclosed only to a person who is reasonably able to prevent or lessen the threat, including the target of the threat.

(3) With respect to an individual who is being treated for a mental illness, the protected health information disclosed under this section may include, to the extent consistent with the health care provider's professional judgment and standards of ethical conduct:

(a) The individual's diagnoses and the treatment recommendations;

(b) Issues concerning the safety of the individual, including risk factors for suicide, steps that can be taken to make the individual's home safer, and a safety plan to monitor and support the individual;

(c) Information about resources that are available in the community to help the individual, such as case management and support groups; and

(d) The process to ensure that the individual safely transitions to a higher or lower level of care, including an interim safety plan.

(4) Any disclosure of protected health information under this section must be limited to the minimum necessary to accomplish the purpose of the disclosure.

(5) A health care provider is not subject to any civil liability for making a disclosure in accordance with this section.

(6) This section shall be known and may be cited as the Susanna Blake Gabay Act. [2015 c.473 §§2,3]

Note: See note under 192.553.

192.568 Confidentiality; use and disclosure. A health care provider or a state health plan does not breach a confidential relationship with an individual if the health care provider or state health plan uses or discloses protected health information in accordance with ORS 192.558. [Formerly 192.523]

Note: See note under 192.553.

192.570 [1977 c.517 §5; renumbered 192.598 in 2011]

192.571 No right of action. Nothing in ORS 192.556 or 192.558 may be construed to create a new private right of action against a health care provider or a state health plan. [Formerly 192.524]

Note: See note under 192.553.

192.573 Personal representative of deceased individual. If no person has been appointed as a personal representative under ORS chapter 113 or a person appointed as a personal representative under ORS chapter 113 has been discharged, the personal representative of a deceased individual shall be the first of the following persons, in the following order, who can be located upon reasonable effort by the covered entity and who is willing to serve as the personal representative:

(1) A person appointed as guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with authority to make medical and health care decisions at the time of the individual's death.

(2) The individual's spouse.

(3) An adult designated in writing by the persons listed in this section, if no person listed in this section objects to the designation.

(4) A majority of the adult children of the individual who can be located.

(5) Either parent of the individual or an individual acting in loco parentis to the individual.

(6) A majority of the adult siblings of the individual who can be located.

(7) Any adult relative or adult friend. [Formerly 192.526]

Note: See note under 192.553.

192.575 [1977 c.517 §6; 1993 c.131 §4; 1995 c.666 §28; renumbered 192.600 in 2011]

192.576 Disclosure to individual appealing denial of Social Security benefits. (1) In the case of an individual appealing the denial of Social Security disability benefits, a covered entity shall upon request provide to the individual or the individual's personal representative, free of charge, one copy of the individual's health information created after the date that the individual alleged as the onset of disability in the individual's initial application for Social Security disability benefits and before the date of the administrative hearing. At the election of the individual or the individual's personal representative, the health information shall be provided in paper or electronic format.

(2) A covered entity may deny a request for a copy of health information if:

(a) The covered entity has already provided one copy of the health information to the individual or the individual's personal representative; or

(b) The request is made by a person other than the individual or the individual's personal representative and the requester has not presented a valid authorization for the release of information.

(3) A covered entity may charge a fee for providing copies of health information, as provided in ORS 192.563, if:

(a) The request for copies is made by a person other than the individual or the individual's personal representative; or

(b) The covered entity has already provided to the individual or the individual's personal representative one copy of the information. [2015 c.360 §2; 2017 c.551 §1]

Note: See note under 192.553.

192.577 Disclosure of information concerning adult in custody of Department of Corrections. (1) A health care provider shall disclose protected health information concerning an adult in custody of a Department of Corrections facility to the physician of an employee of the department or of Oregon Corrections Enterprises, without an authorization from the adult in custody or a personal representative of the adult in custody, if:

(a) The employee, in the performance of the employee's official duties, was directly exposed to the bodily fluids of the adult in custody; and

(b) The adult in custody has tested positive for a blood-borne infection or other communicable disease that may be transmitted through an individual's bodily fluids.

(2) A disclosure under subsection (1) of this section must be limited to the minimum necessary to inform the physician of possible exposure to a blood-borne infection or other communicable disease. [2017 c.484 §2; 2019 c.213 §56; 2019 c.280 §4]

Note: See note under 192.553.

192.579 Allowed disclosure for coordinating care. (1) As used in this section, "entity" means a health care provider, a coordinated care organization, as defined in ORS 414.025 or a prepaid managed care health services organization, as defined in ORS 414.025, that provides health care to an individual, if the care is paid for by a state health plan.

(2) Notwithstanding ORS 179.505, an entity may disclose the identity of an individual who receives health care from the entity without obtaining an authorization from the individual, or a personal representative of the individual, to another entity for the purpose of coordinating the health care and treatment provided to the individual by either entity. [2011 c.418 §2; 2015 c.792 §4]

Note: See note under 192.553.

192.580 [1977 c.517 §7; 1985 c.797 §4; 1987 c.482 §1; 2001 c.247 §1; 2003 c.14 §94; renumbered 192.602 in 2011]

192.581 Allowed retention or disclosure of genetic information. (1) Notwithstanding ORS 192.537 (3), a health care provider may retain genetic information of an individual without obtaining an authorization from the individual or a personal representative of the individual if the retention is for treatment, payment or health care operations by the provider.

(2) Notwithstanding ORS 192.539 (1), a health care provider may disclose genetic information of an individual without obtaining an authorization from the individual or a personal representative of the individual if the provider discloses the genetic information in accordance with ORS 192.558 (3).

(3) As used in this section, "retain genetic information" has the meaning given that term in ORS 192.531. [Formerly 192.529]

Note: See note under 192.553.

BEDBUGS

192.582 Confidentiality of bedbug infestation reports. (1) As used in this section:

(a) "Bedbug" means a member of the Cimicidae family of parasitic insects.

(b) "Public health authority" means:

(A) A local public health authority, as defined in ORS 431.003; or

(B) The Oregon Health Authority.

(2) The following information reported by pest control operators to a public health authority must be maintained confidentially

and is not subject to disclosure under ORS 192.311 to 192.478:

(a) The location of a site where a pesticide intended to prevent, destroy, repel or mitigate an infestation of bedbugs has been applied or is to be applied;

(b) The identity of any person who owns, rents or leases property at the site described in paragraph (a) of this subsection; and

(c) Any information describing or pertaining to the infestation or suspected infestation at the site described in paragraph (a) of this subsection.

(3) Nothing in this section prevents a public health authority from publishing statistical compilations or reports relating to reportable disease investigations if the compilations or reports do not identify individual cases or sources of information. [Formerly 570.880]

Note: 192.582 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PRIVATE FINANCIAL RECORDS

192.583 Definitions for ORS 192.583 to 192.607. As used in ORS 192.583 to 192.607:

(1) "Customer" means any person, partnership, limited partnership, corporation, trust or other legal entity, who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means:

(a) A "financial institution" as defined in ORS 706.008; or

(b) A "trust company" as defined in ORS 706.008.

(3) "Financial records" means any original written or electronic document, any copy of the document, or any information contained in the document, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of such an institution.

(4) "Local agency" means every county, city, school district, municipal organization, district, political subdivision; or any board, commission or agency thereof; or any other local public agency; and every officer, agent or employee thereof.

(5) "State agency" means every state office, department, division, bureau, board or commission or other state agency, including the Legislative Assembly and every officer, agent or employee thereof.

(6) "Summons or subpoena" means an administrative summons or administrative subpoena issued by any state or local agency, or a judicial subpoena or subpoena duces tecum. [Formerly 192.550]

192.585 [1977 c.517 §8(2),(3); 2005 c.130 §2; renumbered 192.603 in 2011]

192.586 Disclosure of financial records prohibited; exceptions. (1) Except as provided in ORS 192.588, 192.589, 192.591, 192.593, 192.596, 192.597, 192.598 and 192.603 or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992, and ORS 305.084:

(a) A financial institution may not provide financial records of a customer to a state or local agency.

(b) A state or local agency may not request or receive from a financial institution financial records of customers.

(2) Subsection (1) of this section does not preclude a financial institution, in the discretion of the financial institution, from initiating contact with, and thereafter communicating with and disclosing customer financial records to:

(a) Appropriate state or local agencies concerning a suspected violation of the law.

(b) The office of the State Treasurer if the records relate to state investments in commercial mortgages involving the customer. The records and the information contained therein are public records but are exempt from disclosure under ORS 192.311 to 192.478 unless the public interest in disclosure clearly outweighs the public interest in confidentiality. However, the following records in the office must remain open to public inspection:

(A) The contract or promissory note establishing a directly held residential or commercial mortgage and information identifying collateral;

(B) Any copy the office retains of the underlying mortgage note in which the office purchases a participation interest; and

(C) Information showing that a directly held loan is in default.

(c) An appropriate state or local agency in connection with any business relationship or transaction between the financial institution and the customer, if the disclosure is made in the ordinary course of business of the financial institution and will further the legitimate business interests of the customer or the financial institution.

(3) ORS 192.583 to 192.607 do not prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) The examination by, or disclosure to, the Department of Consumer and Business Services of financial records that relate solely to the exercise of the department's supervisory function. The scope of the department's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions.

(c) The furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360.

(d) Compliance with the provisions of ORS 708A.655 or 723.844.

(4) Notwithstanding subsection (1) of this section, a financial institution may:

(a) Enter into an agreement with the Oregon State Bar that requires the financial institution to make reports to the Oregon State Bar whenever a properly payable instrument is presented for payment out of an attorney trust account that contains insufficient funds, whether or not the instrument is honored by the financial institution; and

(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out of an attorney trust account under a trust account overdraft notification program established under ORS 9.685. [Formerly 192.555; 2012 c.70 §§10a,26; 2013 c.352 §2; 2015 c.129 §3; 2017 c.644 §9]

192.587 [1993 c.131 §6; renumbered 192.605 in 2011]

192.588 Disclosure to Department of Human Services or Oregon Health Authority; procedure; limitations. (1) Upon the request of the Department of Human Services or the Oregon Health Authority and the receipt of the certification required under subsection (2) of this section, a financial institution shall advise whether a person has one or more accounts with the financial institution, and if so, the balance on deposit in each such account on the date this information is provided.

(2) In requesting information under subsection (1) of this section, the department or authority shall specify the name and Social Security number of the person upon whom the account information is sought, and shall certify to the financial institution in writing, signed by an agent of the department or authority:

(a) That the person upon whom account information is sought is an applicant for or recipient of public assistance, as defined in ORS 411.010, or medical assistance, as defined in ORS 414.025; and

(b) That the department or authority has authorization from the person for release of the account information.

(3) Any financial institution supplying account information under ORS 192.583 to 192.588 and 411.632 shall be reimbursed for actual costs incurred.

(4) No financial institution that supplies account information to the department or authority pursuant to this section shall be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of account information under this section.

(5) Each financial institution that is requested to supply account information under this section may specify to the department or authority that requests for account information and responses from the financial institution shall be submitted in written, tape or electronic format. A reasonable time shall be provided the financial institution for response.

(6) The department or authority shall seek account information under this section only with respect to persons who are applicants for or recipients of public assistance, as defined in ORS 411.010, or medical assistance, as defined in ORS 414.025. [Formerly 192.557; 2013 c.688 §26]

192.589 Financial institution records of deceased individual; disclosure to Department of Human Services or Oregon Health Authority; procedure. (1) At any time after an individual dies, the Department of Human Services or the Oregon Health Authority may deliver to a financial institution the written notice and request described in subsection (2) of this section.

(2) A written notice and request under this section must:

(a) Include the name, last known address and Social Security number of the deceased individual;

(b) State the date of the deceased individual's death;

(c) State that the deceased individual received public assistance or medical assistance that was subject to a claim for reimbursement under ORS 411.640, 411.708, 411.795 or 416.350; and

(d) Request that the financial institution provide all or any part of the following information to the department or the authority:

(A) Whether the financial institution held on the date of the deceased individual's death any deposit account in the deceased individual's name or in more than one name,

one of which is the deceased individual's name;

(B) The balance on deposit in each deposit account described in subparagraph (A) of this paragraph on the date of the deceased individual's death;

(C) The name of each person to whom the financial institution disbursed funds from a deposit account described in subparagraph (A) of this paragraph on or after the date of the deceased individual's death, if the financial institution closed the deposit account on or after the date of the deceased individual's death;

(D) A record of the activity in each of the deposit accounts described in subparagraph (A) of this paragraph in the period that begins 30 days before the date of the deceased individual's death and ends on the date of the deceased individual's death;

(E) A copy of any affidavit or declaration the financial institution received under ORS 708A.430 or 723.466; and

(F) The name and address of any person named as an owner of a deposit account described in subparagraph (A) of this paragraph, if the financial institution has the information in the financial institution's records.

(3) The department or the authority may submit an affidavit or declaration under ORS 708A.430 or 723.466 at the same time the department or authority submits a notice and request under subsection (2) of this section, except that a declaration under ORS 708A.430 must be submitted no earlier than 46 days after the death of the depositor and no later than 76 days after the death of the depositor.

(4) The department and the authority shall reimburse a financial institution as provided in ORS 192.602 for all reasonable costs and expenses the financial institution incurs to provide information in response to a notice and request under subsection (2) of this section. [2015 c.129 §2; 2017 c.51 §3; 2023 c.84 §3]

192.590 [1977 c.517 §9; 1981 c.897 §41; 1995 c.696 §18; renumbered 192.606 in 2011]

192.591 Disclosure to state court; procedure; limitations. (1) Upon the request of a state court and the receipt of the certification required under subsection (2) of this section, a financial institution shall advise whether a person has one or more accounts with the financial institution and, if so, the balance on deposit in each such account on the date this information is provided and a record of the account's activity for at least the prior 30 days, which may include the current and previous account statement period.

(2) In requesting information under subsection (1) of this section, the state court shall specify the name and Social Security number of the person about whom the account information is sought, and shall certify to the financial institution in writing, signed by an agent of the state court, that the person about whom account information is sought has requested appointed counsel or that appointed counsel has been provided for the person. In addition, the state court shall forward to the financial institution a certification signed by the person about whom account information is sought that authorizes the release of the account information.

(3) Any financial institution supplying account information under this section shall be reimbursed for reasonable costs incurred.

(4) No financial institution that supplies account information to a state court pursuant to this section is liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of account information under this section.

(5) Each financial institution that is requested to supply account information under this section may specify to the state court that requests for account information and responses from the financial institution shall be submitted in written, tape or electronic format. The financial institution shall respond to the request within three business days.

(6) The state court may seek account information only with respect to persons who have requested appointed counsel or who have had counsel appointed by the court. [Formerly 192.559]

192.593 Authorization by customer for disclosure. (1) A financial institution may disclose financial records of a customer to a state or local agency, and such an agency may request and receive such records, when the customer has authorized such disclosure as provided in this section.

(2) The authorization of disclosure shall:

(a) Be in writing, signed and dated by the customer;

(b) Identify with particularity the records authorized to be disclosed;

(c) Name the agency to whom disclosure is authorized;

(d) Contain notice to the customer that the customer may revoke such authorization at any time in writing; and

(e) Inform the customer as to the reason for such request and disclosure.

(3) No financial institution shall require a customer to sign an authorization for disclosure as a condition of doing business with such institution. [Formerly 192.560]

192.595 [1977 c.517 §10; renumbered 192.607 in 2011]

192.596 Disclosure under summons or subpoena; procedure. (1) A financial institution may disclose financial records of a customer to a state or local agency, and a state or local agency may request and receive such records, pursuant to a lawful summons or subpoena, served upon the financial institution, as provided in this section or ORS chapter 25.

(2) The state or local agency issuing such summons or subpoena shall make personal service of a copy of it upon the customer.

(3) The summons or subpoena shall name the agency issuing it, and shall specify the statutory authority under which the financial records are being obtained.

(4) The summons or subpoena shall state that service of a copy thereof has been made upon the customer, and shall state the date upon which service was accomplished.

(5) Except as provided in subsection (6) of this section, a financial institution shall not disclose the financial records of a customer to a state or local agency, in response to a summons or subpoena served upon it, for a period of 10 days following service of a copy thereof upon the customer, unless the customer has consented to earlier disclosure. If the customer moves to quash such summons or subpoena, and the financial institution receives written notice of such action from the customer, all within 10 days following the date upon which a copy of the summons or subpoena was served upon the customer, the financial institution shall not disclose the financial records of said customer pursuant to said summons or subpoena unless:

(a) The customer thereafter consents in writing to the disclosure; or

(b) A court orders disclosure of the financial records to the state or local agency, pursuant to the summons or subpoena.

(6) Pursuant to the issuance of a summons or subpoena, a state or local agency may petition the court, and the court, upon a showing of reasonable cause to believe that a law subject to the jurisdiction of the petitioning agency has been or is about to be violated, may order that service upon the customer pursuant to subsection (2) of this section, information concerning such service required by subsection (4) of this section, and the 10-day period provided for in subsection (5) of this section be waived or shortened.

(7) Where the court grants such petition, a copy of the court order granting the same shall be attached to the summons or subpoena, and shall therewith be served upon the financial institution.

(8) The provisions of subsections (2) to (7) of this section do not apply to subpoenas issued pursuant to ORS chapter 25. [Formerly 192.565]

192.597 Disclosure pursuant to abuse investigation; procedure; liability; affidavit. (1) Notwithstanding ORS 192.596, a financial institution shall disclose and provide copies of the financial records of a person who is the alleged victim in an investigation under ORS 124.070 or 441.650 in accordance with a subpoena issued by a court or on behalf of a grand jury under ORS 136.563.

(2) A subpoena issued under this section shall specify:

(a) The name and Social Security number of the person about whom financial records are sought; and

(b) That the person about whom financial records are sought is the alleged victim in an abuse investigation under ORS 124.070 or 441.650.

(3) Disclosure and provision of copies under this section shall be made:

(a) Without the consent of the person who is the alleged victim in the abuse investigation, or of the person's caretaker, fiduciary or other legal representative; and

(b) When made under subsection (7)(b) of this section, without the consent of the person who is not the alleged victim in the abuse investigation.

(4) A copy of the subpoena issued under this section may be served upon the person or the person's caretaker, fiduciary or other legal representative, in the discretion of the court or the district attorney that issued the subpoena.

(5) Except when specifically directed by the court or district attorney issuing the subpoena not to, a financial institution that discloses and provides copies of financial records under this section may, but is not required to:

(a) Inform the person about whom financial records have been sought about the disclosure; or

(b) Inform the person's caretaker, fiduciary or other legal representative, about the disclosure.

(6) A financial institution that provides copies of financial records under this section may be reimbursed for costs incurred as provided in ORS 192.602.

(7)(a) Financial records may be subpoenaed under this section only with respect to a person who is the alleged victim of abuse in an investigation under ORS 124.070 or 441.650.

(b) Notwithstanding paragraph (a) of this subsection, financial records may be subpoenaed under this section when the financial records pertain to an account, loan or other financial relationship owned, held or maintained by a person who is the alleged victim in an abuse investigation under ORS 124.070 or 441.650 together with one or more other persons who are not alleged victims in the abuse investigation.

(8) A financial institution that discloses and provides copies of financial records under this section is not liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure and provision of the copies.

(9)(a) Copies provided by a financial institution under this section must be accompanied by an affidavit or declaration of a custodian of records for the financial institution that states the following:

(A) That the affiant or declarant is a duly authorized custodian of the financial records and has authority to certify the financial records;

(B) That the copies are true copies of all of the financial records responsive to the subpoena; and

(C) That the financial records were prepared by the personnel of the financial institution acting under the control of the financial institution in the ordinary course of the financial institution's business.

(b) If the financial institution has none of the financial records described in the subpoena, or only part of the financial records described in the subpoena, the affiant or declarant shall state in the affidavit or declaration that none or only a part of the financial records described in the subpoena are in the financial institution's possession and control and shall disclose and provide only those financial records of which the affiant or declarant has custody.

(c) When more than one person has knowledge of the facts required to be stated in the affidavit or declaration under this subsection, more than one affidavit or declaration may be used.

(d) Copies provided under this subsection are admissible in evidence in a proceeding before a court in which testimony may be compelled to the same extent as though the original financial records were offered and a custodian of the financial records had been present and testified to the matters stated in the affidavit or declaration. The affidavit or declaration is admissible as evidence of the matters stated in the affidavit or declaration. The matters stated in the affidavit or declaration are presumed to be true. The presumption established by this paragraph is a presumption affecting the burden of producing evidence. [2012 c.70 §10; 2013 c.352 §11]

192.598 Disclosure under search warrant. (1) A financial institution may disclose financial records of a customer to a state or local agency, and a state or local agency may request and receive such records, pursuant to a lawful search warrant, as provided in this section.

(2) The content of the search warrant shall conform to the requirements of ORS 133.565.

(3) The state or local agency seeking financial records shall make personal service of the search warrant upon the financial institution in the manner provided by law for service of a subpoena.

(4) Disclosure of financial records may occur as soon as the warrant is served upon the financial institution. [Formerly 192.570]

192.600 Liability of financial institution for disclosure. (1) Nothing in ORS 192.583 to 192.607 shall require a financial institution to inquire or determine that those seeking disclosure have duly complied with the requirements set forth in ORS 192.583 to 192.607, provided only that the customer authorization, summons, subpoena or search warrant served upon or delivered to a financial institution pursuant to ORS 192.593, 192.596, 192.597 or 192.598 shows compliance on its face.

(2) A financial institution which in good faith reliance refuses to disclose financial records of a customer upon the prohibitions of ORS 192.583 to 192.607, shall not be liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by such refusal.

(3) Financial institutions shall not be required to notify their customers concerning the receipt by them of requests from state or local agencies for disclosures of financial records of such customers. However, except as otherwise provided in ORS 192.583 to 192.607, nothing in ORS 192.583 to 192.607 shall preclude financial institutions from giving such notice to customers. A court may order a financial institution to withhold notification to a customer of the receipt of a summons, subpoena or search warrant when the court finds that notice to the customer would impede the investigation being conducted by the state or local agency.

(4) Financial institutions that participate in a trust account overdraft notification program established under ORS 9.685 are not liable to a lawyer or law firm on the attorney trust account, to a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole or in part by that

participation or arising in any way out of that participation.

(5) A financial institution shall not be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the release of information pursuant to ORS 192.586 (2)(a). [Formerly 192.575; 2012 c.70 §§10b,27; 2013 c.352 §3]

192.602 Time for compliance; reimbursement; exceptions. (1)(a) A financial institution shall have a reasonable period of time in which to comply with any proper customer authorization, summons, subpoena or search warrant permitting or seeking disclosure of financial records. Except as provided in paragraphs (b) and (c) of this subsection, a "reasonable period of time" shall in no case be less than 10 days from the date upon which the financial institution receives or is served with a customer authorization, summons, subpoena or search warrant.

(b) When disclosure is sought under ORS 192.596, the reasonable period of time shall be not less than 20 days.

(c) When disclosure is sought under ORS 192.597, the reasonable period of time shall be that period of time required by the circumstances but in no case more than 10 days from the date upon which the financial institution receives or is served with a subpoena under ORS 192.597.

(2) Before making disclosures, a financial institution may require that the requesting state or local agency reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs include, but are not limited to, personnel costs, reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

(a) Personnel costs, $30 per hour per person, computed on the basis of $7.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(b) Reproduction costs, $1 per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual costs.

(c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to convey the required or requested material to the place of examination.

(3) The provisions of subsection (2) of this section do not apply in the case of records subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700. [Formerly 192.580; 2012 c.70 §§10c,28; 2013 c.352 §4]

192.603 Procedure for disclosure to law enforcement agency. (1) As used in this section:

(a) "Account information" means, whether or not the financial institution has an account under a particular customer's name, the number of customer account items dishonored or that created overdrafts, dollar volume of dishonored items and items that when paid created overdrafts, a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates and amounts of deposits and debits to a customer's account, copies of deposit slips and deposited items, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed.

(b) "Secure electronic message" means an electronic message that is encrypted or otherwise transmitted in a manner that is reasonably calculated to prevent accidental, unlawful or unauthorized disclosure or access to parties not authorized to receive or access the electronic message.

(2) When a police or sheriff's department or district attorney's office in this state requests account information from a financial institution to assist in a criminal investigation, the financial institution shall supply a statement setting forth the requested account information with respect to a customer or a customer account specified by the police or sheriff's department or district attorney's office, for a period of up to three months prior to and three months following the date of occurrence of the account transaction giving rise to the criminal investigation. The disclosure statement required under this subsection may include only account information as defined in subsection (1) of this section. If the police or sheriff's department or district attorney's office makes the request by sending a secure electronic message to the financial institution, the financial institution shall respond to the request in a secure electronic message. The police or sheriff's department or district attorney's office requesting the information shall, within 24 hours of making the request, confirm the request in a written or secure electronic message delivered or mailed to the financial institution, setting forth the nature of the

account information sought, the time period for which account information is sought, and that the information has been requested pursuant to a criminal investigation. [Formerly 192.585; 2019 c.399 §6]

192.605 Charges for participation in attorney trust account overdraft notification program. Financial institutions that participate in an attorney trust account overdraft notification program established under ORS 9.685 may charge attorneys or law firms who have trust accounts with the financial institution for the reasonable costs incurred by the financial institution by reason of that participation. [Formerly 192.587]

192.606 Civil liability for violation of ORS 192.583 to 192.607; attorney fees; status of evidence obtained in violation. (1) Any customer who suffers any ascertainable loss as a result of a willful violation of ORS 192.583 to 192.607 by any person, may bring an individual action in an appropriate court to recover actual damages or $1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.583 to 192.607 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(b) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action under this section.

(4) An action to enforce any provision of ORS 192.583 to 192.607 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.583 to 192.607 is inadmissible in any proceeding. [Formerly 192.590]

192.607 Severability. If any provision of ORS 192.583 to 192.607 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 192.583 to 192.607 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.583 to 192.607 are severable. [Formerly 192.595]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.705. As used in ORS 192.610 to 192.705:

(1) "Convening" means:

(a) Gathering in a physical location;

(b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants;

(c) Using serial electronic written communication among participants; or

(d) Using an intermediary to communicate among participants.

(2) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(3) "Deliberation" means discussion or communication that is part of a decision-making process.

(4) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(5) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(6) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(7)(a) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.

(b) "Meeting" does not include any on-site inspection of any project or program or the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1; 2023 c.417 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.705 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.705.

(2) A quorum of a governing body may not meet in private for the purpose of decid-

ing on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.705.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, gender identity, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominant use.

(4)(a) Meetings of the governing body of a public body shall be held:

(A) Within the geographic boundaries over which the public body has jurisdiction;

(B) At the administrative headquarters of the public body;

(C) At the nearest practical location; or

(D) If the public body is a state, county, city or special district entity, within Indian country of a federally recognized Oregon Indian tribe that is within the geographic boundaries of this state. For purposes of this subparagraph, "Indian country" has the meaning given that term in 18 U.S.C. 1151.

(b) Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved.

(c) A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location.

(d) Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Health Authority or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52; 2007 c.100 §21; 2009 c.595 §173; 2017 c.482 §1; 2019 c.286 §1; 2021 c.367 §12]

192.640 Public notice required; special notice for executive sessions or special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Recording or written minutes required; content; fees. (1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection

of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.311 to 192.478.

(4) A public body may charge a person a fee under ORS 192.324 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits; advisory opinions. (1) ORS 192.610 to 192.705 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.705 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.119 and 441.993 including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) To consider matters relating to school safety or a plan that responds to safety threats made toward a school.

(L) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(m) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(n) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(o) To consider matters relating to the safety of the governing body and of public body staff and volunteers and the security of public body facilities and meeting spaces.

(p) To consider matters relating to cyber security infrastructure and responses to cyber security threats.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

(10) Any person may submit to the Oregon Government Ethics Commission:

(a) A written request for the commission to issue and publish a commission advisory opinion under ORS 244.280 on the application of this section to any actual or hypothetical circumstance;

(b) A written request for the executive director of the Oregon Government Ethics Commission to issue and publish a staff advisory opinion under ORS 244.282 on the application of this section to any actual or hypothetical circumstance; or

(c) A written or oral request for the executive director or other staff of the commission to issue written or oral staff advice under ORS 244.284 on the application of this section to any actual or hypothetical circumstance.

(11) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not adopt rules that establish what entities are considered representatives of the news media that are entitled to attend executive sessions under subsection (4) of this section. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134; 2007 c.602 §11; 2009 c.792 §32; 2015 c.421 §2; 2015 c.666 §3; 2018 c.50 §11; 2021 c.264 §4; 2023 c.252 §1]

192.670 Meetings by means of telephone or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.705.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where, or at least one electronic means by which, the public can listen to the communication at the time it occurs. A place provided may be a place where no member of the governing body of the public body is present.

(3) All meetings held by a governing body of a public body, excluding executive sessions, must provide to members of the general public, to the extent reasonably possible, an opportunity to:

(a) Access and attend the meeting by telephone, video or other electronic or virtual means;

(b) If in-person oral testimony is allowed, submit during the meeting oral testimony by telephone, video or other electronic or virtual means; and

(c) If in-person written testimony is allowed, submit written testimony, including by electronic mail or other electronic means, so that the governing body is able to consider the submitted testimony in a timely manner.

(4) The provisions of subsection (3) of this section:

(a) Apply to hearings under ORS 197.797, 215.402 to 215.438 and 215.700 to 215.780 regardless of whether a governing body or governing body's designee, including a hearings officer, conducts the hearing; and

(b) Do not apply to contested case hearings under ORS chapter 183. [1973 c.172 §7; 1979 c.361 §1; 2011 c.272 §2; 2021 c.228 §1]

192.672 State board or commission meetings through telephone or electronic means; compensation and reimbursement; recording and publishing. (1) A state board or commission may meet through telephone or other electronic means in accordance with ORS 192.610 to 192.705.

(2)(a) Notwithstanding ORS 171.072 or 292.495, a member of a state board or commission who attends a meeting through telephone or other electronic means is not entitled to compensation or reimbursement for expenses for attending the meeting.

(b) A state board or commission may compensate or reimburse a member, other than a member who is a member of the Legislative Assembly, who attends a meeting through telephone or other electronic means as provided in ORS 292.495 at the discretion of the board or commission.

(3)(a) A state board or commission that meets through telephone or other electronic means in accordance with ORS 192.610 to 192.705 shall record and promptly publish the meeting on a publicly accessible website or hosting service, so that members of the public may without charge:

(A) Observe a recording of the meeting if the meeting was conducted through videoconferencing technology; or

(B) Listen to a recording of the meeting if the meeting was conducted through teleconferencing technology that did not include video capabilities.

(b) The requirement that a meeting be published under this subsection does not apply to that portion of a state board or commission meeting that was lawfully held in executive session under ORS 192.660 or other law.

(c) The requirement to record and publish meetings under this subsection applies to any state board or commission that is within the executive department, as defined in ORS 174.112, and whose members are subject to Senate confirmation under ORS 171.562 and 171.565. [2011 c.272 §1; 2023 c.565 §1]

Note: 192.672 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.680 Enforcement of ORS 192.610 to 192.705; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.705 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.705. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the

county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.705, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.705 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.705, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.705 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.705, except that this subsection does not apply to proceedings of the Oregon Government Ethics Commission. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1; 2023 c.417 §8]

192.685 Additional enforcement by Oregon Government Ethics Commission. (1)(a) Notwithstanding ORS 192.680, complaints of violations of any provision of ORS 192.610 to 192.705 alleged to have been committed by public officials may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(b) If at any time the commission has reason to believe that there has been a violation of ORS 192.660, the commission may proceed under this section and as provided by ORS 244.260 on its own motion as if the commission had received a complaint.

(2) A complainant may not file a complaint with the commission under this section unless the complainant has complied with the written grievance procedures described in ORS 192.705 and:

(a) Has received a response from the public body that denies that a violation of ORS 192.610 to 192.705 occurred;

(b) Has received a response from the public body that admits that a violation of ORS 192.610 to 192.705 occurred that the public body has failed to take adequate steps to cure; or

(c) Has not received a response from the public body within the time prescribed for a response under ORS 192.705.

(3) A complainant shall submit documentation of the complainant's actions taken under ORS 192.705 and the public body's response as described in subsection (2) of this section, if any. The commission shall dismiss any complaint filed under this section that does not satisfy the requirements of subsection (2) of this section.

(4) If a complaint satisfies the requirements of subsection (2) of this section, the commission may interview witnesses, review minutes and other records and obtain and consider any other information pertaining to meetings of the governing body of a public body for purposes of determining whether a violation of ORS 192.610 to 192.705 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(5) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28; 2023 c.68 §2; 2023 c.417 §6]

192.690 Exceptions to ORS 192.610 to 192.705. (1) ORS 192.610 to 192.705 do not apply to any of the following:

(a) Deliberations of the Psychiatric Security Review Board or the State Board of Parole and Post-Prison Supervision.

(b) Deliberations of state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183.

(c) Deliberations of the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases.

(d) Meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568.

(e) Meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568.

(f) Meetings of county child abuse multidisciplinary teams required to review child abuse cases in accordance with the provisions of ORS 418.747.

(g) Meetings of child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785.

(h) Meetings of peer review committees in accordance with the provisions of ORS 441.055.

(i) Mediation conducted under ORS 36.252 to 36.268.

(j) Any judicial proceeding.

(k) Meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies.

(L) Oregon Health and Science University faculty or staff committee meetings.

(m) Communications between or among members of a governing body that are:

(A) Purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body;

(B) Not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or

(C) Nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.705 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26; 2005 c.347 §5; 2005 c.562 §23; 2007 c.796 §8; 2009 c.697 §11; 2011 c.708 §26; 2017 c.442 §25; 2019 c.141 §12; 2023 c.417 §2]

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.705 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.705 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

192.700 Annual training requirements. (1)(a) The Oregon Government Ethics Commission shall annually prepare training on the requirements of ORS 192.610 to 192.705 and best practices to enhance compliance with those requirements. The commission may delegate the preparation and presentation of trainings to another organization, except that the commission must approve the content of training prepared by another organization prior to presentation of the training.

(b) At the discretion of the commission, trainings prepared under this section may be presented in live sessions or be made available for viewing online. Training sessions may be presented to multiple governing bodies at any one time and may be presented in a prerecorded format.

(2)(a) Every member of a governing body of a public body with total expenditures for a fiscal year of $1 million or more shall attend or view training prepared under this section at least once during the member's term of office and shall verify the member's attendance using the method prescribed by the commission.

(b) A member of a governing body who, under paragraph (a) of this subsection, is not required to attend training is nevertheless encouraged to attend training given under this section.

(3) The commission shall, at least once every five years, adjust the expenditure threshold for mandatory training described in subsection (2)(a) of this section to account for changes in inflation and shall by rule establish a new threshold, rounded to the nearest $100,000, for mandatory training attendance under this section.

(4) This section does not apply to governing bodies of state government, as defined in ORS 174.111. [2023 c.417 §3]

192.705 Filing written grievance; required response. (1) A person who believes that a governing body has acted in violation of ORS 192.610 to 192.705 may, within 30 days of the alleged violation, file a written grievance with the public body whose governing body is alleged to have violated ORS 192.610 to 192.705, setting forth the specific facts and circumstances that the person asserts amounted to a violation of ORS 192.610 to 192.705. The grievance must state the identity of the person filing the grievance and any other information required by the Oregon Government Ethics Commission by rule.

(2) A public body receiving a written grievance filed under this section shall, within 21 days of the receipt of the grievance, provide a written response to the person:

(a) Acknowledging receipt of the grievance; and

(b)(A) Denying that the facts and circumstances as set forth in the grievance accurately reflect the conduct of the governing body and setting forth the facts and circumstances as determined by the public body and the reasons why those facts and circumstances do not amount to a violation of ORS 192.610 to 192.705;

(B) Admitting that the facts and circumstances as set forth in the grievance accurately reflect the conduct of the governing body but denying that those facts and circumstances amount to a violation of ORS 192.610 to 192.705; or

(C) Admitting that the conduct of the governing body amounted to a violation of ORS 192.610 to 192.705 and setting forth the steps the governing body will take to cure the violation, including but not limited to:

(i) Rescinding the decision taken by the governing body in violation of ORS 192.610 to 192.705; or

(ii) Acknowledging in a properly noticed and conducted public meeting held within 45 days of the governing body's original decision that:

(I) The original decision was made in violation of ORS 192.610 to 192.705;

(II) Good cause exists for the governing body to not rescind the decision; and

(III) The governing body's practices will be modified to ensure future violations of ORS 192.610 to 192.705 do not occur.

(3) The public body shall send a copy of the written grievance and the public body's response under this section to the Oregon Government Ethics Commission at the time the public body responds to the person who filed the grievance. [2023 c.417 §5]

192.710 [1973 c.168 §1; 1979 c.262 §1; repealed by 2015 c.158 §30]

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

192.715 Short title. ORS 192.715 to 192.760 may be cited as the Uniform Electronic Legal Material Act. [2013 c.221 §10]

Note: 192.715 to 192.760 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.720 Definitions for ORS 192.715 to 192.760. As used in ORS 192.715 to 192.760:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(a) The Oregon Constitution;

(b) Session laws published by the Legislative Counsel under ORS 171.236;

(c) The Oregon Revised Statutes; or

(d) Oregon Administrative Rules.

(3) "Official publisher" means:

(a) For the Oregon Constitution, the Legislative Counsel;

(b) For Oregon Laws, the Legislative Counsel;

(c) For the Oregon Revised Statutes, the Legislative Counsel; or

(d) For a rule published in the Oregon Administrative Rules, the Secretary of State.

(4) "Publish" means to display, present or release to the public, or cause to be displayed, presented or released to the public, by the official publisher.

(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. [2013 c.221 §1]

Note: See note under 192.715.

192.725 Electronic record as official record. (1) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(a) Designate the electronic record as official; and

(b) Comply with ORS 192.730, 192.740 and 192.745.

(2) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with ORS 192.730, 192.740 and 192.745. [2013 c.221 §2]

Note: See note under 192.715.

192.730 Authentication of electronic official record. An official publisher of legal material in an electronic record that is designated as official under ORS 192.725 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher. [2013 c.221 §3]

Note: See note under 192.715.

192.735 Evidentiary rules concerning authenticated electronic record. (1) Legal material in an electronic record that is authenticated under ORS 192.730 is presumed to be an accurate copy of the legal material.

(2) If another state has adopted a law substantially similar to ORS 192.715 to 192.760, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(3) A party contesting the authentication of legal material in an electronic record authenticated under ORS 192.730 has the burden of proving by a preponderance of the evidence that the record is not authentic. [2013 c.221 §4]

Note: See note under 192.715.

192.740 Preservation and security of electronic official record. (1) An official publisher of legal material in an electronic record that is or was designated as official under ORS 192.725 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(2) If legal material is preserved under subsection (1) of this section in an electronic record, the official publisher shall:

(a) Ensure the integrity of the record;

(b) Provide for backup and disaster recovery of the record; and

(c) Ensure the continuing usability of the material. [2013 c.221 §5]

Note: See note under 192.715.

192.745 Availability for public use. An official publisher of legal material in an electronic record that is required to be preserved under ORS 192.740 shall ensure that the material is reasonably available for use by the public on a permanent basis. [2013 c.221 §6]

Note: See note under 192.715.

192.750 Implementation; considerations. In implementing ORS 192.715 to 192.760, an official publisher of legal material in an electronic record shall consider:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;

(3) The needs of users of legal material in an electronic record;

(4) The views of governmental officials and entities and other interested persons; and

(5) To the extent practicable, methods and technologies for the authentication of, preservation and security of and public access to legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to ORS 192.715 to 192.760. [2013 c.221 §7]

Note: See note under 192.715.

192.755 Uniform construction. In applying and construing ORS 192.715 to 192.760, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2013 c.221 §8]

Note: See note under 192.715.

192.760 Relationship of ORS 192.715 to 192.760 to federal law. ORS 192.715 to 192.760 modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede section 101(c) of that Act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. 7003(b). [2013 c.221 §9]

Note: See note under 192.715.

FINANCIAL INSTITUTION RECORD DISCLOSURES

192.800 Definitions for ORS 192.800 to 192.810. As used in this section and ORS 192.805 and 192.810:

(1) "Customer" means any person who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means a financial institution or a trust company, as those terms are defined in ORS 706.008.

(3) "Financial records" means any original written or electronic document, any copy of the document, or any information contained in the document, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpoena" means a judicial subpoena or subpoena duces tecum. [1985 c.797 §1; 1997 c.631 §423; 2005 c.130 §3]

192.805 Reimbursement required prior to disclosure; charges. Before producing any documents or making any disclosures, a financial institution may require the requesting person who caused the subpoena to be issued to reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs shall include but are not limited to personnel costs, reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

(1) Personnel costs, $30 per hour per person, computed on the basis of $7.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(2) Reproduction costs, $1 per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual cost.

(3) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to convey the required or requested material to the place of examination. [1985 c.797 §2; 1989 c.309 §1; 2001 c.247 §2]

192.810 Applicability of ORS 192.805. ORS 192.805 does not apply to any subpoena issued by or on behalf of a state agency or local agency subject to the provisions of ORS 192.583 to 192.607, or if the financial institution is a named party to litigation that is the basis for issuance of the subpoena. [1985 c.797 §3; 1989 c.309 §2]

ADDRESS CONFIDENTIALITY PROGRAM

192.820 Definitions for ORS 192.820 to 192.868. As used in ORS 192.820 to 192.868:

(1) "Actual address" means:

(a) A residential, work or school street address of an individual specified on the application of the individual to be a program participant; or

(b) The name of the county in which the program participant resides or the name or number of the election precinct in which the program participant is registered to vote.

(2) "Address Confidentiality Program" means the program established under ORS 192.822.

(3) "Application assistant" means an employee of or a volunteer serving a public or private entity designated by the Attorney General under ORS 192.854 to assist individuals with applications to participate in the Address Confidentiality Program.

(4) "Health care provider" means an individual who is authorized in this state to provide physical and behavioral health care services and who provides reproductive and gender-affirming health care services.

(5) "Program participant" means an individual accepted into the Address Confidentiality Program under ORS 192.820 to 192.868.

(6) "Public body" has the meaning given that term in ORS 174.109.

(7) "Public record" has the meaning given that term in ORS 192.311.

(8) "Substitute address" means an address designated by the Attorney General under the Address Confidentiality Program.

(9) "Victim of a sexual offense" means:

(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or

(b) Any other individual designated by the Attorney General by rule.

(10) "Victim of bias" means:

(a) An individual against whom a bias crime or bias incident, as those terms are defined in ORS 147.380, has been committed; or

(b) Any other individual designated by the Attorney General by rule.

(11) "Victim of domestic violence" means:

(a) An individual against whom domestic violence has been committed, as defined in ORS 135.230, 181A.355 or 412.072;

(b) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(c) Any other individual designated a victim of domestic violence by the Attorney General by rule.

(12) "Victim of human trafficking" means:

(a) An individual against whom an offense described in ORS 163.263, 163.264 or 163.266 has been committed; or

(b) Any other individual designated by the Attorney General by rule. In adopting rules under this subsection, the Attorney General shall consider individuals against whom an act recognized as a severe form of trafficking in persons under 22 U.S.C. 7102 has been committed.

(13) "Victim of stalking" means:

(a) An individual against whom stalking has been committed, as described in ORS 163.732; or

(b) Any other individual designated by the Attorney General by rule. [2005 c.821 §1; 2007 c.542 §1; 2009 c.11 §18; 2009 c.468 §1; 2023 c.228 §41; 2023 c.549 §8]

Note: 192.820 to 192.868 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.822 Address Confidentiality Program; substitute addresses. (1) The Address Confidentiality Program is established in the Department of Justice to:

(a) Protect the confidentiality of the actual address of a health care provider or a victim of domestic violence, a sexual offense, stalking, bias or human trafficking; and

(b) Prevent assailants or potential assailants of the health care provider or victim from finding the health care provider or victim through public records.

(2) The Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of all legal process in this state and receiving and forwarding first-class, certified or registered mail.

(3) The Attorney General is not required to forward any packages or mail other than first-class, certified or registered mail to the program participant.

(4) The Attorney General is not required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered. [2005 c.821 §2; 2009 c.468 §2; 2023 c.228 §42; 2023 c.549 §9]

Note: See note under 192.820.

192.825 [1997 c.566 §1; 2001 c.535 §31; repealed by 2005 c.118 §1]

192.826 Application for participation in program; certification of participation; authorization card; rules. (1) Any of the following individuals with the assistance of an application assistant may file an application with the Attorney General to participate in the Address Confidentiality Program:

(a) An adult individual.

(b) A parent or guardian acting on behalf of a minor when the minor resides with the parent or guardian.

(c) A guardian acting on behalf of an incapacitated individual.

(2) The application must be dated, signed and verified by the applicant and the application assistant who assisted in the preparation of the application.

(3) Except as provided in subsection (8) of this section, the application must contain all of the following:

(a) A statement by the applicant that the applicant or the applicant's child or ward is a victim of domestic violence, a sexual offense, stalking, bias or human trafficking and that the applicant fears for the applicant's safety or the safety of the applicant's child or ward.

(b) Evidence that the applicant or the applicant's child or ward is a victim of domestic violence, a sexual offense, stalking, bias or human trafficking. This evidence may include any of the following:

(A) Law enforcement, court or other federal, state or local government records or files;

(B) Documentation from a public or private entity that provides assistance to victims of domestic violence, a sexual offense, stalking, bias or human trafficking if the applicant or the applicant's child or ward is an alleged victim of domestic violence, a sexual offense, stalking, bias or human trafficking;

(C) Documentation from a religious, medical or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, stalking, bias or human trafficking; or

(D) Other forms of evidence as determined by the Attorney General by rule.

(c) A statement by the applicant that disclosure of the actual address of the applicant would endanger the safety of the applicant or the safety of the applicant's child or ward.

(d) A statement by the applicant that the applicant:

(A) Resides at a location in this state that is not known by assailants or potential assailants of the applicant or the applicant's child or ward; and

(B) Will not disclose the location to assailants or potential assailants of the applicant or the applicant's child or ward while the applicant is a program participant.

(e) Written consent permitting the Attorney General to act as an agent for the appli-

cant for the service of all legal process in this state and the receipt of first-class, certified or registered mail.

(f) The mailing address and telephone number at which the Attorney General can contact the applicant.

(g) The actual address that the applicant requests not be disclosed by the Attorney General that directly relates to the increased risk of the applicant or the applicant's child or ward as a victim of domestic violence, a sexual offense, stalking, bias or human trafficking.

(h) A sworn statement by the applicant that to the best of the applicant's knowledge the information contained in the application is true.

(i) A recommendation by an application assistant that the applicant be a participant in the Address Confidentiality Program.

(4) Upon the filing of a properly completed application and upon approval by the Attorney General, the Attorney General shall certify the applicant as a program participant.

(5) Upon certification, the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. The Address Confidentiality Program authorization card is valid as long as the program participant remains certified under the program.

(6) The term of certification shall be for a period of time determined by the Attorney General by rule, unless prior to the end of the period one of the following occurs:

(a) The program participant withdraws the certification by filing with the Attorney General a request for withdrawal signed by the program participant and acknowledged in writing by a notary public or an application assistant; or

(b) The Attorney General cancels the certification under ORS 192.834.

(7) A program participant may renew the certification by filing an application for renewal with the Attorney General at least 30 days prior to expiration of the current certification.

(8) The Attorney General shall establish by rule the requirements for an application filed by a health care provider. [2005 c.821 §3; 2009 c.468 §3; 2023 c.228 §43; 2023 c.549 §10]

Note: See note under 192.820.

192.828 Prohibitions; civil penalty. (1) An applicant for participation in the Address Confidentiality Program or a program participant may not:

(a) Falsely attest in an initial application or an application for renewal that disclosure of the actual address of the applicant would endanger the safety of the applicant or the safety of the applicant's child or ward; or

(b) Knowingly provide false information in an initial application or an application for renewal.

(2) If after an investigation, the Attorney General finds that a violation of subsection (1) of this section has occurred, the Attorney General may impose a civil penalty as provided in ORS 183.745 in an amount not to exceed $500. [2005 c.821 §4]

Note: See note under 192.820.

192.830 [1997 c.566 §2; 2001 c.535 §32; repealed by 2005 c.118 §1]

192.832 Notice of change in name, address or telephone number. (1) A program participant shall notify the Attorney General within 30 days after the program participant has obtained a legal name change by providing the Attorney General with a certified copy of any judgment or order evidencing the change or any other documentation the Attorney General considers sufficient evidence of the name change.

(2) A program participant shall notify the Attorney General of a change in actual address or telephone number from the actual address or telephone number listed on the application of the program participant within 10 days after the change occurs. [2005 c.821 §5]

Note: See note under 192.820.

192.834 Cancellation of certification. (1) The Attorney General shall cancel the certification of a program participant if:

(a) The Attorney General determines that the program participant violated ORS 192.828;

(b) The Attorney General determines that the program participant violated ORS 192.832; or

(c) Subject to ORS 192.832 (2), first class, certified or registered mail forwarded to the program participant by the Attorney General is returned as undeliverable.

(2) The Attorney General shall send notice of cancellation to the program participant setting out the reasons for the cancellation and setting out the rights and duties of the program participant.

(3) A program participant has 30 days to appeal the cancellation decision under procedures adopted by the Attorney General by rule. A cancellation of certification under this section is not considered an order as defined in ORS 183.310 and is not subject to judicial review under ORS 183.480.

(4) An individual whose certification as a program participant is canceled under this section shall notify persons and public bodies using the substitute address as the address

of the program participant that the substitute address is no longer the address to be used by public bodies as described in ORS 192.836. [2005 c.821 §6]

Note: See note under 192.820.

192.835 [1997 c.566 §3; 1999 c.59 §48; 1999 c.718 §1; 2001 c.535 §33; repealed by 2005 c.118 §1]

192.836 Use of substitute address; waiver of requirement. (1)(a) A program participant may request that public bodies use the substitute address designated by the Attorney General as the address of the program participant in any ongoing actions or proceedings or when creating a new public record.

(b) A public body is not responsible for requesting that departments, divisions, affiliates or other organizational units of the public body or other public bodies use the substitute address as the address of the program participant.

(c) Unless requested by the program participant, when the actual address of a program participant is contained in a public record that is filed with the public body, the public body is not responsible for modifying the public record to contain the substitute address designated by the Attorney General.

(d) The Attorney General is not responsible for making requests under this subsection.

(2) Except as provided in this section and ORS 192.842, when a program participant submits a current and valid Address Confidentiality Program authorization card to a public body, the public body shall accept the substitute address on the authorization card as the address of the program participant when creating a new public record. Upon the request of the program participant, the public body shall use the substitute address on the authorization card in any ongoing actions or proceedings.

(3) A public body may request a waiver from the requirements of the Address Confidentiality Program by submitting a waiver request to the Attorney General. The waiver request shall be in writing and include:

(a) An explanation of why the public body cannot meet its statutory or administrative obligations by possessing or using the substitute address; and

(b) An affirmation that if the Attorney General accepts the waiver, the public body will only use the actual address of the program participant for those statutory or administrative purposes included in the waiver request.

(4) The Attorney General shall accept or deny a waiver request from a public body in writing and include a statement of specific reasons for acceptance or denial. An acceptance or denial made under this subsection is not considered an order as defined in ORS 183.310 and is not subject to judicial review under ORS 183.480.

(5) Except as provided in ORS 192.820 to 192.868, if a law or rule requires the use of a residence address, the substitute address may be used instead. [2005 c.821 §7; 2007 c.542 §2]

Note: See note under 192.820.

192.840 [1997 c.566 §4; repealed by 2001 c.535 §36]

192.842 Use of actual or substitute address in specified circumstances. (1) A county clerk or other elections official shall use the actual address of a program participant for voter registration purposes. Except as provided in ORS 192.820 to 192.868, a county clerk or other elections official may not disclose the actual address.

(2) A county clerk or other elections official shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under ORS 254.470.

(3) A school district shall use the actual address of a program participant for any purpose related to admission or assignment. The school district shall take such measures as necessary to protect the confidentiality of the actual address of the program participant. Student records created under ORS 326.565 and 326.580 shall use the substitute address of the program participant.

(4) A county clerk shall accept the substitute address of the program participant as the address of the applicant for the purpose of issuing a marriage license under ORS 106.041 or registering a Declaration of Domestic Partnership under ORS 106.325. [2005 c.821 §8; 2007 c.99 §13; 2007 c.542 §12]

Note: See note under 192.820.

192.844 Prohibition on disclosure of actual address or telephone number by public body. (1) Except as provided in ORS 192.820 to 192.868, a public body that receives a request from a program participant under ORS 192.836 may not disclose the actual address or telephone number of the program participant.

(2) Each public body that receives a request from a program participant under ORS 192.836 shall adopt a procedure to prevent unnecessary disclosure of actual addresses or telephone numbers of program participants to employees of that public body or other persons in that public body. [2005 c.821 §9; 2007 c.542 §3]

Note: See note under 192.820.

192.845 [1997 c.566 §5; 1999 c.718 §2; repealed by 2005 c.118 §1]

192.846 Records of Department of Transportation; substitute address. (1) A program participant may request that any driver or vehicle record kept by the Department of Transportation that contains or is required to contain the program participant's actual address contain instead the substitute address designated by the Attorney General. A request under this subsection must:

(a) Be in a form specified by the department; and

(b) Contain verification that the individual is a program participant.

(2) Upon receipt of a request and verification under this section, the department shall remove the program participant's actual address from its records and instead use the substitute address designated by the Attorney General. The department shall note on the records that the address shown is a substitute address under ORS 192.820 to 192.868. While the request is in effect, the program participant may enter the substitute address on any driver or vehicle form issued by the department that requires an address.

(3) If an individual ceases to be certified as a program participant, the individual shall notify the department of a change of address as provided in ORS 803.220, 807.420 or 807.560. [2007 c.542 §11]

Note: See note under 192.820.

192.848 When Attorney General may disclose actual address or telephone number. (1) The Attorney General may not disclose the actual address or telephone number of a program participant, except under either of the following circumstances:

(a) Upon receipt of a court order signed by a judge pursuant to a finding of good cause. Good cause exists when disclosure is sought for a lawful purpose that outweighs the risk of the disclosure and, in the case of a request for disclosure received from a federal, state or local law enforcement agency, district attorney or other public body, when information is provided to the court that describes the official purpose for which the actual address or telephone number of the program participant will be used. If a judge finds that good cause exists, the terms of the court order shall address, as much as practicable, the safety and protection of the program participant. In cases where the Attorney General has not received prior notice of a court order, not later than three business days after receiving the order, the Attorney General may object to the order and request a hearing before the judge who signed the order.

(b) Where the program participant is required to disclose the actual address of the program participant as part of a registration for sex offenders as required under ORS 163A.005 to 163A.235.

(2) A person to whom an actual address or telephone number of a program participant has been disclosed pursuant to a court order may not disclose the actual address or telephone number to any other person unless permitted to do so by order of the court.

(3) The Attorney General shall notify a program participant within one business day after the Attorney General discloses an actual address under subsection (1)(a) of this section.

(4) Upon request by a public body, the Attorney General may verify whether or not a person is a program participant when the verification is for official use only. [2005 c.821 §10; 2007 c.542 §4; 2013 c.708 §26]

Note: See note under 192.820.

192.850 [1997 c.566 §6; 2001 c.535 §34; repealed by 2005 c.118 §1]

192.852 Prohibition on obtaining actual address or telephone number; prohibition on disclosure by employee of public body. (1) A person may not attempt to obtain or obtain the actual address or telephone number of a program participant from the Attorney General or a public body through fraud or misrepresentation.

(2) Except as provided in ORS 192.820 to 192.868 or federal law, an employee of a public body may not intentionally disclose the actual address or telephone number of a program participant to a person known to the employee to be prohibited from receiving the actual address or telephone number of the program participant. This subsection applies only when an employee obtains the actual address or telephone number of the program participant during the performance of the official duties of the employee and, at the time of disclosure, the employee has specific knowledge that the actual address or telephone number disclosed belongs to a program participant. [2005 c.821 §11]

Note: See note under 192.820.

192.854 Application assistants; application assistance not legal advice. (1) The Attorney General may designate employees of or volunteers serving public or private entities that provide counseling and shelter services to victims of domestic violence, a sexual offense, stalking or human trafficking as application assistants to assist individuals applying to participate in the Address Confidentiality Program.

(2) Any assistance rendered to applicants for participation in the Address Confidentiality Program by the Attorney General or an application assistant is not considered legal advice. [2005 c.821 §12; 2009 c.468 §4]

Note: See note under 192.820.

192.855 [1997 c.566 §7; repealed by 2001 c.535 §36]

192.856 Additional response time for notice or other paper. Notwithstanding any other law and the Oregon Rules of Civil Procedure, whenever a program participant has the right or is required to do some act or take some proceedings within a prescribed period of 10 days or less after the service of a notice or other paper upon the program participant and the notice or paper is served by mail pursuant to ORS 192.820 to 192.868, five days shall be added to the prescribed period. [2005 c.821 §13]

Note: See note under 192.820.

192.858 Disclosures to participants. The Attorney General shall disclose in writing to a program participant prior to certification:

(1) The rights and obligations of the program participant under ORS 192.820 to 192.868; and

(2) The term of certification as determined by the Attorney General under ORS 192.826. [2005 c.821 §14]

Note: See note under 192.820.

192.860 Rules. The Attorney General may adopt rules the Attorney General considers necessary to carry out the provisions of ORS 192.820 to 192.868. [2005 c.821 §15]

Note: See note under 192.820.

192.865 Criminal penalty. Violation of ORS 192.852 is a Class C misdemeanor. [2005 c.821 §16]

Note: See note under 192.820.

192.868 Grants, donations and gifts. (1) The Department of Justice may seek, solicit, receive and administer monetary grants, donations and gifts to establish and operate the Address Confidentiality Program.

(2) All moneys received by the department under subsection (1) of this section shall be deposited in the Department of Justice Operating Account created in ORS 180.180. Amounts deposited under this section are continuously appropriated to the department to carry out the provisions of ORS 192.820 to 192.868. [2005 c.821 §17]

Note: See note under 192.820.

192.990 [1973 c.168 §2; 2011 c.597 §169; repealed by 2015 c.158 §30]

Chapter 469

2023 EDITION

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(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 §1; 1979 c.723 §1]

469.020 Definitions. As used in ORS 176.820, 469.010 to 469.155, 469.860 (3), 469.880 to 469.895, 469.900 (3), 469.990, 469.992, 757.710 and 757.720, unless the context requires otherwise:

(1) "Agency" includes a department or other agency of state government, city, county, municipal corporation, political subdivision, port, people's utility district, joint operating agency and electric cooperative.

(2) "Coal supplier" means any person engaged in the wholesale distribution in this state of coal intended for use in this state for an energy facility.

(3) "Cost-effective" means that an energy resource, facility or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility or conservation measure. Cost comparison under this definition shall include but not be limited to:

(a) Cost escalations and future availability of fuels;

(b) Waste disposal and decommissioning costs;

(c) Transmission and distribution costs;

(d) Geographic, climatic and other differences in the state; and

(e) Environmental impact.

(4) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(5) "Department" means the State Department of Energy created under ORS 469.030.

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

(7) "Energy facility" has the meaning given in ORS 469.300.

(8) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An energy generation area for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(9) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(10) "Nominal electric generating capacity" has the meaning given in ORS 469.300.

(11) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(12) "Petroleum supplier" means a petroleum refiner in this state, or any person engaged in the wholesale distribution of crude petroleum or derivative thereof or of propane in this state.

(13) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structure, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. "Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

(14) "Site" means a proposed location of an energy facility, and its related or supporting facilities.

(15) "Thermal power plant" has the meaning given that term by ORS 469.300.

(16) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas. [1975 c.606 §2; 1977 c.794 §1; 1979 c.723 §2; 1981 c.629 §1; 1981 c.792 §1; 1991 c.480 §3; 1993 c.569 §1; 1995 c.505 §4; 1995 c.551 §2; 2003 c.186 §16]

STATE DEPARTMENT OF ENERGY; ADMINISTRATION

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

(2) The State Department of Energy shall:

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

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

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

(d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.338, 192.345, 192.355, 192.690, 469.010 to 469.155, 469.300 to 469.563, 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

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

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

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

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

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

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

(L) Advise the Governor on energy-related matters. [1975 c.606 §4; 1981 c.792 §2; 1987 c.200 §4; 1993 c.569 §2; 1995 c.551 §3; 1999 c.934 §5; 1999 c.1043 §9; 2003 c.186 §1; 2013 c.656 §7]

Note: Section 1, chapter 376, Oregon Laws 2021, provides:

Sec. 1. Legislative findings about offshore wind energy. (1) The Legislative Assembly finds that:

(a) Oregon offshore wind holds tremendous potential and promise for this state to diversify its energy portfolio.

(b) Oregon has an opportunity to participate in a growing global market by contributing to the development of the nascent offshore wind energy supply chain.

(c) An intergovernmental task force led by the Bureau of Ocean Energy Management has reengaged and is expected to reveal offshore wind call areas in 2021 for the development of floating offshore wind energy within the federal waters off the Oregon coast.

(d) Oregon has an opportunity to participate in holistic west coast planning for the strategic integration of floating offshore wind energy within the next decade

and to position itself for potential market expansion thereafter.

(e) The Department of Land Conservation and Development has an established role as the lead state agency coordinating with the federal process for floating offshore wind development and, as the lead agency of the federally approved Oregon Coastal Management Program, the department implements the state's federal consistency authority pursuant to the Coastal Zone Management Act of 1972 and associated federal regulations. The department implements federal consistency review by evaluating federal activities for compliance with state enforceable policies and their reasonably foreseeable effects to coastal uses and resources of the Oregon coastal zone, and the department will coordinate with networked agency and local government partners to evaluate floating offshore wind development activities for consistency with the Oregon Coastal Management Program.

(f) The Oregon Business Development Department has established a leadership role in facilitating attracting the floating offshore wind energy industry to this state and in facilitating floating offshore wind energy supply chain development.

(g) Understanding the impacts, benefits, opportunities and barriers of floating offshore wind energy with respect to Oregon's fishing communities, ocean and shore-side recreational users, tribes, ports, coastal ecosystems, natural resources, manufacturing industry, maritime sector, disaster recovery planning, workforce development and electricity ratepayers can maximize the benefits to this state, while minimizing the conflicts between floating offshore wind energy, the ocean ecosystem and ocean users.

(h) Defining a pathway for Oregon to take advantage to the fullest extent possible of the federal offshore wind investment tax credit and other federal infrastructure investment programs that could benefit Oregon's ports and transmission system can facilitate immediate economic investments as well as long term ratepayer savings.

(i) Understanding the feasibility of using offshore wind as a clean power source for the future in-state generation of renewable fuel such as renewable hydrogen will strengthen state and regional energy decarbonization planning scenarios.

(j) Investigating potential mechanisms to integrate floating offshore wind energy into Oregon's future energy mix will strengthen state and regional energy decarbonization strategies.

(2) In furtherance of the findings set forth in subsection (1) of this section, the Legislative Assembly finds and declares that:

(a) It is the goal of this state to plan for the development of up to three gigawatts of floating offshore wind energy projects within the federal waters off the Oregon coast by 2030;

(b) It is further the goal of this state that the planning described in this subsection be conducted in a manner that will maximize benefits to this state while minimizing conflicts between floating offshore wind energy, the ocean ecosystem and ocean users; and

(c) Consistent with applicable federal law, it shall be the policy position of the State of Oregon that:

(A) Any federal planning or permitting process for offshore energy research and development in federal waters off the Oregon coast and for any related transmission and other facilities, particularly those that transverse Oregon's territorial sea, shall adequately consider the prompt decommissioning of any offshore facility after permanent cessation of use of the facility; and

(B) Adequate consideration as described in this paragraph must include consideration of the removal or decommissioning of anchors, cables and any other equipment related to the facility in a manner that will serve to avoid future conflicts between the equipment and fishing operations conducted by persons who hold licenses issued pursuant to the commercial fishing laws. [2021 c.376 §1]

469.040 Director; duties; appointment; rules. (1) The State Department of Energy shall be under the supervision of the Director of the State Department of Energy, who shall:

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

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

(c) Hire, assign, reassign and coordinate personnel of the State Department of Energy, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

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

(2) The director may delegate to any officer or employee the exercise and discharge in the director's name of any power, duty or function of whatever character vested in the director by law. The official act of any person acting in the director's name and by the director's authority shall be considered an official act of the director.

(3) The director shall be appointed by the Governor, subject to confirmation by the Senate in the manner provided by ORS 171.562 and 171.565. [1975 c.606 §5; 1985 c.593 §1; 1993 c.496 §3; 1995 c.551 §4; 1999 c.934 §6; 1999 c.1043 §10; 2003 c.186 §3; 2017 c.314 §1]

469.050 Limitations on subsequent employment of director; sanctions. (1) A person who has been the Director of the State Department of Energy shall not, within two years after the person ceases to be the director, be an employee of:

(a) An owner or operator of an energy facility;

(b) An applicant for a site certificate; or

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

(2) Employment of any individual in violation of subsection (1)(a) or (b) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual. [1975 c.606 §§6,7]

469.055 Authority of department to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the State Department of Energy may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the department; or

(b) Provides services or seeks to provide services to the department as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In the Hanford nuclear safety program;

(b) In which the person conducts energy audits in schools, colleges, universities or medical facilities;

(c) In the budget and finance section of the department;

(d) That has personnel or human resources functions as one of the position's primary responsibilities;

(e) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(f) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers or criminal background information; or

(g) In which the person has access to tax or financial information about individuals or business entities or processes tax credits. [2005 c.730 §7]

Note: 469.055 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.059 Biennial comprehensive report; contents; compilation; public comment. (1) No later than November 1 of every even-numbered year, the State Department of Energy shall transmit to the Governor and the Legislative Assembly a comprehensive report on energy resources, policies, trends and forecasts in Oregon. The purposes of the report shall be to inform local, state, regional and federal energy policy development, energy planning and energy investments, and to identify opportunities to further the energy policies stated in ORS 469.010 and 469.310.

(2) Consistent with the legislatively approved budget, the report shall include, but need not be limited to, data and information on:

(a) The consumption, generation, transmission and production of energy, including fuel energy;

(b) Energy costs;

(c) Energy sectors, markets, technologies, resources and facilities;

(d) Energy efficiency and conservation;

(e) The effects of energy use, including effects related to greenhouse gas emissions;

(f) Local, state, regional and federal regulations, policies and planning activities related to energy; and

(g) Emerging energy opportunities, challenges and impacts.

(3) The report may include, but need not be limited to:

(a) Recommendations for the development and maximum use of cost-effective conservation methods and renewable resources, consistent with the energy policies stated in ORS 469.010 and 469.310 and, where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501; and

(b) Recommendations for proposed research, development and demonstration projects and programs necessary to further the energy policies stated in ORS 469.010 and 469.310.

(4) The report shall be compiled by collecting, organizing and refining data and information acquired by the department in the performance of its existing duties and under its existing authority.

(5)(a) This section is not intended to allow disclosure of records exempt from disclosure under ORS 192.311 to 192.478.

(b) The department shall establish procedures for the development and compilation of the report that:

(A) Allow for a person to request the exclusion from the report of specific data or information submitted by the person to the department and to provide, in the request, reasoning as to why the data or information is exempt from disclosure under ORS 192.311 to 192.478; and

(B) Protect data and information that the department determines to be exempt from disclosure in accordance with ORS 192.338.

(c) The department may utilize data and information that is exempt from disclosure under ORS 192.311 to 192.478 in compilation or analysis that is included in the report, provided that the exempt data and informa-

tion is not disclosed in a manner that is individually identifiable.

(6) Upon request from the department, other agencies shall assist the department in the performance of its duties under this section.

(7) The department shall seek public input and provide opportunities for public comment during the development of the report. [2017 c.286 §3]

469.060 [1975 c.606 §8; 1983 c.273 §1; 1989 c.466 §1; 1995 c.505 §5; 1995 c.551 §19a; repealed by 2017 c.286 §1]

469.062 Comprehensive state energy strategy; periodic update. (1) The State Department of Energy shall develop a comprehensive state energy strategy that identifies optimized pathways to achieving the state's energy policy objectives.

(2) The state energy strategy must be informed, at a minimum, by the following:

(a) Stakeholder perspectives;

(b) State laws, policies and targets regarding energy and greenhouse gas emissions;

(c) Existing energy and integrated resource plans;

(d) Energy-related studies and data analysis; and

(e) State energy policy objectives.

(3) In identifying optimized pathways to achieving the state's energy policy objectives, the state energy strategy must take into account, at a minimum, the following factors:

(a) State energy demand and trends;

(b) Energy resources and technology choices in consideration of costs, energy efficiency, feasibility and availability;

(c) Economic and employment impacts;

(d) Energy burden and affordability;

(e) Energy resilience, as defined in section 29, chapter 508, Oregon Laws 2021, and energy reliability;

(f) Environmental justice, as defined in ORS 469A.400;

(g) Land use considerations;

(h) Natural resource impacts;

(i) Emerging technologies and investment opportunities;

(j) Energy generation, transmission and distribution infrastructure needed to achieve state energy policy objectives;

(k) Existing and potential incentives to support energy efficiency, development and deployment;

(L) Energy security and impacts of broader markets;

(m) Community benefits; and

(n) Community energy resilience, as defined in section 29, chapter 508, Oregon Laws 2021.

(4)(a) In developing the state energy strategy, the department shall engage with relevant state agencies, federally recognized Indian tribes and stakeholders. At a minimum, the stakeholders must represent a diverse range of:

(A) Interests, perspectives, expertise and education;

(B) Socioeconomic backgrounds;

(C) Communities; and

(D) Geographic areas of this state.

(b) The department may convene an advisory work group to inform the department on the department's engagement with stakeholders and development of the state energy strategy.

(5)(a) The department shall ensure that the state energy strategy developed under this section reflects the best available information, data analyses and time horizons necessary to achieving the state's energy policy objectives.

(b) The department shall periodically update the state energy strategy to reflect current information, data analysis and state energy policy objectives.

(c) The department shall inform the Governor and Legislative Assembly when the department updates the state energy strategy.

(6) The department may contract with third parties for assistance in performing the department's duties under this section, including assistance with technical or facilitation services.

(7) All agencies of state government, as defined in ORS 174.111, are directed, to the extent permitted by laws relating to confidentiality, to furnish such information and advice to the department as the department considers necessary to perform the department's duties under this section. [2023 c.562 §2]

Note: 469.062 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 3 and 4, chapter 562, Oregon Laws 2023, provide:

Sec. 3. (1) The State Department of Energy shall produce a report regarding the state energy strategy developed under section 2 of this 2023 Act [469.062]. The report, at minimum, must:

(a) Summarize the state energy strategy and optimized pathways to achieving the state's energy policy objectives;

(b) Describe the department's engagement process with stakeholders and how stakeholder perspectives informed the state energy strategy; and

(c) Recommend legislation or changes to policy necessary to implement the state energy strategy.

(2) The department shall submit the report produced under subsection (1) of this section to the Governor and the appropriate interim committees of the Legislative Assembly in the manner provided under ORS 192.245 no later than November 1, 2025. [2023 c.562 §3]

Sec. 4. Section 3 of this 2023 Act is repealed on January 2, 2026. [2023 c.562 §4]

469.064 Energy security plan; requirements; fuel storage capacity; report. (1) The State Department of Energy shall develop an energy security plan. The energy security plan must meet the requirements for a state energy security plan described in 42 U.S.C. 6326.

(2) To the extent consistent with the requirements of 42 U.S.C. 6326, the energy security plan must align with strategies in the Oregon Fuel Action Plan developed by the department and must include, but need not be limited to:

(a) An evaluation of the state's ability to recover quickly from physical threats, including a magnitude 9.0 Cascadia Subduction Zone earthquake, and cybersecurity threats.

(b) Recommendations for increasing the geographic diversity of fuel storage capacity throughout this state.

(c) An assessment of the seismic resilience of existing fuel storage facilities throughout this state.

(d) Consistent with state programs to reduce greenhouse gas emissions associated with transportation fuels, an assessment of the use of renewable fuels and other innovative alternatives to improve disaster resilience.

(e) An evaluation of strategies for mitigating barriers to implementing a geographically distributed fuel network throughout this state, including:

(A) Adoption of Oregon Fuel Action Plan criteria for predesignated fuel points of distribution for receiving emergency fuel supplies at selected fuel diversification sites.

(B) Strategies for expanding storage capacities at public facilities with existing capability to store and dispense unleaded, diesel or aviation fuel, including an evaluation of whether fuel storage sites contain properly installed seismically certified generators and adequate on-site fuel storage capacity to power backup generators so that independent operations can be maintained for three or more weeks after a Cascadia Subduction Zone earthquake.

(C) Partnerships with private-sector companies to build fuel storage capacity at identified, prioritized locations, especially private-sector companies that provide an emergency or essential service mission to save or sustain life or support the restoration of critical lifelines and services in support of the state's overall response and recovery effort.

(D) Strategies for increasing geographically distributed fuel storage that prioritize areas of this state that are expected to be most vulnerable to a Cascadia Subduction Zone earthquake, including local or regional islanding effects that would isolate a region from the rest of this state as a result of road or bridge damage.

(E) An evaluation of potential impacts to communities adjacent to potential locations for emergency fuel storage or expanded fuel storage, including consultation and outreach with those communities.

(3) In developing and implementing the energy security plan, the department shall consult with:

(a) Relevant state government agencies, including the Public Utility Commission, the Department of Environmental Quality, the Department of Transportation, the Oregon Department of Aviation, the Oregon Department of Emergency Management, the State Department of Geology and Mineral Industries and the Environmental Justice Council;

(b) Local governments;

(c) Tribal governments;

(d) Consumer-owned and investor-owned electric utilities;

(e) Natural gas utilities;

(f) Fuel suppliers;

(g) Qualified technical experts in disaster resilience; and

(h) Any other person with relevant knowledge or experience.

(4) No later than September 15 of each even-numbered year, the State Department of Energy shall provide to the interim committees of the Legislative Assembly related to energy a report in the manner provided under ORS 192.245 describing the implementation or revision of the energy security plan developed under this section. [2022 c.99 §12; 2022 c.99 §13]

Note: 469.064 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 16 and 17, chapter 99, Oregon Laws 2022, provide:

Sec. 16. The State Department of Energy shall submit the energy security plan developed under section 12 of this 2022 Act [469.064] in a report to the interim committees of the Legislative Assembly related to en-

ergy, in the manner provided under ORS 192.245, no later than June 1, 2024. [2022 c.99 §16]

Sec. 17. Sections 15 and 16 of this 2022 Act are repealed on January 2, 2025. [2022 c.99 §17]

469.070 [1975 c.606 §9; 1977 c.794 §3; 1983 c.273 §2; 2003 c.186 §17; repealed by 2017 c.286 §1]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The Director of the State Department of Energy may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.820, 192.338, 192.345, 192.355, 192.690, 469.010 to 469.155, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;

(c) Inventory of energy resources; and

(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

(2) In obtaining information under subsection (1) of this section, the director, with the written consent of the Governor, may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, administer oaths, and may cause the depositions of persons residing within or without Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts, to obtain information relevant to energy resources.

(3) In obtaining information under this section, the director:

(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the director for such study; and

(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or records as provided in ORS 176.820, 192.338, 192.345, 192.355, 192.690, 469.010 to 469.155, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720, may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C. [1975 c.606 §18; 1977 c.358 §9; 1977 c.794 §4a; 1979 c.284 §154; 2003 c.186 §18]

469.085 Procedure for imposing civil penalties; rules. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall be imposed as provided in ORS 183.745.

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

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

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

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

(6) The director or the council shall adopt by rule a schedule of the amount of civil penalty that may be imposed for a particular violation.

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

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

(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged violation;

(c) The impact of the violation on public health and safety or public interests in fishery, navigation and recreation;

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

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

(8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and conditions as the director or council determines to be proper. Upon the request of the person incurring the penalty, the director or council shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.480 §2; 1991 c.734 §106; 2003 c.186 §19]

469.090 Confidentiality of information submitted under ORS 469.080. (1) Information furnished under ORS 469.080 shall be confidential and maintained as such, if so requested by the person providing the information, if the information meets one of the following requirements:

(a) The information is proprietary in nature; or

(b) The information consists of geological and geophysical information and data, including maps, concerning oil, gas or geothermal resource wells.

(2) Nothing in this section prohibits the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons. [1975 c.606 §19]

469.095 [1979 c.561 §9; repealed by 1993 c.475 §3]

469.097 Duty to monitor industry progress in energy conservation. The State Department of Energy shall to the extent permitted by its resources monitor industry progress in achieving energy conservation. [1981 c.865 §3; 1987 c.158 §96]

469.100 Agency consideration of legislative policy; agency review of rules. (1) All agencies shall consider the policy stated in ORS 469.010 in adopting or modifying their rules and policies.

(2) All agencies shall review their rules and policies to determine their consistency with the policy stated in ORS 469.010. [1975 c.606 §3; 1995 c.551 §20]

469.110 Dealings with federal government; intervention by State Department of Energy in agency action. (1) At the direction of the Director of the State Department of Energy, the State Department of Energy may represent the state's energy-related interests in any matter involving the federal government, its departments or agencies, which is within the scope of the power and duties of the State Department of Energy, and may, upon request, represent the interest of a county, city, state agency, federally recognized Native American or American Indian tribe, special district or owner or operator of an energy facility.

(2) At the direction of the director, the department may intervene in any proceeding undertaken by an agency for the purpose of expressing its views as to the effect of an agency action, upon state energy resources and state energy policy. [1975 c.606 §12; 2013 c.656 §4]

469.120 State Department of Energy Account; appropriation; record of moneys. (1) The State Department of Energy Account is established.

(2) The account shall consist of all funds received by the State Department of Energy pursuant to law. All moneys in the account are continuously appropriated to the State Department of Energy for payment of expenses of the department and of the Energy Facility Siting Council.

(3) Moneys collected under ORS 469.421 (8) may be expended only for the purposes of programs and activities that the council and the department are charged with administering and authorized to conduct under the laws of this state, including those enumerated in ORS 469.030.

(4) The Director of the State Department of Energy shall keep a record of all moneys deposited in the account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity or program, including any activities described in ORS 469.424, against which each withdrawal is charged. On or after October 1 of each year, the director shall make available, upon request, the record for the prior fiscal year to any energy resource supplier that has paid the assessment imposed under ORS 469.421 (8). The director shall make the record available within 30 days of receiving the request. [1975 c.606 §13; 1995 c.551 §5; 2003 c.186 §7; 2013 c.656 §8]

469.130 [1975 c.606 §47; 1977 c.794 §5; 1977 c.891 §10; 1987 c.879 §16; repealed by 1995 c.551 §21]

469.135 Energy Conservation Clearinghouse for Commerce and Industry. The State Department of Energy shall expand the Energy Conservation Clearinghouse for Commerce and Industry so that it provides:

(1) Current information to business and industry on:

(a) State and federal financing mechanisms;

(b) Tax advantages of energy conservation investments; and

(c) General economic advantages of energy conservation investments.

(2) Teaching on conservation techniques and management of energy by corporations. [1981 c.865 §2]

469.137 Biogas and renewable natural gas inventory; contents; use; advisory committee. (1) As used in this section:

(a) "Biogas" means gas that is generated from organic waste or other organic materials through anaerobic digestion, gasification, pyrolysis or other technology that converts organic waste to gas.

(b) "Renewable natural gas" is biogas that has been processed to be interchangeable with conventional natural gas for the purpose of meeting pipeline quality standards or transportation fuel grade requirements.

(2) The State Department of Energy shall develop, maintain and periodically update an inventory of biogas and renewable natural gas resources available to this state. The inventory must include, but need not be limited to:

(a) A list of the potential biogas and renewable natural gas sources in this state and the estimated potential production quantities available at each source;

(b) An estimate of the energy content of listed potential biogas and renewable natural gas sources;

(c) An estimate of the range of technologies available to this state for renewable natural gas production by conversion technologies such as anaerobic digestion and thermal gasification; and

(d) A list of the existing biogas production sites in this state that includes:

(A) The location of each site; and

(B) An assessment of the supply-chain infrastructure associated with the site.

(3) The department shall utilize the inventory required by this section, and any other relevant information as considered necessary by the department, to develop and periodically revise an estimate of:

(a) The potential quantity of renewable natural gas that could be produced in this state and delivered for use:

(A) As a transportation fuel in the form of compressed natural gas or liquefied natural gas; and

(B) By residential, commercial and industrial consumers of natural gas;

(b) The potential for the use of renewable natural gas in this state to reduce greenhouse gas emissions;

(c) The potential for renewable natural gas in this state to improve air quality; and

(d) The technical, market, policy and regulatory barriers to developing and utilizing renewable natural gas in this state.

(4) The department shall appoint an advisory committee to assist in developing, maintaining and periodically updating the inventory required by this section. The committee must include but not be limited to persons familiar with the renewable natural gas industry. The committee shall make recommendations to the department:

(a) Regarding the identification and removal of barriers to producing and utilizing biogas and renewable natural gas in this state as a means toward providing the greatest feasible reductions in greenhouse gas emissions and improvements in air quality;

(b) On establishing policies to promote renewable natural gas; and

(c) On any other matters related to this section, as requested by the department. [2017 c.328 §1]

Note: 469.137 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.140 [1975 c.606 §48; repealed by 1977 c.794 §6]

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

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

(3) As used in this section "energy supplier" means a publicly owned utility or fuel oil dealer which supplies electricity or fuel oil for the space heating of dwellings. [1977 c.887 §13]

469.155 Advisory energy conservation standards for dwellings; rules. (1) As used in this section:

(a) "Dwelling" means real or personal property inhabited as the principal residence of an owner or renter. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and multiple unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 174.101.

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

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

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

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

(3) The director shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards. [1981 c.565 §2; 1987 c.158 §97; 1989 c.648 §65; 2003 c.186 §20; 2019 c.422 §33]

469.157 [1981 c.746 §7; repealed by 1995 c.79 §287]

469.160 [1977 c.196 §2; 1979 c.670 §3; 1981 c.894 §4; 1983 c.346 §1; 1983 c.768 §2; 1987 c.492 §2; 1989 c.880 §1; 1995 c.746 §19a; 1997 c.534 §4; 1999 c.510 §1; 2001 c.584 §5; 2005 c.832 §6; 2007 c.843 §28; 2011 c.730 §70; renumbered 469B.100 in 2011]

469.161 Single resource for providing information and assistance related to energy efficiency incentives and programs. (1) The State Department of Energy shall create a single resource that provides to interested persons information, technical assistance and assistance in identifying contractors and financing options, related to available energy efficiency incentives and programs.

(2) The department shall coordinate information and data exchanges between federal and state agencies, private and public utility providers, and energy efficiency incentive or program providers as may be necessary to:

(a) Create and maintain the single resource described under subsection (1) of this section; and

(b) Support the implementation and reporting requirements of available energy efficiency incentives and programs.

(3) The department may contract with a nonprofit or other entity as may be necessary to carry out the provisions of this section.

(4) Entities that exchange, compile or maintain information or data under this section or that are involved in carrying out the provisions of this section shall use best practices to maintain the confidentiality and security of the information and data as required by federal and state law, including the Oregon Consumer Information Protection Act and ORS 192.355. [2023 c.562 §9]

Note: 469.161 to 469.183 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.165 [1977 c.196 §3; 1989 c.880 §2; 1997 c.534 §5; 2005 c.832 §7; 2007 c.843 §30; 2011 c.730 §70a; renumbered 469B.103 in 2011]

469.166 Program to assist environmental justice communities. The State Department of Energy shall establish a program to provide assistance related to energy projects and activities to environmental justice communities, as defined in ORS 469A.400. At a minimum, the program must provide environmental justice communities with information regarding:

(1) Funding resources.

(2) Technical assistance.

(3) Other support that may be available. [2023 c.562 §1]

Note: See note under 469.161.

469.170 [1977 c.196 §4; 1979 c.670 §4; 1981 c.894 §5; 1983 c.346 §2; 1987 c.492 §3; 1989 c.880 §3; 1995 c.746 §20; 1997 c.534 §6; 1999 c.21 §78; 2001 c.584 §6; 2003 c.186 §21; 2005 c.832 §8; 2007 c.843 §31; 2011 c.730 §71; renumbered 469B.106 in 2011]

469.171 [1999 c.765 §2; renumbered 469B.109 in 2011]

469.172 [1989 c.880 §7; 1995 c.746 §20a; 1999 c.510 §2; 2001 c.584 §7; 2005 c.832 §9; 2007 c.843 §32; 2011 c.730 §72; renumbered 469B.112 in 2011]

469.175 [1977 c.196 §5; 1979 c.670 §5; 1981 c.894 §6; 1983 c.346 §3; 1987 c.492 §4; repealed by 1989 c.880 §4 (469.176 enacted in lieu of 469.175)]

469.176 [1989 c.880 §5 (enacted in lieu of 469.175); 1997 c.534 §7; 2005 c.832 §10; 2007 c.843 §33; renumbered 469B.115 in 2011]

469.180 [1977 c.196 §6; 1979 c.670 §6; 1981 c.894 §7; 1983 c.346 §4; 1987 c.492 §5; 1989 c.880 §8; 1993 c.684 §1; 1997 c.534 §10; 2003 c.186 §22; 2005 c.832 §11; 2007 c.843 §34; renumbered 469B.118 in 2011]

469.181 Definitions for ORS 469.181 and 469.183. As used in this section and ORS 469.183:

(1)(a) "Green electrolytic hydrogen" means hydrogen produced through electrolysis using:

(A) A renewable energy source as defined in ORS 469A.005;

(B) Nonemitting electricity that is not derived from a fossil fuel; or

(C) Electricity that has a carbon intensity that is equal to or less than the average carbon intensity of the electricity served in this state in the calendar year in which construction or expansion of the facility that produces the green electrolytic hydrogen began.

(b) "Green electrolytic hydrogen" does not include hydrogen manufactured using any conversion technology or steam reforming that produces hydrogen from a fossil fuel feedstock.

(2) "Nonemitting electricity" has the meaning given that term in ORS 469A.400.

(3) "Renewable hydrogen" means hydrogen produced using:

(a) A renewable energy source as defined in ORS 469A.005;

(b) Nonemitting electricity that is not derived from a fossil fuel; or

(c) Electricity that has a carbon intensity that is equal to or less than the average carbon intensity of the electricity served in this state in the calendar year in which construction or expansion of the facility that

produces the renewable hydrogen began. [2023 c.98 §1]

Note: See note under 469.161.

469.183 Accelerating adoption of green electrolytic and renewable hydrogen fuels. To support the state's transition to clean energy by accelerating the production, distribution and end use of renewable hydrogen and green electrolytic hydrogen fuels, the State Department of Energy shall:

(1) Where appropriate, seek and apply for federal funds for which the state is eligible, and support other applications for federal funds, that may be used to support the development and deployment of renewable hydrogen and green electrolytic hydrogen in this state; and

(2) Provide education and increase awareness regarding renewable hydrogen and green electrolytic hydrogen for federally recognized Indian tribes, local governments, other state agencies, federal agencies, private entities, this state's four-year public institutions of higher education, labor unions, environmental justice communities and other relevant entities. [2023 c.98 §2]

Note: See note under 469.161.

469.185 [1979 c.512 §3; 1981 c.894 §17; 1985 c.745 §1; 1991 c.711 §1; 1997 c.534 §11; 1997 c.656 §5; 1999 c.365 §1; 1999 c.623 §4; 1999 c.765 §4; 2001 c.583 §4; 2007 c.591 §1; 2007 c.843 §16; 2010 c.76 §4; 2011 c.474 §25; renumbered 469B.130 in 2011]

469.190 [1979 c.512 §2; renumbered 469B.133 in 2011]

469.195 [1979 c.512 §4; 1985 c.745 §2; 2010 c.76 §6; renumbered 469B.136 in 2011]

469.197 [2007 c.843 §22; 2008 c.29 §1; 2010 c.76 §7; 2011 c.474 §26; renumbered 469B.139 in 2011]

469.200 [1979 c.512 §5; 1981 c.894 §18; 1985 c.745 §3; 1987 c.158 §98; 1991 c.711 §3; 1993 c.684 §2; 1995 c.746 §15a; 1997 c.534 §12; 1997 c.656 §6a; 1999 c.365 §2; 2003 c.186 §23; 2007 c.843 §17; 2008 c.29 §2; 2010 c.76 §§8,9,9a; 2011 c. 474 §§27,28,29; renumbered 469B.142 in 2011]

469.205 [1979 c.512 §6; 1981 c.894 §19; 1985 c.745 §4; 1989 c.765 §7; 1991 c.711 §2; 1993 c.684 §3; 1995 c.746 §16; 1997 c.656 §7; 1999 c.623 §5; 1999 c.765 §5; 2001 c.583 §5; 2001 c.660 §2; 2003 c.186 §24; 2007 c.843 §18; 2008 c.29 §3; 2010 c.76 §10; 2011 c.474 §30; renumbered 469B.145 in 2011]

469.206 [1997 c.534 §9; 2001 c.583 §6; 2007 c.843 §19; 2009 c.288 §4; renumbered 469B.148 in 2011]

469.207 [1985 c.745 §9; 1993 c.684 §4; 1995 c.746 §16a; 2001 c.583 §7; renumbered 469B.151 in 2011]

469.208 [1993 c.684 §6; renumbered 469B.154 in 2011]

469.210 [1979 c.512 §7; 1995 c.746 §17; 1997 c.656 §8; 1999 c.365 §3; 2001 c.583 §7a; 2003 c.186 §25; 2010 c.76 §11; renumbered 469B.157 in 2011]

469.215 [1979 c.512 §8; 1981 c.894 §20; 1985 c.745 §5; 1989 c.765 §8; 1991 c.711 §4; 1995 c.746 §18; 1997 c.656 §9; 1999 c.365 §4; 1999 c.623 §6; 2001 c.583 §8; 2001 c.660 §1b; 2003 c.186 §26; 2007 c.843 §20; 2008 c.29 §4; 2010 c.76 §12; renumbered 469B.161 in 2011]

469.217 [1985 c.745 §8; renumbered 469B.164 in 2011]

469.220 [1979 c.512 §9; 2010 c.76 §13; 2011 c.693 §3; renumbered 469B.167 in 2011]

469.225 [1979 c.512 §10; 2003 c.186 §27; 2008 c.29 §5; 2010 c.76 §14; 2011 c.474 §31; renumbered 469B.169 in 2011]

469.228 [1989 c.926 §1; 1991 c.67 §134; 1991 c.641 §5; 1993 c.617 §1; repealed by 1999 c.880 §2]

ENERGY EFFICIENCY STANDARDS

469.229 Definitions for ORS 469.229 to 469.261. As used in ORS 469.229 to 469.261, unless the context clearly requires otherwise:

(1) "À la carte charger" means a battery charger that is individually packaged without batteries, including a multiport charger or a charger with multivoltage capability.

(2) "Ballast" means a device used with an electric discharge lamp to obtain necessary circuit conditions for starting and operating the lamp.

(3) "Battery" or "battery pack" means an assembly of one or more rechargeable cells intended to provide electrical energy to a product, in one of the following forms:

(a) A detachable battery that is contained in an enclosure separate from the product and that is intended to be removed or disconnected from the product for charging; or

(b) An integral battery that is contained within the product and is not removed from the product for charging.

(4) "Battery analyzer" means a device:

(a) Used to analyze and report a battery's performance and overall condition;

(b) Capable of being programmed and performing service functions to restore capability in deficient batteries; and

(c) Not intended or marketed to be used on a daily basis for the purpose of charging batteries.

(5) "Battery backup" or "uninterruptible power supply charger (UPS)" means a small battery charger system that is voltage and frequency dependent (VFD) and designed to provide power to an end-use product in the event of a power outage, including a UPS as defined in International Electrotechnical Commission (IEC) publication 62040-3 (March 2011 edition), where the output of the VFD UPS is dependent on changes in AC input voltage and frequency and is not intended to provide additional corrective functions, such as those relating to the use of tapped transformers.

(6)(a) "Battery charger system" means a battery charger coupled with its batteries, including:

(A) Electronic devices with a battery that are normally charged from AC line voltage or DC input voltage through an internal or external power supply and a dedicated battery charger;

(B) The battery and battery charger components of devices that are designed to run on battery power during part or all of their operations;

(C) Dedicated battery systems primarily designed for electrical or emergency backup; and

(D) Devices whose primary function is to charge batteries, along with the batteries the devices are designed to charge, including chargers for power tool batteries and chargers for automotive, AA, AAA, C, D, or nine-volt rechargeable batteries and chargers for batteries used in larger industrial motive equipment and à la carte chargers.

(b) "Battery charger system" does not mean a battery charger:

(A) Used to charge a motor vehicle that is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells or other portable sources of electrical current, including a nonelectrical source of power designed to charge batteries and components thereof, except for battery chargers for forklifts, electric personal assistive mobility devices or low-speed vehicles;

(B) That is classified as a Class II or Class III device for human use under the Federal Food, Drug, and Cosmetic Act, as in effect on January 1, 2014, and that requires listing and approval as a medical device;

(C) Used to charge a battery or batteries in an illuminated exit sign, including those products that are a combination illuminated exit sign and emergency egress lighting;

(D) With input that is three phases of line-to-line 300 volts root mean square or more and is designed for a stationary power application;

(E) That is a battery analyzer;

(F) That is a voltage independent or voltage and frequency independent uninterruptible power supply as defined in International Electrotechnical Commission (IEC) publication 62040-3 (March 2011 edition); or

(G) That is contained completely within a larger product and that provides power for data storage or for continuity within volatile cache or memory systems, that maintains information for system use and that is not capable of powering full operation of the larger product when external AC line voltage is removed.

(c) The charging circuitry of battery charger systems may or may not be located within the housing of the end-use device. In many cases, the battery may be charged with a dedicated external charger and power supply combination that is separate from the device that runs on power from the battery.

(7) "Battery maintenance mode" means the mode of operation when the battery charger system is connected to the main electricity supply and the battery is fully charged and connected to the charger.

(8) "Bottle-type water dispenser" and "water cooler" have the meanings given those terms by the Director of the State Department of Energy by rule.

(9) "Charge return factor" means the number of ampere-hours returned to the battery during the charge cycle divided by the number of ampere-hours delivered by the battery during discharge.

(10) "Combination television" means a system in which a television or television monitor and an additional device or devices, including a video cassette recorder, are combined into a single unit in which the additional device or devices are included in the television casing.

(11) "Commercial dishwasher" has the meaning given that term by the director by rule.

(12) "Commercial fryer" has the meaning given that term by the director by rule.

(13)(a) "Commercial hot food holding cabinet" means an appliance that is a heated, fully-enclosed compartment with one or more solid doors and is designed to maintain the temperature of hot food that has been cooked in a separate appliance.

(b) "Commercial hot food holding cabinet" does not include heated glass merchandising cabinets, drawer warmers or cook-and-hold appliances.

(14) "Commercial steam cooker" has the meaning given that term by the director by rule.

(15)(a) "Compact audio product," also known as a mini, mid, micro or shelf audio system, means an integrated audio system encased in a single housing that includes an amplifier and radio tuner and attached or separable speakers that can reproduce audio from one or more of the following media:

(A) Magnetic tape;

(B) Compact disc;

(C) DVD; or

(D) Flash memory.

(b) "Compact audio product" does not include products that can be independently powered by internal batteries, have a powered external satellite antenna or can provide a video output signal.

(16) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(17) "Component television" means a television composed of two or more separate components, including separate display device and tuner, marketed as a television under one model or system designation and having one or more power cords.

(18) "Computer" has the meaning given that term by the director by rule.

(19) "Computer monitor" has the meaning given that term by the director by rule.

(20) "Digital versatile disc" or "DVD" means a laser-encoded plastic medium capable of storing a large amount of digital audio, video and computer data.

(21)(a) "Digital versatile disc player" or "digital versatile disc recorder" means a commercially available electronic product encased in a single housing that includes an integral power supply and for which the sole purpose is, respectively, the decoding and the production or recording of digitized video signal on a DVD.

(b) "Digital versatile disc recorder" does not include models that have an electronic programming guide function that provides an interactive, on-screen menu of television listings and downloads program information from the vertical blanking interval of a regular television signal.

(22) "Electric storage water heater" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(23) "Electronic programming guide" means an application that provides an interactive, on-screen menu of television listings that downloads program information from the vertical blanking interval of a regular television signal.

(24) "Faucet" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(25) "High color-rendering index fluorescent lamp" and "high CRI fluorescent lamp" have the meanings given those terms by the director by rule.

(26) "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.

(27)(a) "High light output double-ended quartz halogen lamp" means a lamp that:

(A) Is designed for general outdoor lighting purposes;

(B) Contains a tungsten filament;

(C) Has a rated initial lumen value of greater than 6,000 and less than 40,000 lumens;

(D) Has at each end a recessed single contact, R7s base;

(E) Has a maximum overall length between four and 11 inches;

(F) Has a nominal diameter less than three-fourths inch (T6); and

(G) Is designed to be operated at a voltage between 110 volts and 200 volts or is designed to be operated at a voltage between 235 volts and 300 volts.

(b) "High light output double-ended quartz halogen lamp" does not mean a lamp that is:

(A) A tubular quartz infrared heat lamp; or

(B) Marked and marketed as a stage and studio lamp with a rated life of 500 hours or less.

(28) "Inductive charger system" means a small battery charger system that transfers power to the charger through magnetic or electric induction.

(29) "Kitchen faucet" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(30) "Kitchen replacement aerator" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(31)(a) "Large battery charger system" means a battery charger system with a rated input power of more than two kilowatts.

(b) "Large battery charger system" does not mean a battery charger system for golf carts.

(32) "Lavatory faucet" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(33) "Lavatory replacement aerator" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(34) "Multiport charger" means a battery charger that is capable of simultaneously charging two or more batteries and that may have multivoltage capability, allowing two or more batteries of different voltages to charge simultaneously.

(35) "No battery mode" means the mode of operation in which a battery charger is connected to the main electricity supply and the battery is not connected to the charger.

(36) "Plumbing fitting" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(37) "Portable electric spa" has the meaning given that term by the director by rule.

(38) "Public lavatory faucet" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(39) "Power conversion efficiency" means the instantaneous DC output power of the battery charger system divided by the simultaneous utility AC input power.

(40) "Pressure regulator" means a device that maintains constant operating pressure immediately downstream from the device, given higher pressure upstream.

(41) "Residential ventilating fan" has the meaning given that term by the director by rule.

(42) "Selected input mode" means the input port selected that the television uses as a source to produce a visible or audible output and that is required for televisions with multiple possible inputs, including coaxial, composite, S-Video, HDMI and component connectors.

(43) "Showerhead" has the meaning given that term by the director by rule, after consultation with the State Plumbing Board.

(44) "Small battery charger system" means:

(a) A battery charger system with a rated input power of two kilowatts or less.

(b) A golf cart battery charger system, regardless of input power or battery capacity.

(45) "Spray sprinkler body" means the exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

(46)(a) "Television" means an analog or digital device, including a combination television, a television monitor, a component television and any unit marketed as a television, designed for the display and reception of a terrestrial, satellite, cable or Internet protocol or other broadcast or recorded transmission of analog or digital video or audio signals.

(b) "Television" does not mean a computer monitor.

(47) "Television monitor" means a television that does not have an internal tuner, receiver or playback device.

(48) "Television standby-passive mode" means the mode of operation in which the television is connected to a power source, produces neither sound nor picture but can be switched into another mode with the remote control unit or via an internal signal.

(49) "USB charger system" means a small battery charger system that uses a universal serial bus (USB) connector as the only power source to charge the battery, and is packaged with an external power supply rated with a voltage output of five volts and a power output of 15 watts or less. [2005 c.437 §1; 2007 c.375 §1; 2007 c.649 §1; 2013 c.418 §§1,2; 2017 c.295 §1; 2021 c.108 §1; 2022 c.4 §1]

Note: 469.229 to 469.261 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.230 [1989 c.926 §3; repealed by 1999 c.880 §2]

469.232 [1989 c.926 §§4,10; 1993 c.617 §2; 1997 c.249 §165; 1997 c.632 §9; repealed by 1999 c.880 §2]

469.233 Energy efficiency standards. The following minimum energy efficiency standards for new products are established:

(1) Bottle-type water dispensers or water coolers manufactured on or after January 1, 2022, and included in the scope of the United States Environmental Protection Agency's "Energy Star Program Requirements Product Specification for Water Coolers, Version 2.0," must have an "on mode with no water draw" energy consumption less than or equal to the following values as measured in accordance with the test requirements of that specification:

(a) 0.16 kilowatt-hours per day for cold-only units and cook and cold units;

(b) 0.87 kilowatt-hours per day for storage type hot and cold units; and

(c) 0.18 kilowatt-hours per day for on demand hot and cold units.

(2) Commercial hot food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the "Idle Energy Rate-dry Test" in ASTM F2140-01, "Standard Test Method for Performance of Hot Food Holding Cabinets" published by ASTM International. Interior volume shall be measured in accordance with the method shown in the United States Environmental Protection Agency's "Energy Star Program Requirements for Commercial Hot Food Holding Cabinets," as in effect on August 15, 2003.

(3) Compact audio products may not use more than two watts in standby passive mode for those without a permanently illuminated clock display and four watts in standby passive mode for those with a permanently illuminated clock display, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002(E), "Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment."

(4) Digital versatile disc players and digital versatile disc recorders may not use

more than three watts in standby passive mode, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002(E), "Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment."

(5) Portable electric spas manufactured on or after January 1, 2022, must meet the requirements of the American National Standards Institute's "American National Standard for Portable Electric Spa Energy Efficiency (ANSI/APSP/ICC-14 2019)."

(6) A television manufactured on or after January 1, 2014, must automatically enter television standby-passive mode after a maximum of 15 minutes without video or audio input on the selected input mode. A television must enter television standby-passive mode when turned off with the remote control unit or via an internal signal. The peak luminance of a television in home mode, or in the default mode as shipped, may not be less than 65 percent of the peak luminance of the retail mode or the brightest selectable preset mode of the television. A television must meet the standards in the following table:

Viewable Screen Area	Television Standby-passive Mode Power Usage (Watts)	Maximum On Mode Power Usage (P in Watts, A is Viewable Screen area)	Minimum Power Factor for (P ≥ 100W)
< 1400 sq. in	1 W	P ≤ 0.12 x A + 25	0.9
≥ 1400 sq. in	3 W	NA	NA

(7)(a) Large battery charger systems manufactured on or after January 1, 2014, must meet the minimum efficiencies in the following table:

Standards for Large Battery Charger Systems

Performance Parameter		Standard
Charge Return Factor	100 percent Depth of Discharge	Crf ≤ 1.10
	80 percent Depth of Discharge	Crf ≤ 1.10
	40 percent Depth of Discharge	Crf ≤ 1.15
Power Conversion Efficiency		≥ 89 percent
Power Factor		≥ 0.90
Battery Maintenance Mode Power $+0.0012E_b$ W (E_b = battery capacity of tested battery)		≤ 10
No Battery Mode Power		≤ 10 W

(b)(A) As described in subparagraph (B) of this paragraph, inductive charger systems and small battery charger systems must meet the minimum energy efficiency standards in the following table:

Standards for Inductive and Small Battery Charger Systems

Performance Parameter	Standard
Maximum 24-hour charge and maintenance energy (Wh) (E_b = capacity of all batteries in ports and N = number of charger ports)	For E_b of 2.5 Wh or less: 16 x N For E_b > 2.5 Wh and ≤ 100 Wh: 12 x N+1.6E_b For E_b > 100 Wh and ≤ 1000 Wh: 22 x N+1.5E_b For E_b > 1000 Wh: 36.4 x N + 1.486E_b
Battery Maintenance Mode Power and No Battery Mode Power (W) Power Factor (E_b = capacity of all batteries in ports and N = number of charger ports)	The sum of battery maintenance mode power and no battery mode power must be less than or equal to: 1 x N+0.0021xE_b

(B) The requirements in subparagraph (A) of this paragraph must be met by:

(i) Small battery charger systems for sale at retail that are not USB charger systems with a battery capacity of 20 watt-hours or more and that are manufactured on or after January 1, 2014.

(ii) Small battery charger systems for sale at retail that are USB charger systems with a battery capacity of 20 watt-hours or more and that are manufactured on or after January 1, 2014.

(iii) Small battery charger systems that are not sold at retail that are manufactured on or after January 1, 2017.

(iv) Inductive charger systems manufactured on or after January 1, 2014, unless the inductive charger system uses less than one watt in battery maintenance mode, less than one watt in no battery mode and an average of one watt or less over the duration of the charge and battery maintenance mode test.

(v) Battery backups and uninterruptible power supplies, manufactured on or after January 1, 2014, for small battery charger systems for sale at retail, which may not consume more than 0.8+ (0.0021xE_b) watts in battery maintenance mode, where (E_b) is the battery capacity in watt-hours.

(vi) Battery backups and uninterruptible power supplies, manufactured on or after January 1, 2017, for small battery charger systems not sold at retail, which may not consume more than 0.8+ (0.0021xE_b) watts in battery maintenance mode, where (E_b) is the battery capacity in watt-hours.

(C) The requirements in subparagraph (A) of this paragraph do not need to be met by an à la carte charger that is:

(i) Provided separately from and subsequent to the sale of a small battery charger system described in this paragraph;

(ii) Necessary as a replacement for, or as a replacement component of, a small battery charger system; and

(iii) Provided by a manufacturer directly to a consumer or to a service or repair facility.

(8) A high light output double-ended quartz halogen lamp manufactured on or after January 1, 2016, must have a minimum efficiency of:

(a) 27 lumens per watt for lamps with a minimum rated initial lumen value of greater than 6,000 lumens and a maximum initial lumen value of 15,000 lumens; or

(b) 34 lumens per watt for lamps with a rated initial lumen value of greater than 15,000 and less than 40,000 lumens.

(9) High CRI fluorescent lamps manufactured on or after January 1, 2023, must meet or exceed the lamp efficacy standards contained in 10 C.F.R. 430.32(n)(4), as in effect on January 1, 2020.

(10) Computers and computer monitors manufactured on or after January 1, 2022, must meet the requirements contained in the California Code of Regulations, Title 20, section 1605.3(v), as adopted on May 10, 2017, and amended on November 8, 2017.

(11) The following plumbing fittings manufactured on or after January 1, 2022, must meet the requirements in the California Code

of Regulations, Title 20, section 1605.3(h), as in effect on January 1, 2020:

(a) Lavatory faucets and lavatory replacement aerators;

(b) Kitchen faucets and kitchen replacement aerators;

(c) Public lavatory faucets; and

(d) Showerheads.

(12) Commercial fryers manufactured on or after January 1, 2022, and included in the scope of the United States Environmental Protection Agency's "Energy Star Program Requirements Product Specification for Commercial Fryers, Version 2.0," must meet the qualification criteria, testing requirements and other requirements of that specification.

(13) Commercial dishwashers manufactured on or after January 1, 2022, and included in the scope of the United States Environmental Protection Agency's "Energy Star Program Requirements Product Specification for Commercial Dishwashers, Version 2.0," must meet the qualification criteria, testing requirements and other requirements of that specification.

(14) Commercial steam cookers manufactured on or after January 1, 2022, and included in the scope of the United States Environmental Protection Agency's "Energy Star Program Requirements Product Specification for Commercial Steam Cookers, Version 1.2," must meet the qualification criteria, testing requirements and other requirements of that specification.

(15) Residential ventilating fans manufactured on or after January 1, 2022, and included in the scope of the United States Environmental Protection Agency's "Energy Star Program Requirements Product Specification for Residential Ventilating Fans, Version 3.2," must meet the qualification criteria, testing requirements and other requirements of that specification.

(16)(a) Electric storage water heaters manufactured on or after January 1, 2022, must have a modular demand response communications port compliant with:

(A) The March 2018 version of the ANSI/CTA-2045-A communication interface standard or a standard determined by the Director of the State Department of Energy to be equivalent; and

(B) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

(b) A request that the director determine that a communication interface standard is equivalent to the March 2018 version of the ANSI/CTA-2045-A communication interface standard under paragraph (a)(A) of this subsection must be made in the manner prescribed by the director by rule.

(17) Spray sprinkler bodies manufactured on or after January 1, 2023, and included in the scope of the United States Environmental Protection Agency's "WaterSense Specification for Spray Sprinkler Bodies, Version 1.0," must include an integral pressure regulator and meet the water efficiency and performance criteria and other requirements of that specification. [2005 c.437 §5; 2007 c.375 §§2,3; 2007 c.649 §2; 2013 c.418 §§3,4; 2015 c.276 §§1,2; 2021 c.108 §2; 2022 c.4 §2]

Note: See note under 469.229.

469.234 [1989 c.926 §§5,9; 1993 c.617 §4; repealed by 1999 c.880 §2]

469.235 [2007 c.375 §4; repealed by 2021 c.108 §7]

469.236 [1989 c.926 §6; repealed by 1999 c.880 §2]

469.238 Sale of products not meeting standards prohibited; exemptions. (1) Except as provided in subsection (2) of this section, a person may not sell or offer for sale a new bottle-type water dispenser, commercial hot food holding cabinet, compact audio product, digital versatile disc player, digital versatile disc recorder, portable electric spa, television, inductive charger system, large battery charger system, small battery charger system, high light output double-ended quartz halogen lamp, high color-rendering index fluorescent lamp, computer, computer monitor, lavatory faucet, kitchen faucet, public lavatory faucet, lavatory replacement aerator, kitchen replacement aerator, showerhead, commercial fryer, commercial steam cooker, commercial dishwasher, residential ventilation fan, electric storage water heater or spray sprinkler body unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may sell or offer for sale a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Manufactured in this state and sold outside this state;

(b) Manufactured outside this state and sold at wholesale inside this state for final retail sale and installation outside this state;

(c) Installed in a mobile or manufactured home at the time of construction; or

(d) Designed expressly for installation and use in recreational vehicles. [2005 c.437 §§2,3,4; 2007 c.649 §3; 2013 c.418 §§5,6; 2021 c.108 §3; 2022 c.4 §3]

Note: See note under 469.229.

469.239 Installation of products not meeting standards prohibited; exemptions. (1) Except as provided in subsection (2) of this section, a person may not

install a new bottle-type water dispenser, commercial hot food holding cabinet, compact audio product, digital versatile disc player, digital versatile disc recorder, portable electric spa, television, inductive charger system, large battery charger system, small battery charger system, high light output double-ended quartz halogen lamp, high color-rendering index fluorescent lamp, computer, computer monitor, commercial fryer, commercial steam cooker, commercial dishwasher, residential ventilation fan or spray sprinkler body for compensation unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may install a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Installed in a mobile or manufactured home at the time of construction; or

(b) Designed expressly for installation and use in recreational vehicles. [2005 c.437 §6; 2005 c.437 §7; 2007 c.649 §4; 2013 c.418 §§7,8; 2021 c.108 §4; 2022 c.4 §4]

Note: See note under 469.229.

469.240 [1989 c.926 §§11,12; repealed by 1999 c.880 §2]

469.241 [1993 c.617 §22; repealed by 1999 c.880 §2]

469.242 [1993 c.617 §20; repealed by 1999 c.880 §2]

469.243 [1993 c.617 §21; repealed by 1999 c.880 §2]

469.244 [1989 c.926 §§16,25; repealed by 1993 c.617 §28]

469.245 [1993 c.617 §19; repealed by 1999 c.880 §2]

469.246 [1989 c.926 §§13,18; 1991 c.67 §135; 1993 c.617 §5; repealed by 1999 c.880 §2]

469.247 [1993 c.617 §16; repealed by 1999 c.880 §2]

469.248 [1989 c.926 §39; 1991 c.67 §136; 1993 c.617 §6; repealed by 1999 c.880 §2]

469.249 [1993 c.617 §18; repealed by 1999 c.880 §2]

469.250 [1989 c.926 §§7,8; 1991 c.67 §137; repealed by 1999 c.880 §2]

469.252 [1989 c.926 §§14,15; repealed by 1993 c.617 §28]

469.253 [1993 c.617 §17; repealed by 1999 c.880 §2]

469.254 [1989 c.926 §19; 1993 c.617 §7; 1997 c.838 §6; repealed by 1999 c.880 §2]

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

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

(3) A manufacturer of a product regulated pursuant to ORS 469.229 to 469.261 shall certify to the State Department of Energy that the products are in compliance with the minimum energy efficiency standards specified in ORS 469.233. The department shall establish rules governing the certification of these products and may coordinate with the certification and testing programs of other states and federal agencies with similar standards.

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

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

(c) The department shall waive marking, labeling or tagging requirements for products marked, labeled or tagged in compliance with federal requirements or for products certified pursuant to subsection (3) of this section, unless the department determines that state marking, labeling or tagging is required to provide adequate energy efficiency information to the consumer. [2005 c.437 §9; 2007 c.375 §6; 2007 c.649 §5a; 2021 c.108 §5]

Note: See note under 469.229.

469.256 [1989 c.926 §29; repealed by 1993 c.617 §29]

469.258 [1989 c.926 §20; 1991 c.641 §6; repealed by 1999 c.880 §2]

469.259 [1991 c.641 §2; 1993 c.617 §8; repealed by 1999 c.880 §2]

469.260 [1989 c.926 §21; 1991 c.67 §138; repealed by 1999 c.880 §2]

469.261 Department to review standards; rules; postponement of operative dates of standards; application for waiver of federal preemption. (1) The State Department of Energy shall periodically review the minimum energy efficiency standards specified in ORS 469.233.

(2)(a) After the review pursuant to subsection (1) of this section and notwithstanding ORS 469.233, the Director of the State Department of Energy may adopt rules to update the minimum energy efficiency standards specified in ORS 469.233 if the director

determines that the standards need to be updated:

(A) To promote energy conservation in the state;

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

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

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

(i) Adjoining states with similar minimum energy efficiency standards have postponed the operative date of their corresponding minimum energy efficiency standards; or

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

(B)(i) The director may not postpone the operative date of a minimum energy efficiency standard under subparagraph (A) of this paragraph for more than one year.

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

(c) After the review pursuant to subsection (1) of this section, the director may adopt rules to establish new minimum energy efficiency standards if the director determines that new standards are needed:

(A) To promote energy conservation in the state;

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

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

(d) If the director adopts rules under paragraph (a) of this subsection to update the minimum energy efficiency standards specified in ORS 469.233 or under paragraph (c) of this subsection to establish new minimum energy efficiency standards:

(A) The rules may not take effect until one year following their adoption by the director; and

(B) The Governor shall cause to be introduced at the next Legislative Assembly a bill to conform the statutory minimum energy efficiency standards to the minimum energy efficiency standards adopted by the director by rule.

(3) Notwithstanding ORS 469.229 and 469.233 and the requirements of subsection (2) of this section, and after consultation with the appropriate advisory boards to the Department of Consumer and Business Services, the director may adopt rules to update the minimum energy efficiency standards or test methods specified in ORS 469.233 to a more recent version, including any product definitions associated with the standard or test method, if the director determines that the standard or test method needs to be updated to maintain or improve consistency with other comparable standards in other states. Rules adopted under this subsection shall take effect on or after the effective date of a similar standard or test method adopted by another state.

(4) If the director determines that implementation of a state minimum energy efficiency standard requires a waiver of federal preemption, the director shall apply for a waiver of federal preemption pursuant to 42 U.S.C. 6297(d). [2005 c.437 §8; 2007 c.375 §7; 2007 c.649 §6a; 2021 c.108 §6]

Note: See note under 469.229.

469.262 [1989 c.926 §24; repealed by 1999 c.880 §2]

469.267 [1989 c.926 §26; 1993 c.617 §9; repealed by 1999 c.880 §2]

469.269 [1989 c.926 §27; 1993 c.617 §10; repealed by 1999 c.880 §2]

469.270 [1989 c.926 §28; 1991 c.67 §139; repealed by 1993 c.617 §29]

469.274 [1989 c.926 §§31,32; 1991 c.641 §7; 1993 c.617 §11; repealed by 1999 c.880 §2]

ENERGY PERFORMANCE STANDARDS FOR COVERED COMMERCIAL BUILDINGS

469.275 Definitions for ORS 469.275 to 469.291. As used in ORS 469.275 to 469.291:

(1)(a) "Agricultural building" means a structure that is used for:

(A) Storing, maintaining or repairing farm or forestry machinery and equipment;

(B) Raising, harvesting and selling crops or forest products;

(C) Feeding, breeding, managing and selling livestock, poultry, fur-bearing animals or honeybees or the produce of livestock, poultry, fur-bearing animals or honeybees;

(D) Dairying and selling dairy products; or

(E) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination of agricultural, horticul-

tural or animal husbandry uses, including preparing and storing produce raised on the farm for human use and animal use, preparing, processing and storing agricultural and forestry products and goods and disposing, by marketing or otherwise, of farm produce or forest products.

(b) "Agricultural building" does not include:

(A) A dwelling;

(B) A structure used for a purpose other than growing plants in which 10 or more persons are present at any one time;

(C) A structure regulated by the State Fire Marshal pursuant to ORS chapter 476;

(D) A structure used by the public; or

(E) A structure that is subject to the National Flood Insurance Act of 1968 (42 U.S.C 4001 to 4127), as amended, and regulations promulgated under that Act.

(2) "Conditional compliance" means a temporary method that a building owner can use to demonstrate that the building owner has implemented required energy use reduction strategies when the building owner cannot demonstrate full compliance with a required energy use intensity target.

(3) "Covered commercial building" means a tier 1 building or a tier 2 building.

(4) "Eligible building owner" means:

(a) An owner of a tier 1 building that must comply with the standard established in ORS 469.277; or

(b) An owner of a tier 2 building.

(5) "Energy" means:

(a) Electricity, including electricity that is delivered through the electric grid and electricity that is generated at a building site using solar or wind energy resources;

(b) Natural gas;

(c) Steam, hot water or chilled water used for heating or cooling;

(d) Propane;

(e) Fuel oil;

(f) Wood;

(g) Coal; or

(h) Any other fuel that meets a covered commercial building's energy load.

(6) "Energy use intensity" means a measurement that weather normalizes a building's site energy use relative to the building's size, calculated by dividing the total net energy the building consumes in one year by the building's gross floor area, excluding any parking garage, and that is reported in thousands of British thermal units per square foot per year.

(7) "Energy use intensity target" means a net energy use intensity that complies with the standard set forth in ORS 469.277.

(8) "Greenhouse gas" has the meaning given that term in ORS 468A.210.

(9)(a) "Gross floor area" means the total number of square feet of a building, measured from the exterior surfaces of a building's fixed enclosing walls, including all floor space used as offices, lobbies, restrooms, equipment storage areas, mechanical rooms, break rooms and elevator shafts.

(b) "Gross floor area" does not include bays or docks outside the building.

(10) "Net energy use" means the sum of metered and bulk fuel energy that enters a building, minus the sum of metered energy that leaves the building.

(11) "Savings to investment ratio" means the ratio of the total present value of savings to the total present value of costs to implement an energy conservation measure or water conservation measure, in which the numerator of the ratio is the present value of net savings in energy or water or in maintenance costs not related to fuel use or water use that are attributable to the energy conservation measure or water conservation measure and the denominator of the ratio is the present value of the net increase in investment and replacement costs, less the salvage value, of the energy conservation or water conservation measure.

(12) "Semiheated space" means an enclosed space within a covered commercial building that is heated by a heating system with an output the Department of Consumer and Business Services specifies in an applicable specialty code.

(13) "Tier 1 building" means a building in which the sum of gross floor area for hotel, motel and nonresidential use equals or exceeds 35,000 square feet, excluding any parking garage.

(14)(a) "Tier 2 building" means:

(A) A building with gross floor area, excluding any parking garage, that equals or exceeds 35,000 square feet and that is used as a multifamily residential building, a hospital, a school, a dormitory or a university building; or

(B) A building in which the sum of gross floor area for hotel, motel and nonresidential use exceeds 20,000 square feet but does not exceed 35,000 square feet, excluding any parking garage.

(b) "Tier 2 building" does not include a covered commercial building that is classified as a tier 1 building.

(15) "Unconditioned space" means an enclosed space within a covered commercial building that is not:

(a) Heated by a heating system or cooled by a cooling system with output capacities the Department of Consumer and Business Services specifies in an applicable specialty code; or

(b) Indirectly heated or cooled in accordance with standards the department specifies in an applicable specialty code.

(16) "Weather normalized" means a method for modifying a building's energy use intensity in a specific year to account for deviations from the building's energy use intensity as the energy use intensity ordinarily occurs during a year in which the weather does not fluctuate substantially or vary as a consequence of extreme weather events. [2023 c.442 §8]

Note: 469.275 to 469.291 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.276 [1989 c.926 §33; repealed by 1999 c.880 §2]

469.277 Department adoption of performance standards; enforcement; rules. (1)(a) Not later than December 31, 2024, the State Department of Energy, in consultation with the Department of Consumer and Business Services, shall adopt rules that use the American National Standards Institute's standards for Energy Efficiency in Existing Buildings (ANSI/ASHRAE/IES Standard 100) as an initial model for specifying an energy performance standard for covered commercial buildings. In rulemaking proceedings to adopt or update rules under this paragraph, the State Department of Energy shall disclose the sources of information, including the model described in this paragraph and any peer-reviewed science, that the department relies on in developing or updating the energy performance standard. The department shall update the energy performance standard not later than July 1, 2029, and by the same month and day in each successive period of five years.

(b) The energy performance standard described in paragraph (a) of this subsection must:

(A) Comply with the requirements of ORS 469.275 to 469.279;

(B) Seek to maximize reductions in greenhouse gas emissions from covered commercial buildings;

(C) Include energy use intensity targets that apply to specific types of buildings; and

(D) Provide for methods to achieve conditional compliance with an applicable energy use intensity target, which must, at a minimum, require:

(i) Preparing an energy management plan;

(ii) Developing a program for building operations and maintenance that aims at achieving the applicable energy use intensity target;

(iii) Making investments in energy use efficiency measures that aim at achieving the applicable energy use intensity target; and

(iv) Submitting to energy use audits, which may be based upon or linked to ASHRAE Standard 211 audits.

(c) Adoption of the energy performance standard described in paragraph (a) of this subsection does not change eligibility criteria for, or benefits or incentives available under, other programs for energy efficiency demand response.

(2)(a) In adopting the energy performance standard described in subsection (1) of this section, the department:

(A) Shall:

(i) Develop energy use intensity targets that are not more stringent than the average energy use intensity for each covered commercial building occupancy classification, adjusting as necessary for a covered commercial building's unique energy-using features;

(ii) Consider, for the purpose of establishing energy use intensity targets, regional and local data that identifies building energy use, such as existing benchmarking data from the Energy Star program established under 42 U.S.C. 6294a;

(iii) Consider, for the purpose of establishing the energy performance standard, federal and local programs that relate to energy efficiency standards, aligning where possible requirements under the energy performance standard to avoid duplicative work by regulators and eligible building owners;

(iv) Develop energy use intensity targets for two or more climate zones that represent energy use in a year with normal weather;

(v) Develop energy use intensity targets that exclude energy delivered through electric vehicle supply equipment; and

(vi) Adopt a conditional compliance method that:

(I) Requires eligible building owners of covered commercial buildings that do not meet an energy use intensity target to take action to reduce energy use; and

(II) Specifies investment criteria that meet the requirements set forth in paragraph (b) of this subsection and that ensure prog-

ress toward meeting the energy use intensity target; and

(B) May:

(i) Consider building occupancy classifications set forth in ANSI/ASHRAE/IES Standard 100 and the United States Environmental Protection Agency's Energy Star portfolio manager;

(ii) Base energy use intensity targets for recently constructed covered commercial buildings on statewide energy codes that were in effect at the time the covered commercial building was constructed; and

(iii) Require utilities, eligible building owners and other entities to aggregate data for covered commercial buildings that have multiple meters and to report or, as appropriate, provide the aggregated data for reports under ORS 469.279.

(b)(A) Investment criteria the department specifies as part of a conditional compliance method under paragraph (a) of this subsection must:

(i) Ensure that an eligible building owner meets the covered commercial building's energy use intensity target by implementing energy efficiency measures identified in energy use audits; and

(ii) Except as provided in subparagraph (B) of this paragraph, require an eligible building owner to implement an optimized bundle of energy efficiency measures that provide maximum energy savings without resulting in a savings to investment ratio of less than 1.0 or require the eligible building owner to achieve the energy use intensity target by means of an implementation plan that:

(I) Is based on an energy use audit and life-cycle cost analysis from ANSI/ASHRAE/IES Standard 211 that accounts for the period during which a bundle of energy efficiency measures provide savings;

(II) Reflects the eligible building owner's net costs of implementing energy efficiency measures, excluding any costs that utility or government grants cover;

(III) Allows an exclusion of energy efficiency measures that do not pay back the cost of the energy efficiency measure over the useful life of the energy efficiency measure;

(IV) Allows an exclusion of energy efficiency measures that are excluded under subparagraph (B) of this paragraph; and

(V) Allows for phased implementation in which an eligible building owner need not replace a system or equipment before the useful life of the system or equipment ends.

(B) An eligible building owner need not meet an energy efficiency requirement that would compromise the historical integrity of a covered commercial building or part of a covered commercial building that:

(i) Is listed on a state or national register of historic places;

(ii) Is designated as an historic property under a state or local statute, ordinance, rule or other legislative act or a survey conducted under a statute, ordinance, rule or other legislative act;

(iii) Is certified as a contributing resource within a historic district that is listed on a national register or is locally designated as a historic district; or

(iv) A state historic preservation officer or the keeper of the national register of historic places has determined in an opinion or certification is eligible to be listed on the national or state register of historic places either as an individual building or as a building that contributes to a historic district.

(3) The department shall create a database of eligible building owners and covered commercial buildings that are subject to the requirements of ORS 469.275 to 469.279 based on records the department obtains from each county assessor and on other information available to the department.

(4)(a) Not later than July 1, 2025, the department shall notify eligible building owners of the requirement to comply with the provisions set forth for tier 1 buildings in ORS 469.275 to 469.279.

(b) The department may approve an eligible building owner's use of a conditional compliance method in lieu of full compliance with an energy use intensity target if the department determines that the eligible building owner has the capacity to take the actions and make the investments required under the conditional compliance method and otherwise qualifies to use the conditional compliance method.

(5) A municipality, as defined in ORS 455.010, may by ordinance, rule or land use process, adopt an energy performance standard and greenhouse gas emission reduction standards that are more stringent, or that have broader application, than the energy performance standard that the department adopts under this section, provided:

(a) The standard does not exceed the energy efficiency requirements of the state building code for new buildings, except where permitted under ORS 455.040;

(b) The standard does not apply to buildings that are less than six years old, meas-

ured from the date of the building's certificate of occupancy; and

(c) The municipality cooperates with the department in aligning, where practicable, the energy performance standard the municipality adopts with the energy performance standard the department adopts under this section.

(6) Construction work performed to comply with the provisions of ORS 469.275 to 469.279 must comply with all applicable provisions of the state building code and permitting procedures that apply to the construction work.

(7) Except as provided in subsection (5) of this section, this section does not affect or supersede the provisions of ORS 455.040. [2023 c.442 §9]

Note: See note under 469.275.

469.278 [1989 c.926 §34; repealed by 1999 c.880 §2]

469.279 Tier 1 buildings report; exemptions; department support program; correction notice; civil penalties. (1) An eligible building owner of a tier 1 building shall report to the State Department of Energy concerning the eligible building owner's compliance with the energy performance standard described in ORS 469.277. The eligible building owner shall submit the report in accordance with the schedule specified in subsection (4) of this section and shall submit a new report at the end of every successive five-year period. Each report the eligible building owner submits must include documentation that demonstrates that:

(a) The tier 1 building's weather normalized energy use intensity during the previous calendar year is less than or equal to the applicable energy use intensity target;

(b) The eligible building owner is taking actions and making investments in accordance with a conditional compliance method the department approved; or

(c) The tier 1 building is exempt from an energy performance standard that otherwise would apply to the tier 1 building because:

(A) The tier 1 building did not have a certificate of occupancy or temporary certificate of occupancy during all of the 12 months that preceded the date on which the eligible building owner's report is due;

(B) The tier 1 building did not have an actual rate of occupancy that exceeded 50 percent of the tier 1 building's capacity during all of the 12 months that preceded the date on which the eligible building owner's report is due;

(C) The sum of the tier 1 building's gross floor area, minus unconditioned spaces and semiheated spaces, is less than 35,000 square feet;

(D) The primary use for the tier 1 building is manufacturing or another industrial use, as defined in accordance with the following use designations of the International Building Code:

(i) Factory group F; or

(ii) High hazard group H;

(E) The tier 1 building is an agricultural building; or

(F) The eligible building owner or the tier 1 building has undergone or is undergoing financial hardship, as measured in accordance with the following criteria:

(i) Within the 24 months that precede the date on which the eligible building owner's report is due, a city or county listed the tier 1 building on the city's or county's annual tax lien sale list because of arrears in property taxes or water or wastewater charges;

(ii) A court appointed receiver controls the tier 1 building because of financial distress;

(iii) A financial institution owns the tier 1 building because of a borrower's default;

(iv) Within the 24 months that precede the date on which the eligible building owner's report is due, the eligible building owner acquired the tier 1 building by means of a deed in lieu of foreclosure;

(v) The tier 1 building has a senior mortgage that is subject to a notice of default; or

(vi) Other criteria that the department specifies by rule as indicative of financial hardship.

(2) The department shall develop methods and procedures for administering reports that eligible building owners of tier 1 buildings submit to the department under subsection (1) of this section.

(3)(a) The department shall provide a support program to eligible building owners of covered commercial buildings that includes, at a minimum, information and periodic training, technical assistance and telephone and electronic mail support that will assist eligible building owners in complying with the energy performance standard, applicable energy use intensity targets and reporting requirements under ORS 469.275 to 469.279.

(b) As part of the support program described in paragraph (a) of this subsection, the department may encourage eligible building owners to seek for maintenance staff accreditation from the U.S. Green Building Council's Green Janitors Education Program.

(4) An eligible building owner must comply with the energy performance standard

adopted under ORS 469.277 by the following dates:

(a) If the eligible building owner's tier 1 building has a gross floor area of 200,000 square feet or more, not later than June 1, 2028;

(b) If the eligible building owner's tier 1 building has a gross floor area of 90,000 square feet or more but less than 200,000 square feet, not later than June 1, 2029; and

(c) If the eligible building owner's tier 1 building has a gross floor area of 35,000 square feet or more but less than 90,000 square feet, not later than June 1, 2030.

(5)(a) The department shall notify an eligible building owner of a tier 1 building of a failure to comply with ORS 469.275 to 469.279 if the eligible building owner fails to:

(A) Submit the report described in subsection (1) of this section by the date required or in a form and manner the department requires;

(B) Meet the energy performance standard or an applicable energy use intensity target or, in lieu of meeting the standard or target, fails to obtain the department's approval to use a conditional compliance method;

(C) Provide accurate reporting that meets the requirements of ORS 469.275 to 469.279; or

(D) Demonstrate as provided in subsection (1)(c) of this section that the eligible building owner is exempt from an otherwise applicable energy performance standard.

(b) In the notice described in paragraph (a) of this subsection, the department may specify a date by which the eligible building owner of a tier 1 building must correct the failure the department identified in the notice. In addition, the department shall specify the date by which the eligible building owner's failure to comply or failure to correct a lack of compliance will subject the eligible building owner to a civil penalty under subsection (6) of this section.

(c) At an eligible building owner's request, the department shall cite the specific legal authority upon which the department relied as a basis for issuing a notice to the eligible building owner under paragraph (a) of this subsection.

(6)(a) The department may impose a civil penalty as provided in ORS 183.745 upon an eligible building owner of a tier 1 building to which the department issued a notice under subsection (5) of this section if the department determines that the eligible building owner:

(A) Has not complied with the requirement set forth in the notice or has not corrected a lack of compliance by the date for correction that the department specifies in the notice; or

(B) Otherwise violated a provision of ORS 469.275 to 469.279 or a rule the department adopted under ORS 469.275 to 469.279.

(b) A civil penalty the department imposes under paragraph (a) of this subsection may not exceed $5,000 plus an amount for the duration of a continuing violation, which may not exceed a daily amount that the department calculates by multiplying $1 per year per square foot of gross floor area of the tier 1 building that is the subject of the department's notice.

(c) The department shall deposit the proceeds of any civil penalty the department imposes and collects under this subsection into the State Department of Energy Account established under ORS 469.120 and shall allocate the proceeds for the purpose of administering the department's energy efficiency programs. [2023 c.442 §10]

Note: See note under 469.275.

469.280 [1989 c.926 §35; repealed by 1999 c.880 §2]

469.281 Implementation; enforcement; advisory committee; rules. (1) In addition to the energy performance standard the State Department of Energy adopts in accordance with ORS 469.277, the department shall adopt rules to implement ORS 469.275 to 469.279. The rules must:

(a) Ensure timely, accurate and complete reporting of compliance with the requirements of ORS 469.275 to 469.279 from all tier 1 buildings;

(b) Enable the department to effectively enforce the energy performance standard and energy use intensity targets established under ORS 469.275 to 469.279;

(c) Provide means for affected eligible building owners of tier 1 buildings to appeal decisions and enforcement actions of the department that affect the eligible building owner; and

(d) Ensure that an eligible building owner of a tier 1 building is responsible for paying the costs of compliance with ORS 469.275 to 469.279.

(2) Before adopting rules under this section, the department shall establish and consult an advisory committee that includes representatives of eligible building owners, tenants of covered commercial buildings, public utilities, organizations with experience in designing or implementing energy efficiency programs, local governments, organizations that focus on environmental justice and other stakeholders the department identifies as needing representation. The department shall consult with the advisory

committee before amending rules the department adopts under this section. [2023 c.442 §11]

Note: See note under 469.275.

469.282 [1989 c.926 §36; repealed by 1999 c.880 §2]

469.283 County assessors to provide information to department. At the request of the State Department of Energy, each county assessor in this state shall provide information from existing records data that the department requires to implement ORS 469.275 to 469.279, including information about covered commercial buildings within the county. [2023 c.442 §12]

Note: See note under 469.275.

Note: Section 13, chapter 442, Oregon Laws 2023, provides:

Sec. 13. Annual report on implementation of energy performance standards. The State Department of Energy shall report not later than January 15, 2025, and by the same date in each succeeding year until 2035, to the Governor and to committees of the Legislative Assembly that are related to the environment concerning the implementation of the energy performance standard established under section 9 of this 2023 Act [469.277]. The report must include information about the department's adoption of the ANSI/ASHRAE/IES Standard 100 as the department's initial model for the energy performance standard, the financial impact the standard has had on eligible building owners of tier 1 buildings, the amount of any incentives the department provided for compliance and any other information that is relevant to the department's implementation of sections 8 to 10 of this 2023 Act [469.275 to 469.279]. [2023 c.442 §13]

469.284 [1989 c.926 §37; repealed by 1999 c.880 §2]

469.285 When action to comply not required; incentives for voluntary or early compliance. (1) ORS 469.275 to 469.279 do not require an eligible building owner to take action to comply with ORS 469.275 to 469.279:

(a) If the eligible building owner owns a tier 2 building; or

(b) Before the State Department of Energy adopts an energy performance standard under ORS 469.277, if the eligible building owner owns a tier 1 building.

(2) The department may offer incentives for eligible building owners to voluntarily comply with, or for early compliance with, ANSI/ASHRAE/IES Standard 100 or the energy performance standard the department establishes under ORS 469.277. [2023 c.442 §14]

Note: See note under 469.275.

469.286 [1989 c.926 §38; 1991 c.67 §140; 1993 c.617 §12; repealed by 1999 c.880 §2]

469.287 Tier 2 buildings; requirement and standards for providing data; advisory committee; rules. (1)(a) Not later than December 31, 2024, the State Department of Energy by rule shall establish a requirement and standards under which eligible building owners of tier 2 buildings must provide to the department data that would enable the department to establish a benchmark for energy use in, and greenhouse gas emissions from, tier 2 buildings.

(b) The State Department of Energy shall cooperate with the Department of Education to establish a requirement to provide the data described in paragraph (a) of this subsection in a manner that minimizes costs to schools and avoids or minimizes duplication with the Department of Education's school facility assessments.

(2) Not later than July 1, 2025, the State Department of Energy shall notify all eligible building owners of tier 2 buildings of the requirement and standards the department adopts by rule under subsection (1) of this section.

(3) Not later than July 1, 2028, and by July 1 every five years thereafter, an eligible building owner of a tier 2 building shall provide the department with data the department requires in rules the department adopts under subsection (1) of this section.

(4) Not later than July 1, 2029, the department shall evaluate and use the data the department receives from eligible building owners of tier 2 buildings to calculate average energy use in, and average greenhouse gas emissions from, each of the categories of tier 2 buildings that exist in this state.

(5) Not later than July 1, 2025, the department shall establish and consult an advisory committee to identify and evaluate the financial and nonfinancial implications of establishing and implementing an energy performance standard for tier 2 buildings. The advisory committee must include, but is not limited to, representatives of renters, low-income tenants and environmental justice communities, as defined in ORS 469A.400.

(6) Not later than October 1, 2030, the department shall submit a report to the Governor and to an interim committee of the Legislative Assembly related to energy that:

(a) Recommends a cost-effective energy performance standard for tier 2 buildings; and

(b) Includes estimates of costs to eligible building owners, and challenges that eligible building owners would face, in implementing an energy performance standard for tier 2 buildings. [2023 c.442 §15]

Note: See note under 469.275.

469.289 Contracting to administer incentive payments for early compliance. (1) As used in this section, "person" means an individual, corporation, nonprofit corporation, professional corporation, limited liability company, partnership, limited partnership, limited liability partnership, cooperative, business trust, joint venture or

other form of business entity, including Energy Trust of Oregon.

(2) The State Department of Energy may contract with another person to administer incentive payments to eligible building owners for early compliance with the energy performance standard described in ORS 469.277.

(3) The person with which the department contracts under subsection (2) of this section shall administer incentive payments:

(a) In a manner that is consistent with rules the department adopts under, and for compliance that is consistent with, ORS 469.275 to 469.279; and

(b) To eligible building owners that the department certifies as qualifying for incentive payments under, and at rates established for the payments in, ORS 469.291.

(4) A person that administers incentive payments on the department's behalf:

(a) Remains subject to any obligations the person has or will have to provide energy efficiency programs or incentives to the person's customers; and

(b) Is not liable for excess incentive payments the person makes in reliance on the department's certification or determination of the proper amount of the incentive payment, if the person is not otherwise responsible for any inaccuracy in the amount of the incentive payment. [2023 c.442 §16]

Note: See note under 469.275.

469.290 [1989 c.926 §23; 1991 c.641 §8; 1993 c.617 §13; repealed by 1999 c.880 §2]

469.291 Incentive program for early and voluntary implementation of standards; application process; rules. (1) The State Department of Energy by rule shall establish a program to pay incentives to eligible building owners that implement ANSI/ASHRAE/IES Standard 100 or the energy performance standard described in ORS 469.277 for covered commercial buildings before adoption and implementation is mandatory. The program must provide for:

(a) An application process;

(b) Standards by which the department may qualify an eligible building owner to receive, or disqualify an eligible building owner from receiving, an incentive payment;

(c) A method for verifying a covered commercial building's energy consumption with the eligible building owner and the electric utility, gas company or thermal energy company that supplies energy to the covered commercial building for the purpose of qualifying the eligible building owner to receive an incentive payment;

(d) A process for calculating the amount of any incentive payment;

(e) An administrative process by which an eligible building owner may appeal the department's decision to qualify or disqualify the eligible building owner or the department's determination of the amount of an incentive payment; and

(f) A process for authorizing incentive payments and notifying eligible building owners and persons that administer incentive payments of the department's authorization.

(2) To qualify for an incentive payment, an eligible building owner must report to the department in accordance with ORS 469.279 by the deadlines and for a period of time the department specifies by rule. In addition:

(a) The eligible building owner must own a tier 1 building that is or will become subject to the requirements of ORS 469.275 to 469.279 or must own a tier 2 building that qualifies as provided in subsection (3) of this section;

(b) If the covered commercial building is a tier 1 building, the tier 1 building must have a baseline energy use intensity that exceeds an applicable energy use intensity target by at least 15 energy use intensity units; and

(c) The eligible building owner must comply with any other requirements the department specifies by rule.

(3) An eligible building owner of a tier 2 building may receive an incentive payment of 35 cents per square foot of gross floor area, excluding any parking garage, unconditioned space or semiheated space if the eligible building owner has submitted to the department, or has agreed to submit to the department in advance of an established deadline, the data described in ORS 469.287.

(4)(a) Subject to paragraph (c) of this subsection, an eligible building owner that applies and qualifies for an incentive payment under subsection (2) or (3) of this section may receive for meeting the energy performance standard described in ORS 469.277 early or voluntarily an incentive payment of 85 cents per square foot of gross floor area of the eligible building owner's covered commercial building, excluding any parking garage, unconditioned space or semiheated space.

(b) The department may authorize additional incentive payments to an eligible building owner that owns a tier 2 multifamily residential building and that enters into a binding agreement not to displace tenants from the multifamily residential building.

(c) The department may authorize an incentive payment only if funds are available for the payment and contingent upon an eligible building owner's compliance with the

requirements of this section and any rules the department adopts to govern incentive payments.

(5) Before qualifying an eligible building owner to receive an incentive payment under this section, the department shall review the eligible building owner's application and verify any report the eligible building owner must provide under ORS 469.279 and any energy consumption the department must measure for the purposes of the qualification. If the department determines that an eligible building owner qualifies for an incentive payment, the department shall certify the qualification to the eligible building owner and to the person that administers incentive payments under ORS 469.289.

(6) Not later than September 30, 2026, and by the same date every two years thereafter, the department shall report to interim committees of the Legislative Assembly related to energy concerning the operations and results of the incentive program the department establishes under this section. The report must include recommendations for aligning the incentive program with greenhouse gas emission reduction goals that meet or exceed the goals specified in ORS 468A.205. [2023 c.442 §17]

Note: See note under 469.275.

469.292 [1989 c.926 §22; 1991 c.641 §9; repealed by 1999 c.880 §2]

469.296 [1989 c.926 §17; 1993 c.617 §14; repealed by 1999 c.880 §2]

469.298 [1989 c.926 §2; repealed by 1999 c.880 §2]

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

(1) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) "Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(3) "Associated transmission lines" means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

(4) "Average electric generating capacity" means the peak generating capacity of the facility divided by one of the following factors:

(a) For wind facilities, 3.00;

(b) For geothermal energy facilities, 1.11; or

(c) For all other energy facilities, 1.00.

(5) "Combustion turbine power plant" means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.

(6) "Construction" means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds $250,000.

(7) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(8) "Department" means the State Department of Energy created under ORS 469.030.

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

(10) "Electric utility" means persons, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, supplying, transmitting or distributing electric energy.

(11)(a) "Energy facility" means any of the following:

(A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:

(i) Thermal power;

(ii) Combustion turbine power plant; or

(iii) Solar thermal power plant.

(B) A nuclear installation as defined in this section.

(C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:

(i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more;

(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way; and

(iii) Associated transmission lines.

(D) A solar photovoltaic power generation facility using more than:

(i) 240 acres located on high-value farmland as defined in ORS 195.300;

(ii) 2,560 acres located on land that is predominantly cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources Conservation Service of the United States Department of Agriculture; or

(iii) 3,840 acres located on any other land.

(E) A pipeline that is:

(i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

(ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:

(I) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or

(II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or

(iii) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.

(G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.

(H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

(I) A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

(i) The underground storage reservoir;

(ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

(iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

(J) An electric power generating plant with an average electric generating capacity of 50 megawatts or more if the power is produced from geothermal or wind energy at a single energy facility or within a single energy generation area.

(b) "Energy facility" does not include a hydroelectric facility or an energy facility under paragraph (a)(A)(iii) or (D) of this subsection that is established on the site of a decommissioned United States Air Force facility that has adequate transmission capacity to serve the energy facility.

(12) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more. An "energy generation area" for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(13) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property off-site.

(14) "Facility" means an energy facility together with any related or supporting facilities.

(15) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(16) "Local government" means a city or county.

(17) "Nominal electric generating capacity" means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

(18) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(19) "Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities that are part of a thermal power plant.

(20) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines.

(21) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(22) "Project order" means the order, including any amendments, issued by the State Department of Energy under ORS 469.330.

(23)(a) "Radioactive waste" includes all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605.

(b) "Radioactive waste" does not include:

(A) Materials identified by the council by rule as presenting no significant danger to the public health and safety.

(B) Uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

(24) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. "Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

(25) "Site" means any proposed location of an energy facility and related or supporting facilities.

(26) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.

(27) "Thermal power plant" means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. "Thermal power plant" includes a nuclear-fueled thermal power plant that has ceased to operate.

(28) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(29) "Underground gas storage reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous substances. "Underground gas storage reservoir" includes a pool as defined in ORS 520.005.

(30) "Utility" includes:

(a) A person, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(31) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1; 1981 c.587 §1; 1981 c.629 §2; 1981 c.707 §1; 1981 c.866 §1; 1991 c.480 §4; 1993 c.544 §3; 1993 c.569 §3; 1995 c.505 §6; 1995 c.551 §10; 1997 c.606 §1; 1999 c.365 §5; 2001 c.134 §2; 2001 c.683 §6; 2003 c.186 §28; 2013 c.320 §1; 2019 c.650 §1; 2021 c.38 §1; 2023 c.336 §3]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. It is furthermore the policy of this state, notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS 469.020, that the need for new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in ORS 469.503. [Formerly 453.315; 1997 c.428 §1; 2003 c.186 §29]

(Siting)

469.320 Site certificate required; exceptions. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) A site certificate is not required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under average annual operating conditions, has a nominal electric generating capacity:

(i) Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour;

(ii) Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 5,500 Btu per kilowatt hour; or

(iii) Specified by the Energy Facility Siting Council by rule based on the council's determination relating to emissions of the energy facility.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oilseeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section;

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge; and

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

(g) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4)(a)(A) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c) or (f) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption.

(B) The council may not require a person who operates or proposes to construct or enlarge an energy facility to request that the council determine whether the proposed facility qualifies for exemption under subsection (2)(g) of this section.

(b) The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one

year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(8)(a) If the developer of a facility elects, or the governing body of the local government after consulting with the developer elects, to defer regulatory authority to the Energy Facility Siting Council, the developer of a facility shall obtain a site certificate, in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, for a facility that, notwithstanding the definition of "energy facility" in ORS 469.300, is:

(A) An electric power generating plant with an average electric generating capacity of less than 50 megawatts produced from wind energy at a single energy facility or within a single energy generation area;

(B) An associated transmission line; or

(C) A solar photovoltaic power generation facility that is not an energy facility as defined in ORS 469.300 (11)(a)(D).

(b) An election by a developer or a local government under this subsection is final.

(c) An election by a local government under this subsection is not a land use decision as defined in ORS 197.015.

(d) A local government may not make an election under this subsection after a permit application has been submitted under ORS 215.416 or 227.175. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8; 1982 s.s.1 c.6 §1; 1987 c.200 §5; 1991 c.480 §5; 1993 c.569 §4; 1995 c.505 §7; 1999 c.365 §6; 1999 c.385 §1; 2001 c.134 §§3,4; 2001 c.683 §§7,8; 2003 c.186 §§76,77; 2005 c.768 §§1,2; 2007 c.739 §33; 2009 c.751 §7; 2019 c.650 §2; 2021 c.109 §1]

469.330 Notice of intent to file application for site certificate; public notice; standards, application requirements and study requirements; project order; rules. (1) Each applicant for a site certificate shall submit to the Energy Facility Siting Council a notice of intent to file an application for a site certificate. The notice of intent must provide information about the proposed site and the characteristics of the facility sufficient for the preparation of the State Department of Energy's project order.

(2) The council shall cause public notice to be given upon receipt of a notice of intent by the council. The public notice shall provide a description of the proposed site and facility in sufficient detail to inform the public of the location and proposed use of the site.

(3) Following review of the notice of intent and any public comments received in response to the notice of intent, the department may hold a preapplication conference with state agencies and local governments that have regulatory or advisory responsibility with respect to the facility. After the preapplication conference, the department shall issue a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application. A project order is not a final order.

(4) A project order issued under subsection (3) of this section may be amended at any time by either the department or the council. [Formerly 453.335; 1977 c.794 §9; 1989 c.88 §1; 1993 c.569 §5; 1995 c.505 §8]

469.340 [1975 c.552 §37; 1975 c.606 §26a; repealed by 1981 c.629 §3]

469.350 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

(2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, the Oregon Department of Aviation, any other state agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

(3) Any state agency, city or county that is requested by the council to comment and make recommendations under this section shall respond to the council by the specified deadline. If a state agency, city or county determines that it cannot respond to the council by the specified deadline because the state agency, city or county lacks sufficient

resources to review and comment on the application, the state agency, city or county shall contract with another entity to assist in preparing a response. A state agency, city or county that enters into a contract to assist in preparing a response may request funding to pay for that contract from the council pursuant to ORS 469.360.

(4) The State Department of Energy shall notify the applicant whether the application is complete. When the department determines an application is complete, the department shall notify the applicant and provide notice to the public. [Formerly 453.345; 1977 c.794 §10; 1989 c.88 §2; 1993 c.569 §6; 1995 c.505 §9; 2001 c.683 §10; 2009 c.399 §4]

469.360 Evaluation of notice of intent, site application or expedited review request; costs; payment. (1) The Energy Facility Siting Council shall evaluate each notice of intent, site certificate application or request for expedited review.

(2) Pursuant to a written contract or agreement, the council may compensate a state agency or a local government affected by the application for expenses directly related to participation by the compensated agency or local government in the following evaluation activities:

(a) Consultation initiated by an applicant after payment of the fee under ORS 469.421 (2) for the notice of intent or request for expedited review but prior to submittal of the notice or request;

(b) Review of the notice of intent, the application or a request for an expedited review; and

(c) Participation in a council proceeding, excluding legal expenses of the agency or local government incurred as a result of participation by the state agency or local government as a party in a contested case conducted by the council pursuant to ORS 469.370 (5).

(3) Compensation for consultation expenses under subsection (2)(a) of this section shall be limited to the expenses established in an estimate provided by the council and agreed to by the applicant. The applicant may request that the estimate be revised to allow for additional consultation activities at any time prior to submitting the notice of intent.

(4) Pursuant to a written agreement, the council may compensate a tribe identified by the Commission on Indian Services as affected by the application for expenses directly related to the tribe's review of a notice of intent, site certificate application or request for expedited review.

(5) As part of its evaluation, the council also may commission an independent study by an independent contractor, state agency, local government or any other person, of any aspect of the proposed facility within its statutory authority to review. The council may commission an independent study under this subsection only after the council makes a determination that the council is unable to fully evaluate the application without assistance and identifies specific issues to be addressed and only pursuant to a written contract or agreement with the independent contractor, state agency, local government or other person. The council shall compensate the independent contractor, state agency, local government or other person only to the extent the costs are directly related to issues identified by the council.

(6) The council shall provide funding to state agencies, cities or counties required to contract with another entity to complete comments and recommendations pursuant to ORS 469.350.

(7) In addition to compensating state agencies, tribes and local governments pursuant to this section, the council may provide funding to the Department of Environmental Quality for the department to conduct modeling and provide technical assistance to expedite preparation, submission and review of applications for permits under ORS 468A.040 required for energy facilities. [Formerly 453.355; 1987 c.450 §1; 1989 c.88 §3; 1993 c.569 §7; 1995 c.505 §10; 2001 c.683 §11; 2015 c.488 §1]

469.370 Draft proposed order for hearing; issues raised; final order; expedited processing. (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the State Department of Energy shall prepare and issue a draft proposed order on the application.

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:

(a) Comply with the requirements of ORS 197.797 (2), with respect to the persons notified;

(b) Include a description of the facility and the facility's general location;

(c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;

(d) State that copies of the application and draft proposed order are available for

inspection at no cost and will be provided at a reasonable cost; and

(e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

(4) After reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the department shall issue a proposed order recommending approval or rejection of the application. The department shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

(5) Following receipt of the proposed order from the department, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:

(a) The department failed to follow the requirements of subsection (2) or (3) of this section; or

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

(6) If no person requests party status to challenge the department's proposed order, the proposed order shall be forwarded to the council and the contested case hearing shall be concluded.

(7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.

(8) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.

(9) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or

(C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(10) At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with an average electric generating capacity of less than 100 megawatts. No notice of intent shall be required. Fol-

lowing approval of a request for expedited review, the department shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant.

(11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the automatic issuance or denial of a site certificate.

(12) The council shall specify in the site certificate a date by which construction of the facility must begin.

(13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

(a) Elimination of duplicative application, study and reporting requirements;

(b) Council use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable council standards;

(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1; 1985 c.569 §17; 1993 c.544 §4; 1993 c.569 §8; 1995 c.79 §288; 1995 c.505 §11; 1997 c.428 §2; 2001 c.134 §6]

469.371 [1985 c.569 §5; 1991 c.480 §6; repealed by 1993 c.544 §9]

469.372 [1985 c.569 §14; 1985 c.673 §196; repealed by 1993 c.544 §9]

469.373 Expedited processing for certain natural gas energy facilities. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370, an applicant may apply under the provisions of this section for expedited review of an application for a site certificate for an energy facility if the energy facility:

(a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup power generation;

(b) Is a permitted or conditional use allowed under an applicable local acknowledged comprehensive plan, land use regulation or federal land use plan, and is located:

(A) At or adjacent to an existing energy facility; or

(B)(i) At, adjacent to or in close proximity to an existing industrial use; and

(ii) In an area currently zoned or designated for industrial use;

(c)(A) Requires no more than three miles of associated transmission lines or three miles of new natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines; or

(B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in the locating of associated transmission lines or new natural gas pipelines outside of existing rights of way;

(d) Requires no new water right or water right transfer;

(e) Provides funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reduction in emissions as specified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by the energy facility for the life of the energy facility; and

(f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment permit, if needed, within the expedited review process time frame and has written confirmation from the wastewater facility permit holder that the additional wastewater load will be accommodated by the facility without resulting in a significant thermal increase in the facility effluent or without requiring any changes to the wastewater facility National Pollutant Discharge Elimination System permit;

(B) Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:

(i) The municipal corporation has included, or intends to include, the process wastewater load from the energy facility in an application for a National Pollutant Discharge Elimination System permit; and

(ii) All conditions required of the energy facility to allow the discharge of process wastewater from the energy facility will be satisfied; or

(C) Obtains a National Pollutant Discharge Elimination System or water pollution control facility permit for process wastewater disposal, supplies evidence to support a finding that the discharge can likely be permitted within the expedited review process time frame and that the discharge will not require:

(i) A new National Pollutant Discharge Elimination System permit, except for a storm water general permit for construction activities; or

(ii) A change in any effluent limit or discharge location under an existing National Pollutant Discharge Elimination System or water pollution control facility permit.

(2) An applicant seeking expedited review under this section shall submit documentation to the State Department of Energy, prior to the submission of an application for a site certificate, that demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this section. The department shall determine, within 14 days of receipt of the documentation, on a preliminary, nonbinding basis, whether the energy facility qualifies for expedited review.

(3) If the department determines that the energy facility preliminarily qualifies for expedited review, the applicant may submit an application for expedited review. Within 30 days after the date that the application for expedited review is submitted, the department shall determine whether the application is complete. If the department determines that the application is complete, the application shall be deemed filed on the date that the department sends the applicant notice of its determination. If the department determines that the application is not complete, the department shall notify the applicant of the deficiencies in the application and shall deem the application filed on the date that the department determines that the application is complete. The department or the council may request additional information from the applicant at any time.

(4) The State Department of Energy shall send a copy of a filed application to the Department of Environmental Quality, the Water Resources Department, the State Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agriculture, the Department of Land Conservation and Development, the Public Utility Commission and any other state agency, city, county or political subdivision of the state that has regulatory or advisory responsibility with respect to the proposed energy facility. The State Department of Energy shall send with the copy of the filed application a notice specifying that:

(a) In the event the council issues a site certificate for the energy facility, the site certificate will bind the state and all counties, cities and political subdivisions in the state as to the approval of the site, the construction of the energy facility and the operation of the energy facility, and that after the issuance of a site certificate, all permits, licenses and certificates addressed in the site certificate must be issued as required by ORS 469.401 (3); and

(b) The comments and recommendations of state agencies, counties, cities and political subdivisions concerning whether the proposed energy facility complies with any statute, rule or local ordinance that the state agency, county, city or political subdivision would normally administer in determining whether a permit, license or certificate required for the construction or operation of the energy facility should be approved will be considered only if the comments and recommendations are received by the department within a reasonable time after the date the application and notice of the application are sent by the department.

(5) Within 90 days after the date that the application was filed, the department shall issue a draft proposed order setting forth:

(a) A description of the proposed energy facility;

(b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed energy facility;

(c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed energy facility; and

(d) Proposed findings specifying how the proposed energy facility complies with the applicable standards and criteria for approval of a site certificate.

(6) The council shall review the application for site certification in the manner set forth in subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council determines that the fa-

cility, with any required conditions to the site certificate, will comply with:

(a) The requirements for expedited review as specified in this section;

(b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and (L) to (o);

(c) The requirements of ORS 469.503 (3); and

(d) The requirements of ORS 469.504 (1)(b).

(7) Following submission of an application for a site certificate, the council shall hold a public informational meeting on the application. Following the issuance of the proposed order, the council shall hold at least one public hearing on the application. The public hearing shall be held in the area affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior to the hearing. The notice shall comply with the notice requirements of ORS 197.797 (2) and shall include, but need not be limited to, the following:

(a) A description of the energy facility and the general location of the energy facility;

(b) The name of a department representative to contact and the telephone number at which people may obtain additional information;

(c) A statement that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost; and

(d) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record, with sufficient specificity to afford the decision maker an opportunity to respond to the issue, will preclude consideration of the issue, by the council or by a court on judicial review of the council's decision.

(8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present additional written evidence, arguments or testimony regarding the application. In the alternative, prior to the conclusion of the hearing, the applicant may request a contested case hearing on the application. If the applicant requests an opportunity to present written evidence, arguments or testimony, the council shall leave the record open for that purpose only for a period not to exceed 14 days after the date of the hearing. Following the close of the record, the department shall prepare a draft final order for the council. If the applicant requests a contested case hearing, the council may grant the request if the applicant has shown good cause for a contested case hearing. If a request for a contested case hearing is granted, subsections (9) to (11) of this section do not apply, and the application shall be considered under the same contested case procedures used for a nonexpedited application for a site certificate.

(9) The council shall make its decision based on the record and the draft final order prepared by the department. The council shall, within six months of the date that the application is deemed filed:

(a) Grant the application;

(b) Grant the application with conditions;

(c) Deny the application; or

(d) Return the application to the site certification process required by ORS 469.320.

(10) If the application is granted, the council shall issue a site certificate pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose conditions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based on those standards.

(11) Judicial review of the approval or rejection of a site certificate by the council under this section shall be as provided in ORS 469.403. [2001 c.683 §15; 2011 c.298 §1]

Note: 469.373 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.374 [1985 c.569 §15; repealed by 1993 c.544 §9]

469.375 Required findings for radioactive waste disposal facility certificate. The Energy Facility Siting Council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill byproduct or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year floodplain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

(F) An area having experienced volcanic activity within the last two million years.

(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;

(3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of federal government for disposal of such wastes;

(4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;

(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;

(6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and

(7) That, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the State Department of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:

(a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.

(8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 §3; 1981 c.587 §3; 1985 c.4]

469.378 Land use compatibility statement for energy facility. Notwithstanding ORS 197.180, when a state agency action or recommendation concerning an energy facility requires a land use compatibility statement prior to the action being completed, the state agency shall satisfy any applicable requirement of ORS 197.180 by conditioning the agency action or recommendation on a determination by either the Energy Facility Siting Council or the applicable city or county that the energy facility as affected by the state agency action satisfies, or will continue to satisfy, the applicable requirements of ORS 197.180. [2001 c.683 §17]

Note: 469.378 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.380 [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2; 1993 c.569 §9; repealed by 1995 c.505 §32]

469.390 [Formerly 453.385; repealed by 1993 c.569 §31]

469.400 [Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3; repealed by 1993 c.569 §10 (469.401 and 469.403 enacted in lieu of 469.400)]

469.401 Energy facility site certificate; conditions; effect of issuance on state and local government agencies. (1) Upon approval, the site certificate or any amended site certificate with any conditions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the council and by the applicant. The certificate or amended certificate shall authorize the applicant to construct, operate and retire the facility subject to the conditions set forth in the site certificate or amended site certificate. The duration of the site certificate or amended site certificate shall be the life of the facility.

(2) The site certificate or amended site certificate shall contain conditions for the protection of the public health and safety, for the time for completion of construction, and to ensure compliance with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed, except that upon a clear showing of a significant threat to the public health, safety or the environment that requires application of later-adopted laws or rules, the council may require compliance with such later-adopted laws or rules. For a permit addressed in the site certificate or amended site certificate, the site certificate or amended site certificate shall provide for facility compliance with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules.

(3) Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as

to the approval of the site and the construction and operation of the facility. After issuance of the site certificate or amended site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate or amended site certificate, subject only to conditions set forth in the site certificate or amended site certificate. After the site certificate or amended site certificate is issued, the only issue to be decided in an administrative or judicial review of a state agency or local government permit for which compliance with governing law was considered and determined in the site certificate or amended site certificate proceeding shall be whether the permit is consistent with the terms of the site certificate or amended site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility. [1993 c.569 §11 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §12; 1999 c.385 §2]

469.402 Delegation of review of future action required by site certificate. If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the State Department of Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case. [1995 c.505 §27; 1999 c.385 §3]

Note: 469.402 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.403 Rehearing on approval or rejection of application for site certificate or amendment; appeal; judicial review vested in Supreme Court; stay of order. (1) Any party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the Energy Facility Siting Council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council's approval or rejection of an application for a site certificate or a site certificate amendment shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate or amended site certificate process. Upon such application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the application shall be considered denied. The filing of an application for rehearing shall not, unless specifically ordered by the council, operate as a stay of the site certificate or amended site certificate for the facility.

(2) Any party to a contested case proceeding on a site certificate or amended site certificate application may appeal the council's approval or rejection of the site certificate or amended site certificate application. Issues on appeal shall be limited to those raised by the parties to the contested case proceeding before the council.

(3) Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate or amended site certificate is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the council's final order or within 30 days after the date the petition for rehearing is denied or deemed denied. Date of service shall be the date on which the council delivered or mailed its order in accordance with ORS 183.470.

(4) The filing of a petition for judicial review may not stay the order, except that a party to the contested case may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that:

(a) The petitioner will suffer irreparable injury; or

(b) Construction of the energy facility will result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.

(5) If the Supreme Court grants a stay pursuant to subsection (4) of this section, the court:

(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of $5,000.

(b) May grant a stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review and shall render a decision within six months of the filing of the petition for review.

(7) The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (6) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

(8) No period of delay resulting from a continuance granted by the Supreme Court under subsection (7)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (7)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

(9) No continuance under subsection (7)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [1993 c.569 §12 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §13; 1999 c.385 §4; 2001 c.683 §12]

469.405 Amendment of site certificate; judicial review; exemption; rules. (1) A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403.

(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law, the land use approval by an affected local government of a proposed amendment to a facility and the recommendation of the special advisory group of applicable substantive criteria shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to show compliance with the statewide planning goals by demonstrating that the facility has received local land use approval, the provisions of this section shall apply only to proposed projects for which the land use approval by the local government occurs after the date an application for amendment is submitted to the State Department of Energy.

(3) An amendment to a site certificate is not required for a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline will connect to a council certified surface facility related to an underground gas storage reservoir or to a council certified gas pipeline, whether the proposed pipeline is to be located inside or outside the site of a council certified facility, the certificate holder must obtain, prior to construction, the approval of the department for the construction, operation and retirement of the proposed pipeline. The department shall approve such a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding ORS 469.503 (3), the department may not review the proposed pipeline for compliance with other state standards. Notwithstanding ORS 469.503 (4), or any council rule addressing compliance with land use standards, the department shall not review such a proposed pipeline for compliance with land use requirements. Notwithstanding ORS 469.401 (3), the approval by the department of such pipeline shall not bind any state or local agency. The council may adopt appropriate procedural rules for the department review. The department shall issue an order approving or rejecting the proposed pipeline. Judicial review of a department order under this section shall be as provided in ORS 469.403. [1995 c.505 §2; 1999 c.385 §5]

Note: 469.405 was added to and made a part of 469.300 to 469.563 by legislative action but was not

added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.407 Amendment of application to increase capacity of facility. (1) A recipient may by amendment of its application for a site certificate or by amendment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council finds that:

(a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the council;

(b) The enlarged facility does not exceed 500 megawatts and meets the applicable carbon dioxide standard provided for in ORS 469.503 (2) for any increase in capacity beyond the capacity of the 500-megawatt exemption; and

(c) The enlarged facility meets all other applicable council standards.

(2) A recipient is deemed to meet any applicable need standard and carbon dioxide emissions standard for the nominal generating capacity of the 500-megawatt exemption provided that the recipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies the conditions.

(3) As used in this section:

(a) "Recipient" means any base load gas plant, as defined in ORS 469.503, determined by the council to have the lowest net monetized air emissions among the applicants participating in a contested case proceeding.

(b) "500-megawatt exemption" means the council order in which a recipient was determined to have the lowest net monetized air emissions. [1997 c.428 §8]

Note: 469.407 and 469.409 were added to and made a part of 469.300 to 469.563 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.409 Amendment of site certificate to demonstrate compliance with carbon dioxide emissions standard; binding arbitration to resolve disputes. Any site certificate holder that is required by its site certificate or by law to demonstrate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions standard applicable to the type of facility subject to the site certificate before beginning construction. Such a demonstration shall be made as an amendment to the site certificate. Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the Energy Facility Siting Council shall not conduct a contested case hearing on such amendment and the council's order shall not be subject to judicial review. Any dispute about the site certificate holder's demonstration of compliance with the applicable carbon dioxide emissions standard shall be settled through binding arbitration. [1997 c.428 §7]

Note: See note under 469.407.

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate; monitoring programs. (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.338, 192.345, 192.355, 192.690, 469.010 to 469.155, 469.300 to 469.563, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Energy Facility Siting Council for:

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

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

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

(a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and

(b) On and after July 2, 1975, to abide by the rules of the Director of the State Department of Energy adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930.

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

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

(5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July 2, 1975, shall bind successor agencies

created hereunder in accordance with the terms of such site certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of the director adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [1975 c.606 §24; 1983 c.740 §184; 1989 c.88 §5; 1993 c.569 §13; 1995 c.505 §15]

469.413 Power generation from fossil fuels; requirements for new and amended site certificates. Notwithstanding ORS 469.320 and 469.405, the Energy Facility Siting Council may not:

(1) Issue a site certificate for a new generating facility that produces electric power from fossil fuels, including natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, unless the council determines that a new generating facility will generate only nonemitting electricity as defined in ORS 469A.400; or

(2) Approve the amendment of a site certificate for an energy facility described under subsection (1) of this section that was granted prior to September 25, 2021, in a manner that would significantly increase the gross carbon dioxide emissions that are reasonably likely to result from the operation of the energy facility. [2021 c.508 §28]

Note: 469.413 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.420 [Formerly 453.405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3; repealed by 1981 c.792 §4 (469.421 enacted in lieu of 469.420)]

469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under ORS 469.373, a request for the State Department of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council and the department related to the review and decision of the council. Expenses under this subsection may include:

(a) Legal expenses;

(b) Expenses incurred in processing and evaluating the application;

(c) Expenses incurred in issuing a final order or site certificate;

(d) Expenses incurred in commissioning an independent study under ORS 469.360;

(e) Compensation paid to a state agency, a tribe or a local government pursuant to a written contract or agreement relating to compensation as provided for in ORS 469.360; or

(f) Expenses incurred by the council in making rule changes that are specifically required and related to the particular site certificate.

(2) Every person submitting a notice of intent to file for a site certificate, a request for exemption or a request for expedited review shall pay the fee required under the fee schedule established under ORS 469.441 to the department prior to submitting the notice or request to the council. To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or request shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If costs are less than the fee paid, the excess shall be refunded to the person submitting the notice or request.

(3) Before submitting a site certificate application, the applicant shall request from the department an estimate of the costs expected to be incurred in processing the application. The department shall inform the applicant of that amount and require the applicant to make periodic payments of the costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

(4) Any person who is delinquent in the payment of fees under subsections (1) to (3) of this section shall be subject to the provisions of subsection (11) of this section.

(5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the department's bud-

get authorization by an odd-numbered year regular session of the Legislative Assembly or as revised by the Emergency Board meeting in an interim period or by the Legislative Assembly meeting in special session or in an even-numbered year regular session, the Director of the State Department of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the director estimates is needed to fund the cost of ensuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall include both the actual direct cost to be incurred by the council and the department to ensure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards, and the general costs to be incurred by the council and the department to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the department under ORS 469.405 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility, the anticipated costs of ensuring compliance with site certificate conditions, the anticipated costs of conducting site inspections and compliance reviews as described in ORS 469.430, and the anticipated costs of compensating state agencies and local governments for participating in site inspection and compliance enforcement activities at the request of the council.

(6) Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for the remaining portion of the year. The amount of the fee shall be set at the cost of regulating the facility during the remaining portion of the year determined in the same manner as the annual fee.

(7) When the actual costs of regulation incurred by the council and the department for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are less than the annual fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When the actual regulation costs incurred by the council and the department for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are projected to exceed the annual fee for that facility, the director may issue an order revising the annual fee.

(8)(a) In addition to any other fees required by law, each energy resource supplier shall pay to the department annually its share of an assessment to fund the programs and activities of the council and the department.

(b) Prior to filing an agency request budget under ORS 291.208 for purposes related to the compilation and preparation of the Governor's budget under ORS 291.216, the director shall determine the projected aggregate amount of revenue to be collected from energy resource suppliers under this subsection that will be necessary to fund the programs and activities of the council and the department for each fiscal year of the upcoming biennium. After making that determination, the director shall convene a public meeting with representatives of energy resource suppliers and other interested parties for the purpose of providing energy resource suppliers with a full accounting of:

(A) The projected revenue needed to fund each department program or activity; and

(B) The projected allocation of moneys derived from the assessment imposed under this subsection to each department program or activity.

(c) Upon approval of the budget authorization of the council and the department by an odd-numbered year regular session of the Legislative Assembly, the director shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund programs and activities that the council and the department are charged with administering and authorized to conduct under the laws of this state, including those enumerated in ORS 469.030, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the director shall enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the programs and activities that the council and the department are charged with administering and authorized to conduct under the laws of this state, including those enumerated in ORS 469.030, for the second fiscal year of the biennium. The order shall take into account any revisions to the biennial budget of the council and the department made by the Emergency Board meeting in an interim period or by the Legislative Assembly meeting in special session or in an even-numbered year regular session.

(d) Each order issued by the director pursuant to paragraph (c) of this subsection

shall allocate the aggregate assessment set forth in the order to energy resource suppliers in accordance with paragraph (e) of this subsection.

(e) The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed 0.375 percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than $250.

(f) The director shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued by registered or certified mail or through use of an electronic medium with electronic receipt verification. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(g) The amounts assessed to individual energy resource suppliers pursuant to paragraph (e) of this subsection shall be paid to the department as follows:

(A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days following adjournment sine die of the odd-numbered year regular session of the Legislative Assembly; and

(B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July 1 of each even-numbered year or 90 days following adjournment sine die of the even-numbered year regular session of the Legislative Assembly, whichever is later.

(h) An energy resource supplier shall provide the director, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the calendar or fiscal year that was used by the energy resource supplier for the purpose of reporting federal income taxes for the preceding calendar or fiscal year. The statement must be in the form prescribed by the director and is subject to audit by the director. The statement must include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of Article IX, section 3a, of the Oregon Constitution, and ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not more than 15 days for the requirements of this subsection if:

(A) The energy supplier makes a showing of hardship caused by the deadline;

(B) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the council or the department from fulfilling its statutory responsibilities.

(i) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying, generating, transmitting or distributing electricity, natural gas or petroleum products in Oregon.

(B) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier's business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of Article IX, section 3a, of the Oregon Constitution, or ORS 319.020 or 319.530.

(C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

(j) In determining the amount of revenues that must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the council and department, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(k) Orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal power plant or nuclear installation within this state shall pay to the department annually on July 1 an assessment in an amount determined by the director to be necessary to fund the activities of the state and the counties associated with emergency preparedness for a nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed $461,250 per

year. Moneys collected as assessments under this subsection are continuously appropriated to the department for this purpose.

(b) The department shall maintain and cause other state agencies and counties to maintain time and billing records for the expenditure of any fees collected from an operator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

(10) Reactors operated by a college, university or graduate center for research purposes and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (5), (8) and (9) of this section.

(11)(a) All fees assessed by the director against holders of site certificates for facilities that have an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule for which shall be negotiated between the director and the site certificate holder.

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the director if the director prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [1981 c.792 §5 (enacted in lieu of 469.420); 1983 c.273 §5; 1987 c.450 §2; 1989 c.88 §4; 1993 c.569 §14; 1995 c.505 §14; 1995 c.542 §1; 1995 c.551 §11; 1995 c.618 §74a; 1995 c.696 §22; 1997 c.249 §166; 1999 c.385 §6; 2001 c.683 §13; 2003 c.186 §30; 2009 c.11 §67; 2009 c.753 §76; 2011 c.545 §26; 2013 c.656 §1; 2015 c.488 §2; 2016 c.117 §71]

469.424 Energy resource suppliers; notice regarding comments in proceedings; rules. (1) As used in this section, "energy resource supplier" has the meaning given that term in ORS 469.421.

(2)(a) If the State Department of Energy submits comments or written or oral testimony in a rulemaking, contested case, ratemaking or other proceeding conducted by another agency, as defined in ORS 183.310, and if the comment or testimony is about a substantive matter at issue in the proceeding, the department shall provide, once for each proceeding, notice to energy resource suppliers as described in this section.

(b) If the department submits written comments or intervenes in a proceeding conducted by a federal agency, the department shall provide, once for each proceeding, notice to energy resource suppliers as described in this section.

(c) This section does not apply to:

(A) The department's participation in a procedural matter related to a proceeding described in paragraph (a) or (b) of this subsection;

(B) The department's participation in a federal facility siting proceeding;

(C) The department's work with the Energy Facility Siting Council;

(D) The department's work on nuclear safety and emergency preparedness; or

(E) Federal judicial or legislative proceedings.

(3) The department shall create and maintain a list of energy resource suppliers that request to receive notice described in subsection (2) of this section. The department may create separate lists for the different types of proceedings.

(4) Notice provided under this section may be provided by electronic mail and must include a description of the department's interest in the proceeding.

(5) Except as provided in subsection (6) of this section, notice must be provided under this section:

(a) No later than seven days before submitting initial comments on a substantive matter at issue in a rulemaking proceeding described in subsection (2)(a) of this section or a proceeding involving the adoption of federal regulations;

(b) No later than 15 days before submitting initial comments or written or oral testimony on a substantive matter at issue in a contested case, ratemaking or other proceeding described in subsection (2)(a) of this section; or

(c) No later than 15 days before submitting initial written comments or written testimony on a substantive matter at issue in a proceeding conducted by a federal agency other than a proceeding involving the adoption of federal regulations.

(6) If providing notice in accordance with subsection (5) of this section is prejudicial to the department's ability to participate in a rulemaking, contested case, ratemaking or other proceeding described in subsection (2) of this section, the department may provide notice as soon as it is practicable to provide notice. If the department provides notice as

described in this subsection, the department shall include in the notice an explanation of why providing notice in accordance with subsection (5) of this section is prejudicial to the department.

(7) The department may adopt rules as necessary to implement this section. [2013 c.656 §6]

Note: 469.424 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.426 Advisory group; energy resource suppliers. (1) The Director of the State Department of Energy shall convene an advisory work group composed of stakeholders representing energy resource suppliers, the customers who ultimately pay for the energy supplier assessment imposed under ORS 469.421 (8) through their energy bills and other groups that have an interest in the provision and regulation of energy in this state.

(2) The advisory work group shall review and make recommendations on the State Department of Energy's proposals related to:

(a) Planning, policy and technical analysis;

(b) Legislative concepts; and

(c) The department's requested budget.

(3) The work group shall meet at least two times per year at the call of the director. [2013 c.656 §3]

Note: 469.426 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.430 Site inspections; compliance reviews. (1) The Energy Facility Siting Council has continuing authority over the site for which the site certificate is issued, including but not limited to the authority to:

(a) Inspect, or direct the State Department of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the site certificate or any order issued by the department under ORS 469.405 (3); and

(b) Periodically review documents, reports and other materials, or direct the State Department of Energy or request another state agency or local government to review documents, reports or other materials, to ensure that the facility continues to comply with all terms and conditions of the site certificate or any order issued by the department under ORS 469.405 (3).

(2) The council shall avoid duplication of effort with site inspections and compliance reviews by other state and federal agencies and local governments that have issued permits or licenses for the facility.

(3) If the council requests that another state agency or local government conduct a site inspection or compliance review under this section, the council may compensate that state agency or local government for expenses related to the site inspection or compliance review. [Formerly 453.415; 1993 c.569 §15; 1995 c.505 §16; 1999 c.385 §7; 2015 c.488 §3]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS chapter 183, a site certificate or an amended site certificate may be revoked or suspended:

(1) For failure to comply with the terms or conditions of the site certificate or amended site certificate;

(2) For violation of the provisions of ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992 or rules adopted pursuant to ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992; or

(3) If the site certificate was executed prior to July 2, 1975, for violation of the provisions of ORS 469.300 to 469.520 or rules adopted pursuant to ORS 469.300 to 469.520 or for failure to comply with applicable health or safety standards. [Formerly 453.425; 1993 c.569 §16; 1995 c.505 §17; 1999 c.385 §8]

469.441 Justification of fees charged; judicial review. (1) All expenses incurred by the Energy Facility Siting Council and the State Department of Energy under ORS 469.360 and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the department or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption, a request for a pipeline described in ORS 469.405 (3) or a request for an expedited review must submit under ORS 469.421 prior to submitting the notice of intent, request for exemption, request for pipeline or request for expedited review. The fee schedule shall be designed to recover the council's actual costs of evaluating the notice of intent, request for exemption, request for pipeline or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and department to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, re-

quest for exemption, request for pipeline or request for expedited review is submitted, whether the notice of intent, request for exemption, request for pipeline or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the department shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1989 c.88 §8; 1993 c.569 §17; 1999 c.385 §9; 2015 c.488 §4]

(High Voltage Transmission Lines)

469.442 Procedure prior to construction of transmission line in excess of 230,000 volts; review committee. (1) Any person who proposes to construct a transmission line in excess of 230,000 volts capacity that is not otherwise under the jurisdiction of the Energy Facility Siting Council shall:

(a) Give public notice of the proposed action at least six months before beginning any process to obtain local permits required for the proposed transmission line. Notification shall be given:

(A) By publication once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the transmission line is to be constructed; and

(B) To the governing bodies and planning directors of cities and counties which are within or partially within the project study area.

(b) Provide an opportunity for public comment on the proposed transmission line and conduct public meetings to review the proposal.

(c) Respond specifically and in writing to local concerns and recommendations regarding the proposed transmission line.

(2) The Director of the State Department of Energy shall establish a committee to include technical experts and members of the public to coordinate public review of a proposed transmission line under subsection (1) of this section when requested to do so by ordinance or resolution of the affected governing body.

(3) At the conclusion of the public review, the committee shall make a summary report to the affected governing body including public concerns and recommendations concerning the proposed transmission line.

(4) The scope of work and cost of conducting the review shall be negotiated between the State Department of Energy and the project sponsor. The negotiated cost shall be paid by the project sponsor.

(5) Subsections (1) to (4) of this section shall not apply to a person who proposes to construct transmission lines entirely within 500 feet of an existing corridor occupied by transmission lines with a capacity in excess of 230,000 volts. [1987 c.200 §2; 1993 c.569 §18]

469.445 [1987 c.200 §3; repealed by 1993 c.569 §31]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established in the State Department of Energy an Energy Facility Siting Council, consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment, but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) No member of the council shall be an employee, director or retired employee or director of, or a consultant to, or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in:

(a) Any corporation or utility operating or interested in establishing an energy facility in this state; or

(b) Any manufacturer of equipment related to the operation or establishment of an energy facility in this state.

(4) No member shall for two years after the expiration of the term of the member accept employment with an owner or operator of an energy facility that is subject to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or an agency of this state that is held by the owner or operator of the energy facility that employs the person.

(6) The State Department of Energy shall provide clerical and staff support to the council and fund the activities of the council through fees collected under ORS 469.421. [Formerly 453.435; 1995 c.551 §12; 2013 c.656 §10]

469.460 Officers; meetings; compensation and expenses. (1) The Energy Facility Siting Council shall annually elect from among its members a chairperson and vice chairperson with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. A majority of the members of the council constitutes a quorum. The Governor or the chairperson of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.

(2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445; 2021 c.110 §1]

469.470 Powers and duties; rules. The Energy Facility Siting Council shall:

(1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.

(2) In accordance with the applicable provisions of ORS chapter 183, and subject to the provisions of ORS 469.501 (3), adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.

(3) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in performing the functions vested by law in the council.

(4) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(5) Consult with the Water Resources Commission on the need for power and other areas within the expertise of the council when the Water Resources Commission is determining whether to allocate water for hydroelectric development.

(6) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [Formerly 453.455; 1991 c.480 §7; 1993 c.544 §5; 1993 c.569 §19; 1995 c.505 §18]

469.480 Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee; rules. (1) The Energy Facility Siting Council shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.

(2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such advisory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.

(3) Subject to applicable laws regulating travel and other expenses of state officers and employees, members of any advisory committee appointed under subsection (1) of this section shall receive no compensation but may receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

(4) The council by rule shall form an Electric and Magnetic Field Committee which shall meet at the call of the council chair. The committee shall include representatives of the public, utilities, manufacturers and state agencies. The committee shall monitor information being developed on electric and magnetic fields and report the committee's findings to the council. The council shall report the findings of the Electric and Magnetic Field Committee to the Legislative Assembly. [Formerly 453.475; 1991 c.491 §1; 1993 c.569 §20; 1995 c.551 §17]

(Rules; Standards; Compliance)

469.490 Adoption of rules; determination of validity. All rules adopted by the Energy Facility Siting Council pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be adopted in the manner required by ORS chapter 183. The validity of any rule adopted by the council may be determined only upon a petition by any person to the Supreme Court. The petition must be filed within 60 days after the date the rule becomes effective under ORS 183.355. The review by the Supreme Court of

the validity of any rule adopted by the council shall otherwise be according to ORS 183.400. The Supreme Court shall give priority on its docket to such a petition for review. [Formerly 453.495; 1995 c.505 §19]

469.500 [Formerly 453.505; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.501 Energy facility siting, construction, operation and retirement standards; exemptions; rules. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

(a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.

(b) Seismic hazards.

(c) Areas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

(d) The financial ability and qualifications of the applicant.

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(h) The accumulation, storage, disposal and transportation of nuclear waste.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities as defined in ORS 469.503.

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

(n) Soil protection.

(o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).

(2) The council may adopt exemptions from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.

(3)(a) The council may issue a site certificate for a facility that does not meet one or more of the applicable standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet.

(b) The council by rule shall specify the criteria by which the council makes the determination described in paragraph (a) of this subsection.

(4) Notwithstanding subsection (1) of this section, the council may not impose any standard developed under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for an energy facility producing power from wind, solar or geothermal energy. However, the council may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility. [1993 c.569 §22 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §20; 1997 c.428 §3; 2001 c.134 §7; 2013 c.263 §1]

469.503 Requirements for approval of energy facility site certificate; carbon dioxide emissions standard; offset funds; use of offset funds by qualifying organization; rules. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(1) The facility complies with the applicable standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by

the applicable standards the facility does not meet.

(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rulemaking record:

(A) Promote facility fuel efficiency;

(B) Promote efficiency in the resource mix;

(C) Reduce net carbon dioxide emissions;

(D) Promote cogeneration that reduces net carbon dioxide emissions;

(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;

(F) Minimize transaction costs;

(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;

(H) Allow either the applicant or third parties to implement offsets;

(I) Be attainable and economically achievable for various types of power plants;

(J) Promote public participation in the selection and review of offsets;

(K) Promote prompt implementation of offset projects;

(L) Provide for monitoring and evaluation of the performance of offsets; and

(M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the amount of carbon dioxide or other greenhouse gas emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. For purposes of determining the net carbon dioxide emissions, the council shall by rule establish the global warming potential of each greenhouse gas based on a generally accepted scientific method, and convert any greenhouse gas emissions to a carbon dioxide equivalent. Unless otherwise provided by the council by rule, the global warming potential of methane is 23 times that of carbon dioxide, and the global warming potential of nitrous oxide is 296 times that of carbon dioxide. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon

dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas emissions be achieved. The council shall determine the quantity of greenhouse gas emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset.

(i) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction will be achieved by the offset;

(ii) The ability of the council to determine the actual quantity of greenhouse gas emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and

(iii) The extent to which the reduction of greenhouse gas emissions would occur in the absence of the offsets.

(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection, the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization shall assess offsets for their potential to

qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first $500,000 of the offset funds and 4.286 percent of any offset funds in excess of $500,000. This amount shall not be less than $50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the State Department of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

(e) As used in this subsection:

(A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(C) "Carbon dioxide equivalent" means the global warming potential of a greenhouse gas reflected in units of carbon dioxide.

(D) "Fossil-fueled power plant" means a generating facility that produces electric power from natural gas, petroleum, coal or

any form of solid, liquid or gaseous fuel derived from such material.

(E) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A), (B) and (D).

(F) "Global warming potential" means the determination of the atmospheric warming resulting from the release of a unit mass of a particular greenhouse gas in relation to the warming resulting from the release of the equivalent mass of carbon dioxide.

(G) "Greenhouse gas" means carbon dioxide, methane and nitrous oxide.

(H) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

(I) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide or other greenhouse gas emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(J) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

(K) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(C) and (E) to (I).

(L) "Offset" means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions.

(M) "Offset funds" means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

(N) "Qualified organization" means an entity that:

(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

(iv) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

(3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission. [1993 c.569 §23 (469.501, 469.503, 469.505 and 469.507 en-

acted in lieu of 469.500 and 469.510); 1995 c.505 §21; 1997 c.428 §4; 1999 c.365 §11; 2001 c.134 §10; 2003 c.186 §78; 2011 c.298 §2; 2013 c.263 §2]

469.504 Facility compliance with statewide planning goals; exception; amendment of local plan and land use regulations; conflicts; technical assistance; rules. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The Energy Facility Siting Council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(5) Upon request by the State Department of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an

energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

(9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction. [1997 c.428 §5; 1999 c.385 §10; 2001 c.134 §11; 2003 c.186 §79; 2005 c.829 §12]

Note: 469.504 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.505 Consultation with other agencies. (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the federal government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council's review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.

(2) Before resolving any conflicting conditions in site certificates or amended site certificates under ORS 469.503 (3) and 469.504, the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict resolution. [1993 c.569 §24 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1997 c.428 §9; 1999 c.385 §11]

469.507 Monitoring environmental and ecological effects of construction and operation of energy facilities. (1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.

(2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the Director of the State Department of Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(3) The monitoring program may be conducted in cooperation with any federally operated program if the information available from the federal program is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the council or its designee.

(4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation. [1993 c.569 §25 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §22]

469.510 [Formerly 453.515; 1977 c.794 §15; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development. (1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the State Department of Energy, promptly of its activities and programs relating to energy and radiation.

(2) Each state agency proposing to adopt, amend or rescind a rule relating to energy facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.

(3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]

(Plant Operations; Radioactive Wastes)

469.525 Prohibitions on radioactive waste disposal, arrangements for disposal, transportation for disposal and disposal facilities; exceptions; rules. (1) Notwithstanding any other provision of this chapter, no radioactive waste shall be disposed of within this state, no person may arrange for disposal of radioactive waste within this state, no person may transport radioactive waste for disposal in this state and no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(a) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at sites approved by the Energy Facility Siting Council in accordance with ORS 469.375.

(b) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner consistent with rules adopted by the Department of Environmental Quality after consultation with and approval by the Oregon Health Authority.

(c) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued pursuant to this chapter shall not constitute operation of a waste disposal facility so long as such coal ash is maintained in accordance with the terms of the site certificate as amended from time to time as necessary to protect the public health and safety.

(2) The Energy Facility Siting Council shall, in accordance with the applicable provisions of ORS chapter 183, adopt standards and rules as necessary to prevent the disposal of radioactive waste within this state.

(3) For purposes of this section, disposal does not include the temporary storage of:

(a) Radioactive waste used or generated pursuant to a license granted under ORS 453.635;

(b) Radioactive waste from a nuclear-fueled thermal power plant for which a site certificate has been issued pursuant to this chapter, on the site of that plant, until a permanent storage site is made available by the federal government; or

(c) Radioactive waste from a reactor for which a site certificate has been issued pursuant to this chapter that is operated by a college, university or graduate center for research purposes and is not connected to the Northwest Power Grid. [Formerly 459.630; 1979 c.283 §2; 1981 c.587 §2; 2009 c.595 §953; 2021 c.38 §2]

469.530 Review and approval of security programs. The Energy Facility Siting Council and the Director of the State Department of Energy shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval. [Formerly 453.535; 1981 c.707 §3; 1989 c.6 §1]

469.533 State Department of Energy rules for health protection and evacuation procedures in nuclear emergency. Notwithstanding ORS chapter 401, the State Department of Energy in cooperation with the Oregon Health Authority and the Oregon Department of Emergency Management shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear

power plant or nuclear installation. [Formerly 453.765; 1983 c.586 §43; 2009 c.595 §954; 2009 c.718 §49; 2021 c.539 §88a]

469.534 County procedures. Each county in this state that has a nuclear-fueled thermal power plant located within county boundaries and each county within this state that has any portion of its area located within 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written procedures that are compatible with the rules adopted by the State Department of Energy under ORS 469.533. The department shall review the county procedures to determine whether they are compatible with the rules of the department. [1983 c.586 §46]

469.535 Governor may assume control of emergency operations during nuclear accident or catastrophe. Notwithstanding ORS chapter 401, when an emergency exists because of an accident or catastrophe in the operation of a nuclear power plant or nuclear installation or in the transportation of radioactive material, the Governor, for the duration of the emergency, may:

(1) Assume complete control of all emergency operations in the area affected by the accident or catastrophe, direct all rescue and salvage work and do all things deemed advisable and necessary to alleviate the immediate conditions.

(2) Assume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.

(3) Close all roads and highways in such area to traffic or by order of the Director of the State Department of Energy limit the travel on such roads to such extent as the director deems necessary and expedient.

(4) Designate persons to coordinate the work of public and private relief agencies operating in such area and exclude from such area any person or agency refusing to cooperate with other agencies engaged in emergency work.

(5) Require the aid and assistance of any state or other public or quasi-public agencies in the performance of duties and work attendant upon the emergency conditions in such area. [1983 c.586 §47; 2009 c.718 §50]

469.536 Public utility to disseminate information under ORS 469.533. A public utility which operates a nuclear power plant or nuclear installation shall disseminate to the governing bodies of cities and counties that may be affected information approved by the State Department of Energy which explains rules or procedures adopted under ORS 469.533. [Formerly 453.770]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs; transport and disposal of radioactive materials. (1) In instances where the Director of the State Department of Energy determines either from the monitoring or surveillance of the director that there is danger of violation of a safety standard adopted under ORS 469.501 from the continued operation of a plant or installation, the director may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards.

(3) The director may order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the director believes that ORS 469.300 to 469.619 and 469.930 or rules adopted pursuant thereto are being violated or are in danger of being violated. [Formerly 453.545; 1989 c.6 §2; 1993 c.569 §26; 2003 c.186 §31]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the Director of the State Department of Energy from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the Energy Facility Siting Council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the director shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.563 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the director based upon monitoring or surveillance by the director, or based upon information from the council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accu-

mulation or storage of radioactive material located at a nuclear-fueled thermal power plant or a nuclear installation, the director shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.563.

(3)(a) If the director believes there is a clear and immediate danger to public health or safety, the director shall halt the transportation or disposal of radioactive material or waste.

(b) The director shall serve an order to halt the transportation or disposal of radioactive material on the person responsible for the transport or disposal. The order may be served without prior hearing or notice.

(c) Within 24 hours after the director serves an order under paragraph (b) of this subsection, the director shall petition the appropriate circuit court for relief under ORS 469.563.

(4) The Governor, in the absence of the director, may issue orders and petition for judicial relief as provided in this section. [Formerly 453.555; 1977 c.794 §16; 1989 c.6 §3; 2003 c.186 §32]

469.553 Active uranium mill or mill tailings disposal facility site certification required; procedure for review; fees. (1) Any person desiring to construct or operate an active uranium mill or uranium mill tailings disposal facility after June 25, 1979, shall file with the Energy Facility Siting Council a site certificate application.

(2) The Energy Facility Siting Council shall review an application for a site certificate under this section using the procedure prescribed in ORS 469.350, 469.360, 469.370, 469.375, 469.401 and 469.403, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.421 in connection with site certificates applied for or issued under this section. [1979 c.283 §7; 1987 c.633 §1; 1993 c.569 §27; 1995 c.505 §25]

469.556 Rules governing uranium-related activities. The Energy Facility Siting Council shall adopt rules governing the location, construction and operation of uranium mills and uranium mill tailings disposal facilities and the treatment, storage and disposal of uranium mine overburden for the protection of the public health and safety and the environment. [1979 c.283 §8]

469.559 Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor; exception for inactive or abandoned site. (1) Notwithstanding the authority of the Oregon Health Authority pursuant to ORS 453.605 to 453.800 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, and perform or cause to be performed any and all acts necessary to be performed by the state, including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS chapter 183 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Energy Facility Siting Council and the State Department of Energy may enter into and carry out cooperative agreements and arrangements with any agency of the federal government implementing the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. section 9601 et seq., to clean up wastes and contaminated material, including overburden, created by uranium mining before June 29, 1989. Any such project need not obtain a site certificate from the council, but shall nevertheless comply with all applicable, relevant or appropriate state standards including but not limited to those set forth in ORS 469.375 and rules adopted by the council and other state agencies to implement such standards.

(3) The Governor may do any and all things necessary to implement the requirements of the federal Acts referred to in subsections (1) and (2) of this section.

(4) Notwithstanding ORS 469.553, after June 25, 1979, no site certificate is required for the cleanup and disposal of an inactive or abandoned uranium mill tailings site as authorized under subsection (1) of this section and Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604. [1979 c.283 §9; 1987 c.633 §2; 1989 c.496 §1; 2009 c.595 §955]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.338, 192.345 and 192.355, any information filed or submitted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be made available for public inspection and copying during regular office hours of the State Department of Energy at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Insurance)

469.561 Property insurance required; exceptions; filing of policy. (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

(2) Insurance required under this section does not apply to:

(a) Any claim of an employee of a person obtaining insurance under this section, if the claim is made under a state or federal workers' compensation Act and if the employee is employed at the site of and in connection with the nuclear power plant at which the nuclear incident occurred; or

(b) Any claim arising out of an act of war.

(3) A person obtaining insurance under this section shall maintain insurance for the term of the license issued to the nuclear power plant by the United States Nuclear Regulatory Commission and for any extension of the term, and until all radioactive material has been removed from the nuclear power plant and transportation of the radioactive material from the nuclear power plant has ended.

(4) A person obtaining insurance under this section shall file a copy of the insurance policy, any amendment to the policy and any superseding insurance policy with the Director of the State Department of Energy.

(5) Property insurance required under this section is in addition to and not in lieu of insurance coverage provided under the Price-Anderson Act (42 U.S.C. 2210).

(6) Property insurance required by subsections (1) to (5) of this section may include private insurance, self-insurance, utility industry association self-assurance pooling programs, or a combination of all three.

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [Formerly 469.565]

469.562 Eligible insurers. (1) In order to provide the private insurance specified under ORS 469.561, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.561 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [Formerly 469.567]

(Enforcement)

469.563 Court orders for enforcement. Without prior administrative proceedings, a circuit court may issue such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.320, 469.405 (3), 469.410, 469.421, 469.430, 469.440, 469.442, 469.507, 469.525 to 469.559, 469.560, 469.561, 469.562, 469.590 to 469.619, 469.930 and 469.992 or with the terms and conditions of a site certificate. [Formerly 469.570; 1999 c.385 §12]

469.564 Records or information for enforcement; correction of violation; determination of compliance; costs. (1) The Director of the State Department of Energy or the Energy Facility Siting Council may obtain from any persons all records or information needed to carry out and enforce ORS 469.525, 469.550 (3) and 469.607. In obtaining records or information under this subsection, the director or the council, with the written consent of the Governor, may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, may administer oaths and may cause the depositions of persons residing within or without Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts.

(2) The director or the council may require a person to take actions as necessary to correct a past or ongoing violation of ORS 469.525, 469.550 (3) or 469.607 or to ensure future compliance with ORS 469.525, 469.550 (3) or 469.607 or rules adopted for the purposes of carrying out ORS 469.525, 469.550 (3)

or 469.607. The director or the council shall coordinate with the Department of Environmental Quality prior to ordering any actions under this subsection.

(3)(a) At any reasonable time, an employee of or a duly authorized and identified representative of the State Department of Energy may enter upon, inspect and obtain samples from any public or private property, premises or place for the purpose of determining compliance with ORS 469.525, 469.550 (3) or 469.607 or rules adopted for the purposes of carrying out ORS 469.525, 469.550 (3) or 469.607.

(b) If a person refuses to comply with this subsection, the department or a duly authorized and identified representative of the department may obtain a warrant or subpoena to allow the entry, inspection or sampling authorized by this subsection.

(4)(a) A person found by the director or the council to be in violation of ORS 469.525 shall reimburse the department for all necessary, just and reasonable costs incurred by the department in the investigation of the violation. Department costs may include:

(A) Legal expenses;

(B) Expenses incurred in obtaining and inspecting records, information or samples under subsections (1) to (3) of this section; and

(C) Expenses incurred in issuing any final order or notice of violation.

(b) Upon request, the department shall provide a detailed justification for all costs charged to a person under this subsection.

(c) If a dispute arises regarding the necessity or reasonableness of expenses charged to a person under this subsection, the person may seek judicial review of the amount of expenses charged in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the person establishes that any of the charges are unnecessary or unreasonable, the department shall refund the amount found to be unnecessary or unreasonable. The person may not waive the right to judicial review by paying the portion of the fee or expense in dispute. [2021 c.38 §4]

Note: 469.564 was added to and made a part of 469.300 to 469.619 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.565 [1981 c.866 §§3,4; renumbered 469.561 in 1997]

(Oregon Hanford Cleanup Board)

469.566 Legislative findings. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing the Hanford Nuclear Reservation as a potentially suitable location for the long-term disposal of high-level radioactive waste; or

(b) Ensure adequate opportunity for public participation in the assessment process.

(2) Over the past 45 years, the United States has developed and produced nuclear weapons at the Hanford Nuclear Reservation and during this period large quantities of radioactive hazardous and chemical wastes have accumulated at the Hanford Nuclear Reservation, and the waste sites pose an immediate and serious long-term threat to the environment and to public health and safety.

(3) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Cleanup Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the federal government, to ensure a maximum of public participation in the assessment and cleanup process. [1987 c.514 §1; 1991 c.562 §3; 2001 c.104 §204; 2003 c.186 §33]

Note: 469.566 to 469.583 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.567 [1981 c.866 §5; renumbered 469.562 in 1997]

469.568 Construction of ORS 469.566 to 469.583. Nothing in ORS 469.566 to 469.583 shall be interpreted by the federal government or the United States Department of Energy as an expression by the people of Oregon to accept the Hanford Nuclear Reservation as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 §2; 2001 c.104 §205]

Note: See note under 469.566.

469.569 Definitions for ORS 469.566 to 469.583. As used in ORS 469.566 to 469.583:

(1) "Board" means the Oregon Hanford Cleanup Board.

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 §3; 2003 c.186 §34]

Note: See note under 469.566.

469.570 [Formerly 453.575; 1995 c.505 §23; renumbered 469.563 in 1997]

469.571 Oregon Hanford Cleanup Board; members; appointment. There is created an Oregon Hanford Cleanup Board that shall consist of the following members:

(1) The Director of the State Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) A representative of the Governor;

(4) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(5) Ten members of the public, appointed by the Governor, one of whom shall be a representative of a local emergency response organization in eastern Oregon and one of whom shall serve as chairperson; and

(6) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4; 1991 c.562 §1; 1997 c.249 §271; 2003 c.186 §5]

Note: See note under 469.566.

469.572 Compensation of board members. (1) Each member of the Oregon Hanford Cleanup Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Note: See note under 469.566.

469.573 Purpose of Oregon Hanford Cleanup Board. The Oregon Hanford Cleanup Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the Hanford Nuclear Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6; 2001 c.104 §206]

Note: See note under 469.566.

469.574 Duties of Oregon Hanford Cleanup Board; coordination with Washington. In carrying out its purpose as set forth in ORS 469.573, the Oregon Hanford Cleanup Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste and other issues related to the Hanford Nuclear Reservation.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the federal government on any matter related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation. Notification of proposed plans includes notification of proposals to conduct field work, on-site evaluation or on-site testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups in preparing this response.

(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation and the opportunities of the public to participate in procedures and decisions related to this waste.

(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation. If the board finds that the application

is not consistent with the state's policy related to such issue or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the federal government related to the long-term disposal of high-level radioactive waste and other issues related to the Hanford Nuclear Reservation.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation.

(9) Coordinate with appropriate counterparts and agencies in the State of Washington. [1987 c.514 §7; 1991 c.562 §4; 2001 c.104 §207]

Note: See note under 469.566.

469.575 Duties of chairperson of Oregon Hanford Cleanup Board. The chairperson of the Oregon Hanford Cleanup Board shall:

(1) Supervise the day-to-day functions of the board;

(2) Hire, assign, reassign and coordinate the administrative personnel of the board, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(3) Request technical assistance from any other state agency. [1987 c.514 §8]

Note: See note under 469.566.

469.576 Review of Hanford as site selected for long-term disposal of high-level radioactive waste. (1) If the United States Department of Energy selects the Hanford Nuclear Reservation as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Cleanup Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall:

(a) Include a full scientific review of the adequacy of the selected site and of the site plan;

(b) Use recognized experts;

(c) Conduct one or more public hearings on the site plan;

(d) Make available to the public arguments and evidence for and against the site plan; and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site. [1987 c.514 §10; 2001 c.104 §208]

Note: See note under 469.566.

469.577 Lead agency; agreements with federal agencies related to long-term disposal of high-level radioactive waste. (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Cleanup Board.

(3) The Oregon Hanford Cleanup Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section or other issues related to the Hanford Nuclear Reservation. [1987 c.514 §11; 1991 c.562 §5; 2001 c.104 §209]

Note: See note under 469.566.

469.578 Oregon Hanford Cleanup Board to implement agreements with federal agencies. The Oregon Hanford Cleanup Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under ORS 469.577. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general

public and interested citizen groups. [1987 c.514 §12]

Note: See note under 469.566.

469.579 Authority to accept moneys; disbursement of funds; rules. The Oregon Hanford Cleanup Board may accept moneys from the United States Department of Energy, other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of ORS 469.566 to 469.583. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of ORS 469.566 to 469.583, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste or other issues related to the Hanford Nuclear Reservation. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under ORS 469.573. [1987 c.514 §13; 1991 c.562 §6; 2001 c.104 §210; 2003 c.186 §35]

Note: See note under 469.566.

469.580 [1977 c.296 §13; repealed by 1993 c.569 §31]

469.581 Advisory and technical committees. The Oregon Hanford Cleanup Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495. [1987 c.514 §14; 1991 c.562 §2]

Note: See note under 469.566.

469.582 Cooperation with Oregon Hanford Cleanup Board; technical assistance from other state agencies. All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Cleanup Board in carrying out any of its activities under ORS 469.566 to 469.583 and, at the request of the chairperson, provide technical assistance to the board. [1987 c.514 §15]

Note: See note under 469.566.

469.583 Rules. In accordance with the applicable provisions of ORS chapter 183, the Oregon Hanford Cleanup Board shall adopt rules and standards to carry out the requirements of ORS 469.566 to 469.583. [1987 c.514 §16]

Note: See note under 469.566.

(Federal Site Selection)

469.584 Findings. The Legislative Assembly and the people of the State of Oregon find that:

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford Nuclear Reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress.

(3) The United States Department of Energy has prematurely deferred consideration of numerous potential sites and disposal media that its own research indicates are more appropriate, safer and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1987 c.13 §1; 2001 c.104 §211]

Note: 469.584 and 469.585 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.585 Activities of state related to selection of high-level radioactive waste disposal site. In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly, other statewide officials and state agencies shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste;

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic

media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal;

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act;

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste; and

(6) Ensure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford Nuclear Reservation site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 §2; 2001 c.104 §212]

Note: See note under 469.584.

(Hanford Nuclear Reservation)

469.586 Findings. The Legislative Assembly and the people of the State of Oregon find that:

(1) The maintenance of healthy, unpolluted river systems, airsheds and land are essential to the economic vitality and well-being of the citizens of the State of Oregon and the Pacific Northwest.

(2) Radioactive waste stored at the Hanford Nuclear Reservation is already leaking into and contaminating the water table and watershed of the Columbia River and radioactive materials and toxic compounds have been found in plants, animals and waters downstream from the Hanford Nuclear Reservation and constitute a present and potential threat to the health, safety and welfare of the people of the State of Oregon.

(3) The Hanford Nuclear Reservation is now one of the most radioactively contaminated sites in the world, according to government studies, and will require billions of dollars in costs for cleanup and the ongoing assessment of health effects.

(4) In November 1980, the people of the State of Oregon, by direct vote in a statewide election, enacted a moratorium on the construction of nuclear power plants, and no nuclear power plants are presently operating in the State of Oregon.

(5) In May 1987, the people of the State of Oregon, by direct vote in a statewide election, enacted Ballot Measure 1, opposing the disposal of highly radioactive spent fuel from commercial power plants at the Hanford Nuclear Reservation.

(6) In 1995, the Legislative Assembly resolved that Oregon should have all legal rights in matters affecting the Hanford Nuclear Reservation, including party status in the Hanford tri-party agreement that governs the cleanup of the reservation.

(7) Throughout the administrations of Presidents Ford, Carter, Reagan and Bush, the policy of the federal government banned the use of plutonium in commercial nuclear power plants due to the risk that the plutonium could be diverted to terrorists and to nations that have not renounced the use of nuclear weapons.

(8) The federal government has announced that it will process plutonium from weapons with uranium to produce mixed oxide fuel for commercial nuclear power plants and other nuclear facilities. The Hanford Nuclear Reservation, located on the Columbia River, is a primary candidate site being considered for the production facilities.

(9) The production of mixed oxide fuel will result in enormous new quantities of radioactive and chemical wastes that will present significant additional disposal problems and unknown costs. [1997 c.617 §1]

Note: 469.586 and 469.587 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.587 Position of State of Oregon related to operation of Hanford Nuclear Reservation. The Legislative Assembly and the people of the State of Oregon:

(1) Declare that the State of Oregon is unalterably opposed to the use of the Hanford Nuclear Reservation for operations that create more contamination at the Hanford Nuclear Reservation, divert resources from cleanup at the Hanford Nuclear Reservation and make the Hanford Nuclear Reservation cleanup more difficult, such as the processing of plutonium to fuel nuclear power plants, reactors or any other facilities, and further declare that vitrification in a safe manner is the preferred means to dispose of excess plutonium, in order to protect human health and the environment.

(2) Request that the President of the United States and the Secretary of Energy continue their previous policy of banning the use of plutonium to fuel commercial power plants and nuclear facilities.

(3) Request that the federal government honor the federal government's original mandate to implement and complete the cleanup and restoration of the Hanford Nuclear Reservation. [1997 c.617 §2]

Note: See note under 469.586.

(Siting of Nuclear-Fueled Thermal Power Plants)

469.590 Definitions for ORS 469.590 to 469.595. As used in ORS 469.590 to 469.595:

(1) "High-level radioactive waste" means spent nuclear fuel or the radioactive by-products from the reprocessing of spent nuclear fuel.

(2) "Spent nuclear fuel" means nuclear fuel rods or assemblies which have been irradiated in a power reactor and subsequently removed from that reactor. [1981 c.1 §2]

469.593 Findings. The people of this state find that if no permanent repository for high-level radioactive waste is provided by the federal government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes. Therefore, the people of this state enact ORS 469.590 to 469.601. [1981 c.1 §1]

469.594 Storage of high-level radioactive waste after expiration of license prohibited; continuing responsibility for storage; implementation agreements. (1) Notwithstanding the definition of a "waste disposal facility" under ORS 469.300, no high-level radioactive waste should be stored at the site of a nuclear-fueled thermal power plant after the expiration of the operating license issued to the nuclear power plant by the United States Nuclear Regulatory Commission.

(2) Notwithstanding subsection (1) of this section, a person operating a nuclear power plant under a license issued by the United States Nuclear Regulatory Commission shall remain responsible for proper temporary storage of high-level radioactive materials at the site of the nuclear power plant after termination of a license and until such materials are removed from the site for permanent storage.

(3) The State Department of Energy and the operators of nuclear-fueled thermal plants shall pursue agreements with the United States Department of Energy and the United States Nuclear Regulatory Commission to fulfill the provisions of this section. [1985 c.434 §2; 1991 c.480 §11; 1993 c.569 §28; 1995 c.505 §24; 2001 c.134 §12]

469.595 Condition to site certificate for nuclear-fueled thermal power plant. Before issuing a site certificate for a nuclear-fueled thermal power plant, the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the federal government. The repository must provide for the terminal disposition of such waste, with or without provision for retrieval for reprocessing. [1981 c.1 §3]

469.597 Election procedure; elector approval required. (1) Notwithstanding the provisions of ORS 469.370, if the Energy Facility Siting Council finds that the requirements of ORS 469.595 have been satisfied and proposes to issue a site certificate for a nuclear-fueled thermal power plant, the proposal shall be submitted to the electors of this state for their approval or rejection at the next available statewide general election. The procedures for submitting a proposal to the electors under this section shall conform, as nearly as possible to those for state measures, including but not limited to procedures for printing related material in the voters' pamphlet.

(2) A site certificate for a nuclear-fueled thermal power plant shall not be issued until the electors of this state have approved the issuance of the certificate at an election held pursuant to subsection (1) of this section. [1981 c.1 §§4,5]

469.599 Public Utility Commission's duty. The Public Utility Commission shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.463 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 §6]

469.601 Effect of ORS 469.595 on applications and applicants. ORS 469.595 does not prohibit:

(1) The Energy Facility Siting Council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 §8]

(Transportation of Radioactive Material)

469.603 Intent to regulate transportation of radioactive material. It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allowable under and consistent with federal laws and regulations. [1981 c.707 §2]

469.605 Permit to transport required; application; delegation of authority to issue permits; fees; rules. (1) No person shall ship or transport radioactive material identified by the Energy Facility Siting Council by

rule as posing a significant hazard to public health and safety or the environment if improperly transported into or within the State of Oregon without first obtaining a permit from the State Department of Energy.

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

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

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

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

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

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

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

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

(6) The director may delegate the authority to issue permits for the transportation of radioactive material to the Department of Transportation. In exercising such authority, the Department of Transportation shall comply with the applicable provisions of ORS 469.603 to 469.619 and rules adopted by the director or the Energy Facility Siting Council under ORS 469.603 to 469.619. Permits issued by the Department of Transportation under this subsection shall be enforced according to the provisions of ORS 825.258. The director also may delegate other authority granted under ORS 469.605 to 469.619 to other state agencies if the delegation will maintain or enhance the quality of the transportation safety program. [1981 c.707 §5; 1989 c.6 §4; 1991 c.233 §3; 2003 c.186 §36]

469.606 Determination of best and safest route. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the State Department of Energy shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:

(a) The Oregon Department of Transportation, or a designee of the Oregon Department of Transportation;

(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and

(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Commission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determination is made that the proposed route is not the best and safest route for transporting the material, the Director of the State Department of Energy shall deny the application except as provided in subsection (3) of this section.

(3) If the applicant is prohibited by a statute, rule or other action of an adjacent state or a political subdivision in an adjacent state from using the route that complies with federal law, the director:

(a) Shall petition the United States Department of Transportation for an administrative determination of preemption of the ban, pursuant to section 13 of the Hazardous Materials Transportation Uniform Safety Act of 1990, P.L. 101-615.

(b) May issue a permit as provided under ORS 469.605 (5) with conditions necessary to ensure safe transport over a route available to the applicant, until the United States Department of Transportation determines whether the prohibition by the other state or political subdivision is preempted. [1991 c.233 §2; 2003 c.186 §37]

469.607 Authority of council; rules. (1) After consultation with the Department of Transportation and other appropriate state, local and federal agencies, the Energy Facility Siting Council by rule:

(a) May fix requirements for notification, record keeping, reporting, packaging and emergency response;

(b) May designate those routes by highway, railroad, waterway and air where transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, re-

quirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, checkpoints, operator or crew training or other operational requirements to enhance public health and safety; and

(d) May establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.603 to 469.619 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS chapter 183. [1981 c.707 §6; 1989 c.6 §5; 1995 c.733 §45]

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes. Annually, the Director of the State Department of Energy shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The director's report shall include:

(1) The type and quantity of material transported;

(2) Any mode of transportation used;

(3) The route or routes taken; and

(4) Any other information at the discretion of the director. [1981 c.707 §8; 1989 c.6 §6; 2003 c.186 §38]

469.611 Emergency preparedness and response program; radiation emergency response team; training. Notwithstanding ORS chapter 401:

(1) The Director of the State Department of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to ensure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Oregon Health Authority shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the team at the scene of a radiological accident, the director may designate other technical advisors to work with the local response agencies.

(4) The authority shall assist the director to ensure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The authority shall report annually to the director on training of emergency response personnel. [1981 c.707 §9; 1983 c.586 §44; 1989 c.6 §7; 2003 c.186 §39; 2007 c.71 §151; 2009 c.595 §956; 2009 c.718 §51]

469.613 Records; inspection; rules. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the Energy Facility Siting Council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the Director of the State Department of Energy. Any requirement imposed by the council under this subsection shall be consistent with regulations of the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(2) The director may authorize any employee or agent of the director to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.550, 469.563, 469.603 to 469.619 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The director shall provide for:

(a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations. [1981 c.707 §10; 1989 c.6 §8; 2003 c.186 §40]

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident. (1) A person transporting radioactive materials in this state shall indemnify the State of Oregon and its poli-

tical subdivisions and agents for any claims arising from the release of radioactive material during that transportation and pay for the cost of response to an accident involving the radioactive material.

(2) With respect to radioactive materials, the Director of the State Department of Energy shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605.

(3) A person who owns, designs or maintains facilities, structures, vehicles or equipment used for handling, transportation, shipment, storage or disposal of nuclear material shall reimburse the state for all expenses reasonably incurred by the state or a political subdivision of the state, in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident caused by the person's acts or omissions. These expenses include but need not be limited to, costs incurred for precautionary evacuations, emergency response measures and decontamination or other cleanup measures. As used in this subsection "nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(4) Nothing in subsection (3) of this section shall affect any provision of subsection (1) or (2) of this section. [1981 c.707 §11; 1987 c.705 §9; 1989 c.6 §9]

469.617 Report to legislature; content. The Director of the State Department of Energy shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each odd-numbered year regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the State Department of Energy in administering ORS 469.550, 469.563, 469.603 to 469.619 and 469.992; and

(4) Such recommendations for additional legislation as the Energy Facility Siting Council considers necessary and appropriate. [1981 c.707 §12; 1989 c.6 §10; 2011 c.545 §58]

469.619 State Department of Energy to make federal regulations available. The State Department of Energy shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.550, 469.563, 469.603 to 469.619 and 469.992. [1981 c.707 §14; 1989 c.6 §11]

469.621 [1981 c.707 §7; repealed by 1993 c.742 §101]

RESIDENTIAL ENERGY CONSERVATION ACT

(Investor-Owned Utilities)

469.631 Definitions for ORS 469.631 to 469.645. As used in ORS 469.631 to 469.645:

(1) "Cash payment" means a payment made by the investor-owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Commission" means the Public Utility Commission of Oregon.

(4) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 174.101.

(6) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the investor-owned utility.

(7) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(9) "Investor-owned utility" means an electric or gas utility regulated by the commission as a public utility under ORS chapter 757.

(10) "Residential customer" means a dwelling owner or tenant who, either directly or indirectly, pays a share of the cost for service billed by an investor-owned utility for electric or natural gas service received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §2; 1989 c.233 §1; 1989 c.648 §66; 1995 c.551 §13; 2003 c.186 §41; 2019 c.422 §34]

469.633 Investor-owned utility program. Each investor-owned utility shall have an approved residential energy conservation program that, to the Public Utility Commission's satisfaction:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures approved by the commission to a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The minimum financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. Unless the commission approves higher levels of assistance, the financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms approved by the commission:

(i) A principal amount of up to $5,000;

(ii) For an electric utility, an interest rate that does not exceed six and one-half percent annually or, for a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 C.F.R. 201.4 (a)) on the date of the loan application, but not lower than six and one-half percent or higher than 12 percent; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.641 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) $350.

(b) That an otherwise eligible dwelling owner may obtain up to $5,000 in loans or $350 in cash payments for each dwelling.

(c) That there may be up to two loans or cash payments provided for each dwelling.

(d) That a dwelling owner who acquires a dwelling for which a previous loan was obtained under this section and ORS 469.631 may obtain a loan or a cash payment for en-

ergy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.631 to 469.645; and

(B) There remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

(e) If the commission so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling.

(f) If the investor-owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the investor-owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The investor-owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) For an electric utility, provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space heating potential.

(6) Provides that the investor-owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.631 to 469.645 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §3; 1985 c.745 §6; 1989 c.233 §2; 1991 c.67 §141; 1991 c.78 §1]

469.634 Contributions for urban and community forest activities by customers of investor-owned utilities; rules; uses. (1) The Public Utility Commission of Oregon by rule shall establish a system to allow customers of investor-owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill. Investor-owned utilities may choose to use the system established by the commission.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with the Public Utility Commission of Oregon and local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 §2]

469.635 Alternative program of investor-owned utilities. (1) An investor-owned utility may meet the program submission requirements of ORS 469.633 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 889, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.633.

(2) An investor-owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures

that includes the option of a cash payment or a loan unless the investor-owned utility offers another financing program determined by the Public Utility Commission to meet or exceed the program required in ORS 469.633 (3). A program shall be considered to meet or exceed the program required in ORS 469.633 (3) if it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.633 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.633 (3)(a)(B).

(3) An investor-owned utility that has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that is determined by the commission to meet or exceed the requirements in ORS 469.633 and 469.641 shall not be required to submit a separate program. However, the provisions of ORS 469.637, 469.639, 469.643 and 469.645 nevertheless shall be applicable.

(4) In addition to the residential energy conservation program required in ORS 469.633, an investor-owned utility may offer other energy conservation programs if the commission determines the programs will promote cost-effective energy conservation. [1981 c.778 §7; 1991 c.78 §2]

469.636 Additional financing program by investor-owned utility for rental dwelling. In addition to the residential energy conservation program approved under ORS 469.633, an investor-owned utility may offer an additional financing program for energy conservation measures for a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy for space heating from the investor-owned utility. The financing program may consist, at a minimum, of either of the following:

(1) Offering low-interest loans to fund the entire cost of installed energy conservation measures up to $5,000 per dwelling unit. In addition to the loan subsidy provided under ORS 469.633 (3), the loan shall be further subsidized by applying the present value to the public utility of the tax credit received under ORS 469B.130 to 469B.169. Any portion of the present value of the tax credit shall accrue to the dwelling owner rather than to the investor-owned utility.

(2) Offering cash payments in addition to the cash payments required in ORS 469.633 (3). The additional cash payment shall be equal to the present value of the tax credit received under ORS 469B.130 to 469B.169. [1985 c.745 §11; 1989 c.765 §9]

469.637 Energy conservation part of utility service of investor-owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the investor-owned utility. [1981 c.778 §4]

469.639 Billing for energy conservation measures. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may require as part of an investor-owned utility residential energy conservation program that, for dwelling owners with approved credit, the utility add to the periodic utility bill for the owner-occupied dwelling for which energy conservation measures have been provided pursuant to ORS 469.631 to 469.645 an amount agreed to between the dwelling owner and the investor-owned utility.

(2) The commission shall allow an investor-owned utility to charge or bill a dwelling owner separately from the periodic utility bill for energy conservation measures provided pursuant to ORS 469.631 to 469.645 if that utility wishes to do so. [1981 c.778 §5]

469.641 Conditions for cash payments to dwelling owner by investor-owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, an investor-owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981; and

(2) The measures will not be paid for with other investor-owned utility grants or loans. [1981 c.778 §6; 1991 c.877 §39]

469.643 Formula for customer charges; rules. The Public Utility Commission shall adopt by rule a formula under which the investor-owned utility shall charge all customers to recover:

(1) The cost to the investor-owned utility of the services required to be provided under ORS 469.633; and

(2) Any bad debts, including casualty losses, attributable to dwelling owner default on a loan for energy conservation measures. [1981 c.778 §8]

469.645 Implementation of program by investor-owned utility. After the Public Utility Commission has approved the residential energy conservation program of an

investor-owned utility required by ORS 469.633, the investor-owned utility promptly shall implement that program. [1981 c.778 §9]

(Publicly Owned Utilities)

469.649 Definitions for ORS 469.649 to 469.659. As used in ORS 469.649 to 469.659:

(1) "Cash payment" means a payment made by the publicly owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 174.101.

(5) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the publicly owned utility.

(6) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(7) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(8) "Publicly owned utility" means a utility that:

(a) Is owned or operated in whole or in part, by a municipality, cooperative association or people's utility district; and

(b) Distributes electricity.

(9) "Residential customer" means a dwelling owner or tenant who is billed by a publicly owned utility for electric service received at the dwelling.

(10) "Space heating" means the heating of living space within a dwelling.

(11) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §10; 1989 c.648 §67; 1995 c.551 §14; 2003 c.186 §42; 2019 c.422 §35]

469.651 Publicly owned utility program. Within 30 days after November 1, 1981, each publicly owned utility shall submit to the Director of the State Department of Energy a residential energy conservation program that:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the publicly owned utility or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but

not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures at the request of a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. The financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms:

(i) A principal amount of up to $4,000; or

(ii) An interest rate that does not exceed six and one-half percent annually; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.657 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) $350;

(b) That an otherwise eligible dwelling owner may obtain up to $4,000 in loans or $350 in cash payments for each dwelling;

(c) That there may be up to $4,000 in loans or $350 in cash payments for each dwelling;

(d) That a change in ownership of a dwelling shall not prevent the new dwelling owner from obtaining a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.649 to 469.659; and

(B) The amount of the financing is within the limit for that dwelling prescribed in paragraph (c) of this subsection;

(e) If the publicly owned utility so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling; and

(f) If the publicly owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the publicly owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The publicly owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) Provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space-heating potential.

(6) Provides that the publicly owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.649 to 469.659 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §11]

469.652 Contributions for urban and community forest activities by customers of publicly owned utilities; rules; uses. (1) Publicly owned utilities may establish a system to allow customers of publicly owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community For-

estry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 §4]

469.653 Alternative program of publicly owned utility. (1) A publicly owned utility may meet the program submission requirements of ORS 469.651 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 887, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.651.

(2) A publicly owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the publicly owned utility offers another financing program that meets or exceeds the program required in ORS 469.651 (3). A program shall be considered to meet or exceed the program required in ORS 469.651 (3) when it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.651 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.651 (3)(a)(B).

(3) A publicly owned utility whose governing body has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that meets or exceeds the requirements of ORS 469.651 and 469.657 shall not be required to submit a separate program. However, the provisions of ORS 469.655 and 469.659 nevertheless shall be applicable. [1981 c.778 §14]

469.655 Energy conservation as part of utility service of publicly owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the publicly owned utility. [1981 c.778 §12]

469.657 Conditions for cash payments to dwelling owner by publicly owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, a publicly owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981.

(2) The measures will not be paid for with other publicly owned utility grants or loans. [1981 c.778 §13; 1991 c.877 §40]

469.659 Implementation of program by publicly owned utility. After the publicly owned utility has submitted to the Director of the State Department of Energy the residential energy conservation program required by ORS 469.651, the publicly owned utility promptly shall implement that program. [1981 c.778 §15]

469.673 [1981 c.778 §16; 1987 c.749 §8; 1989 c.648 §68; 1995 c.551 §15; 2003 c.186 §43; 2017 c.727 §9; renumbered 456.594 in 2017]

469.675 [1981 c.778 §17; repealed by 2017 c.727 §8]

469.677 [1981 c.778 §18; 2003 c.186 §44; repealed by 2017 c.727 §8]

469.679 [1981 c.778 §19; repealed by 2017 c.727 §8]

469.681 [1981 c.778 §23; 1983 c.273 §3; 1987 c.450 §3; 1989 c.88 §6; 1993 c.434 §1; 1993 c.569 §29; 1995 c.79 §289; 2003 c.186 §45; 2009 c.11 §68; 2017 c.727 §10; renumbered 456.595 in 2017]

469.683 [1981 c.778 §§24,25; 1989 c.966 §55; 1993 c.434 §2; 2003 c.186 §46; 2017 c.727 §11; renumbered 456.597 in 2017]

(Miscellaneous)

469.685 Use of earlier energy audit. A dwelling owner served by an investor-owned utility, as defined in ORS 469.631, or a publicly owned utility, as defined in ORS 469.649, who applies for financing under the provisions of ORS 316.744, 317.386, 456.594 to 456.599 and 469.631 to 469.687, may use without obtaining a new energy audit an energy audit obtained from an energy supplier under chapter 887, Oregon Laws 1977, or a

public utility under chapter 889, Oregon Laws 1977, before November 1, 1981. [1981 c.778 §30; 2003 c.46 §51]

469.687 Title for ORS 456.594 to 456.599 and 469.631 to 469.687. ORS 316.744, 317.386, 456.594 to 456.599 and 469.631 to 469.687 shall be known as the Oregon Residential Energy Conservation Act. [1981 c.778 §1; 2003 c.46 §52]

ENERGY CONSERVATION PROGRAMS

(Single Family Residence)

469.700 Energy efficiency ratings; public information; "single family residence" defined. (1) The Residential and Manufactured Structures Board or the Construction Industry Energy Board, after public hearing and subject to the approval of the Director of the Department of Consumer and Business Services, shall adopt a recommended voluntary energy efficiency rating system for single family residences and provide the State Department of Energy with a copy thereof.

(2) The rating system shall provide a single numerical value or other simple concise means to measure the energy efficiency of any single family residence, taking into account factors including, but not limited to, the heat loss characteristics of ceilings, walls, floors, windows, doors and heating ducts.

(3) Upon adoption of the rating system under subsections (1) and (2) of this section, the department shall publicize the availability of the system, and encourage its voluntary use in real estate transactions.

(4) As used in subsections (1) to (3) of this section, "single family residence" means a structure designed as a residence for one family and sharing no common wall with another residence of any type. [1977 c.413 §§1,2,3; 1993 c.744 §113; 2003 c.675 §44; 2009 c.567 §§9,22]

(Home Energy Performance Score System)

469.703 Home energy performance score system; home energy assessors; reports; database; rules. (1) As used in this section:

(a) "Home energy assessor" has the meaning given that term in ORS 701.527.

(b) "Home energy audit" means the evaluation or testing of components or systems in a residential building for the purpose of identifying options for increasing energy conservation and energy efficiency.

(c) "Home energy performance score" has the meaning given that term in ORS 701.527.

(2) In consultation with the Public Utility Commission, the State Department of Energy shall adopt by rule a home energy performance score system by which a person may assign a residential building a home energy performance score for the purpose of evaluating the energy conservation and energy efficiency of the building.

(3) The department shall designate by rule programs for the training of home energy assessors. Programs designated by the department under this subsection must ensure competency in conducting home energy audits and assigning home energy performance scores.

(4) Subject to subsection (5) of this section, the department may adopt by rule requirements under which home energy assessors who are certified under ORS 701.532 must report to the department the home energy performance scores assigned by the home energy assessors. The department shall keep and maintain a database of information reported to the department under this subsection.

(5) Rules adopted under subsection (4) of this section may not allow for the reporting of individual addresses of residential structures or the names of individual homeowners, but may allow for the reporting of information regarding the jurisdiction in which a residential structure is located and the utility services provided, any specific energy efficiency features of the residential structure or other general information that allows the department to make any aggregated evaluations of savings attributable to energy efficiency. [2013 c.383 §12]

Note: 469.703 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Low Interest Loans)

469.710 Definitions for ORS 469.710 to 469.720. As used in ORS 469.710 to 469.720, unless the context requires otherwise:

(1) "Annual rate" means the yearly interest rate specified on the note, and is not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alter-

native. However, the present value of the delivered energy costs of an energy conservation measure may not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 174.101.

(5) "Dwelling owner" means the person who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for purchase of real property.

(6) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(7) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(8) "Finance charge" means the total of all interest, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(9) "Fuel oil dealer" means a person, association, corporation or any other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) "Residential fuel oil customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service for space heating received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Wood heating resident" means a person whose primary space heating is provided by the combustion of wood. [1981 c.894 §22; 1987 c.749 §5; 1989 c.648 §69; 2005 c.22 §342; 2019 c.422 §36]

469.715 Low interest loans for cost-effective energy conservation; rate. (1) Dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents, shall be eligible for low-interest loans for cost-effective energy conservation measures through commercial lending institutions.

(2) The annual rate shall not exceed six and one-half percent annually for loans provided by commercial lending institutions to dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents for the purpose of financing energy conservation measures pursuant to ORS 469.710 to 469.720. [1981 c.894 §§23,24; 1987 c.749 §6]

469.717 When installation to be completed. (1) Installation of the energy conservation measures must be completed within 90 days after receipt of loan funds. The State Department of Energy may provide an inspection at the owner's request.

(2) Notwithstanding the provisions of subsection (1) of this section, the department may inspect installation of energy conservation measures to verify that all loan or other state subsidy funds have been used for energy conservation measures recommended in the audit, that installation has been performed in a workmanlike manner and that materials used satisfy prevailing industry standards. If requested to do so by the department, the dwelling owner shall provide the department with copies of receipts and any other documents verifying the cost of energy conservation measures. [1987 c.749 §3]

469.719 Eligibility of lender for tax credit not affected by owner's failure. Eligibility of the lender for any tax credit under ORS 317.112 shall not be affected by any dwelling owner's failure to use the loan for qualifying energy conservation measures. [1987 c.749 §4]

469.720 Energy audit required; permission to inspect required; owner not to receive other incentives. (1) A dwelling owner who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may not apply for low-interest financing under ORS 469.710 to 469.720 unless:

(a) The dwelling owner, customer or resident has first requested and obtained an energy audit from a fuel oil dealer, a publicly owned utility or an investor-owned utility or from a person under contract with the State Department of Energy under ORS 316.744, 317.111, 317.386, 456.594 to 456.599 and 469.631 to 469.687;

(b) The dwelling owner first submits to the department written permission to inspect the installations to verify that installation of energy conservation measures has been made;

(c) The dwelling owner presents to the lending institution a copy of the energy audit together with certification that the dwelling in question receives space heating from fuel oil or wood and a copy of the written permission to inspect submitted to the department under paragraph (b) of this subsection; and

(d) The dwelling owner does not receive any other state incentives for that part of the cost of the energy conservation measures to be financed by the loan.

(2) Any dwelling owner applying for low-interest financing under ORS 469.710 to 469.720 who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may use without obtaining a new energy audit any assistance and technical advice obtained from an energy supplier before November 1, 1981, under chapter 887, Oregon Laws 1977, or from a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials. [1981 c.894 §§25,26; 1987 c.749 §7; 1997 c.249 §167; 2003 c.46 §53]

(Public Buildings)

469.730 Declaration of purpose. It is the purpose of ORS 469.730 to 469.745 to promote voluntary measures to conserve energy in public buildings or groups of buildings constructed prior to January 1, 1978, through the adoption of energy conservation standards. [1977 c.853 §1]

469.735 Definitions for ORS 469.730 to 469.745. As used in ORS 469.730 to 469.745, unless the context requires otherwise:

(1) "Department" means the Department of Consumer and Business Services.

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Public building" means any publicly or privately owned building constructed prior to January 1, 1978, including the outdoor areas adjacent thereto, which:

(a) Is open to and frequented by the public; or

(b) Serves as a place of employment. [1977 c.853 §2; 1987 c.414 §154; 1993 c.744 §114]

469.740 Rules establishing energy conservation standards for public buildings; bases. In accordance with ORS chapter 183 and after consultation with the Building Codes Structures Board or with the Construction Industry Energy Board, the Director of the Department of Consumer and Business Services shall adopt rules establishing energy conservation standards for public buildings. The standards shall provide means of measuring and reducing total energy consumption and shall take into account:

(1) The climatic conditions of the areas in which particular buildings are located; and

(2) The three basic systems comprising any functioning building, which are:

(a) Energized systems such as those required for heating, cooling, lighting, ventilation, conveyance and business equipment operation.

(b) Nonenergized systems such as floors, ceilings, walls, roof and windows.

(c) Human systems such as maintenance, operating and management personnel, tenants and other users. [1977 c.853 §3; 1987 c.414 §154a; 1993 c.744 §115; 2009 c.567 §10]

469.745 Voluntary compliance program. To provide the public with a guide for energy conservation, the Director of the State Department of Energy shall adopt a program for voluntary compliance by the public with the standard adopted by the Director of the Department of Consumer and Business Services under ORS 469.740. [1977 c.853 §4; 1987 c.414 §155]

469.748 State agencies to conduct assessments of energy use and greenhouse gas emissions of state-owned buildings; planning targets in capital projects; state agency reporting. (1) As used in this section, "state agency" has the meaning given that term in ORS 278.005.

(2)(a) The Oregon Department of Administrative Services, in cooperation with the State Department of Energy, shall develop a methodology and work plan for state agencies to implement a comprehensive assessment of energy use and greenhouse gas emissions of state-owned buildings. At a minimum, the assessments must:

(A) Examine and quantify each building's greenhouse gas emissions, using where feasible existing data such as energy use reporting for existing state-owned buildings that state agencies submitted to the State Department of Energy and data from other existing programs and contracts;

(B) Identify equipment or usage that contributes to greenhouse gas emissions from each building; and

(C) Determine and quantify the useful life of equipment in each building that contributes to greenhouse gas emissions.

(b) The Oregon Department of Administrative Services may direct state agencies to conduct the assessments described in paragraph (a) of this subsection in phases or stages and may specify a minimum building size that is subject to an assessment.

(c) The Oregon Department of Administrative Services may procure and make available to state agencies services from a private contractor to conduct the assessments described in paragraph (a) of this subsection throughout the state.

(3) All agencies of state government shall cooperate with and assist the Oregon Department of Administrative Services, or the department's contractor, in conducting the assessments and shall timely provide relevant information to the department, or the department's contractor, in accordance with methodology the department specifies.

(4) The Oregon Department of Administrative Services, with support from the State Department of Energy, shall create a searchable and modifiable database with the data that the Oregon Department of Administrative Services, or the department's contractor, collects from state agency assessments described in subsection (2) of this section. State agencies shall use baseline data from the database as a tool for planning energy use reduction and greenhouse gas emissions reduction targets in capital projects.

(5)(a) The Oregon Department of Administrative Services, in collaboration with the Department of Environmental Quality and the State Department of Energy, shall oversee all capital projects in which:

(A) A state agency constructs or performs a major renovation on a state building; and

(B) The estimated contract price for the capital project exceeds $1 million.

(b) In performing the oversight described in paragraph (a) of this subsection, the Oregon Department of Administrative Services shall:

(A) Develop and implement guidelines for sustainable design that:

(i) Apply to all state agencies and all capital projects described in paragraph (a) of this subsection;

(ii) Take into account the building's life cycle and the life cycle of all of the building's systems, components, materials, operations and maintenance; and

(iii) Consider each building's size, cost or purpose;

(B) Provide guidance and technical expertise to each state agency with respect to construction methods, materials, energy conservation measures, greenhouse gas emissions reduction methods, green building construction and renovation and other techniques and technologies that will aid in achieving the state's green building, energy efficiency and greenhouse gas emissions reduction goals; and

(C) Use existing work the State Department of Energy performed in connection with the United States Department of Energy's Standard Energy Efficiency Data program, data from other existing programs and contracts and, where appropriate, data from the database described in subsection (4) of this section.

(c) Each state agency shall report regularly to the Oregon Department of Administrative Services concerning progress on a capital project described in paragraph (a) of this subsection, with an emphasis on progress toward meeting the goals described in paragraph (b)(B) of this subsection. A state agency may combine a report under this paragraph with a report from another state agency.

(6) The Oregon Department of Administrative Services and the State Department of Energy shall participate on behalf of the state in the National Building Performance Standards Coalition. [2023 c.442 §18]

Note: 469.748 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.750 State purchase of alternative fuels. (1) Any state agency, board, commission, department or division that is authorized to purchase or otherwise acquire fuel for the systems providing heating, air conditioning, lighting and the supply of domestic hot water for public buildings and grounds may

enter into long-term contracts for the purchase of alternative fuels. Such contracts may be for terms not longer than 20 years.

(2) As used in this section:

(a) "Alternative fuels" includes all fuels other than petroleum, natural gas, coal and products derived therefrom. The term includes, but is not limited to, solid wastes or fuels derived from solid wastes.

(b) "Public buildings and grounds" has the meaning given that term in ORS 276.210. [1981 c.386 §6]

Note: 469.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(State Agency Projects)

469.752 Definitions for ORS 469.752 to 469.756. As used in ORS 469.752 to 469.756, unless the context requires otherwise:

(1) "Project" means a state agency's improvement of the efficiency of energy use through conservation, development of cogeneration facilities or use of renewable resources. "Project" does not include a plan of a state agency to improve the efficiency of energy use in a state rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(2) "Savings" means any reduction in energy costs or net income derived from the sale of energy generated through a project.

(3) "State agency" has the meaning given that term in ORS 278.005. [1991 c.487 §1; 1993 c.86 §1; 1995 c.551 §16; 2003 c.186 §47]

Note: 469.752 to 469.756 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.754 Authority of state agencies to establish projects; use of savings. (1) State agencies may enter into such contractual and other arrangements as are necessary or convenient to design, develop, operate and finance projects on-site at state owned or state rented facilities.

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

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

(B) A state agency shall retain 100 percent of the net savings to the state agency after any project debt service.

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

(3) A state agency shall spend the savings under subsection (2) of this section to increase productivity through:

(a) Energy efficiency projects;

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

(c) Infrastructure improvements.

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

(5) ORS 469.752 to 469.756 do not authorize a state agency to sell electricity to an entity other than an investor owned utility, a publicly owned utility, an electric cooperative utility or the Bonneville Power Administration.

(6) ORS 469.752 to 469.756 do not limit the authority of a state agency conferred by any other provision of law, or affect any authority, including the authority of a municipality, to regulate utility service under existing law. [1991 c.487 §2; 1993 c.86 §2; 2023 c.442 §19]

Note: See note under 469.752.

469.756 Rules; technical assistance; evaluations. The State Department of Energy in consultation with other state agencies and utilities shall adopt rules, guidelines and procedures that are necessary to establish savings for projects and to implement other provisions of ORS 469.752 to 469.756. The department may enter into agreements under ORS chapter 190 with state agencies to provide technical assistance in selecting appropriate projects and to evaluate and determine energy and cost savings. [1991 c.487 §3; 2023 c.442 §20]

Note: See note under 469.752.

DESIGNATED STATE AGENCY PROGRAMS FOR ENERGY EFFICIENCY IN BUILDINGS

469.760 Legislative findings; state goals related to adoption and use of heat pump technologies. (1) The Legislative Assembly finds that:

(a) Energy consumption in residential and commercial buildings accounted for 34 percent of annual greenhouse gas emissions in this state in 2021, according to the Department of Environmental Quality;

(b) Space and water heating account for 64 percent of an average residential building's energy use;

(c) Heat pumps provide both heating and cooling benefits that keep people safe during extreme weather events that are becoming more frequent and more intense as a consequence of climate change;

(d) Electric heat pumps can provide up to three times more heat energy than the electrical energy the heat pumps consume, which makes heat pumps the most energy efficient space heating option available in the market;

(e) Upgrading space and water heating appliances with contemporary heat pump technologies can help people to save money on household energy bills;

(f) Existing and forthcoming state and federal incentive programs will assist in energy efficiency improvements in homes and buildings, including adoption of energy efficient heating and cooling appliances;

(g) Many residents of this state suffer from disproportionately high energy burdens, and environmental justice communities face greater barriers to purchasing and installing heat pumps and other energy efficient appliances; and

(h) Additional support and innovative solutions are necessary to ensure that all households in this state benefit from energy efficient appliances and heating and cooling upgrades.

(2) The Legislative Assembly declares as goals for this state:

(a) That owners, operators or residents of residential or commercial buildings in this state install and use at least 500,000 new heat pumps by 2030;

(b) That the state provide programs and support for accelerating purchases and installations of heat pump technologies to help meet the state's greenhouse gas emissions reduction goals;

(c) That the programs and support described in paragraph (b) of this subsection should prioritize environmental justice communities and individuals who reside in houses and structures that do not have a functioning, adequate or affordable heating or cooling system;

(d) That the state evaluate the adoption and use of heat pump technologies regularly to determine whether the rate of adoption and use will enable the state to meet greenhouse gas emissions reduction goals; and

(e) That the agencies of the executive branch of state government lead by example by acquiring, installing and using heat pump technologies. [2023 c.442 §1]

Note: 469.760 to 469.772 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.763 Definitions related to designated state agency programs. (1) As used in this section and ORS 469.766 and 469.769:

(a) "Designated state agency program" means a program related to the promotion, implementation, incentivization or regulation of energy efficiency in buildings carried out by any of the following state agencies, as determined by the agency by rule or other action:

(A) The State Department of Energy;

(B) The Housing and Community Services Department;

(C) The Public Utility Commission;

(D) The Department of Environmental Quality;

(E) The Oregon Health Authority; and

(F) The Department of Consumer and Business Services.

(b) "Greenhouse gas emissions reduction goals" means policies and goals for reducing greenhouse gas emissions in this state to achieve, at a minimum, emissions reductions consistent with the greenhouse gas emissions reduction goals specified in ORS 468A.205.

(c) "Heat pump" means a device that provides indoor space heating and cooling by transferring thermal energy between the interior and exterior of a building.

(d) "Heat pump technology" means:

(A) A device that transfers thermal energy between the interior and exterior of a building for the purpose of space heating or cooling;

(B) A device that transfers thermal energy from the interior or exterior of a building to water for the purpose of heating the water; or

(C) A device that performs both of the functions described in subparagraphs (A) and (B) of this paragraph.

(2) In carrying out a designated state agency program, an agency described in subsection (1)(a) of this section shall consider actions to aid in achieving greenhouse gas emissions reduction goals that include, but are not limited to:

(a) Considering greenhouse gas emissions reduction goals in designated state agency program regulatory decisions.

(b) Aligning the creation or operation of new or existing designated state agency programs with greenhouse gas emissions reduction goals.

(c) Working in consultation and aligning efforts with other agencies to simplify and improve access for residents of this state to

existing and new programs that relate to energy efficiency and resilience, and, where appropriate, to reduce or eliminate within programs financial or nonfinancial barriers to accessing energy efficiency measures or appliances that will result in the greatest available energy efficiency and reductions of greenhouse gas emissions.

(d) Consistent with applicable federal and state laws and program requirements, prioritizing actions that help environmental justice communities, as defined in ORS 469A.400:

(A) Adapt to impacts from climate change; and

(B) Overcome cost burdens and other barriers to using energy in a way that is efficient and in alignment with greenhouse gas emissions reduction goals.

(e) Consistent with applicable federal and state laws, consulting with the Oregon Climate Action Commission and the Environmental Justice Council and using, when appropriate, the environmental justice mapping tool developed under ORS 182.555 when considering or evaluating for development or implementation the policies and actions described in this subsection. [2023 c.442 §2]

Note: See note under 469.760.

469.766 Biennial report on adoption of heat pump technologies in this state. (1) The State Department of Energy shall submit to the Governor and an interim committee of the Legislative Assembly related to the environment not later than September 15 of each odd-numbered year, beginning in 2025, a report that evaluates the rate of adoption of heat pump technologies among residents of this state and progress the state is making in achieving the state's greenhouse gas emissions reduction goals. At a minimum, the report must:

(a) Review, using existing studies, market reports, polling data and other publicly available information, the nature and state of the market for heat pump technologies, including the size and dollar value of the market and the variety of available technologies, applications and appliances;

(b) Identify financial and nonfinancial barriers that prevent adoption of heat pump technologies by residents of this state;

(c) Assess the state's progress in achieving the goals specified in ORS 469.760 (2); and

(d) Estimate the date by which the state will achieve the goals specified in ORS 469.760 (2).

(2) The department shall collaborate with other state agencies described in ORS 469.763 (1)(a) in preparing the report described in subsection (1) of this section and may:

(a) Contract with a private entity to conduct research for, prepare or assist in preparing the report; and

(b) Incorporate the findings from this report into the biennial energy report or into other reports to the Legislative Assembly concerning home energy efficiency or heat pump technologies.

(3) In assessing the state's progress toward achieving the goal specified in ORS 469.760 (2)(a), the department shall focus on heat pumps that are commercially available and shall, to the extent possible, use existing studies, data and analysis to evaluate:

(a) Whether reductions in greenhouse gas emissions attributable to new heat pumps installed in homes and buildings in this state contribute to the state's ability to meet greenhouse gas emissions reduction goals; and

(b) To the extent possible, whether sales figures, the percentage of newly installed space and water heating systems that are heat pumps and the rate at which residents of this state install new heat pumps indicate that the state will meet the goal specified in ORS 469.760 (2)(a). [2023 c.442 §3]

Note: See note under 469.760.

469.769 Program to reduce barriers to home energy efficiency and resilience. (1) The State Department of Energy shall collaborate with other state agencies described in ORS 469.763 (1)(a) to reduce financial and nonfinancial barriers to home energy efficiency and resilience by:

(a) Providing initial and continuing technical assistance and training in order to build capacity in developers, builders, community-based organizations, homeowners and tenants to conduct renovations and installations of energy efficient technologies, including heat pumps; and

(b) Providing education and training to contractors, subcontractors, technicians, community-based organizations and other installers and other workers in industries related to construction and energy appliance installation concerning:

(A) The availability of moneys, programs, rebates and other incentives for acquiring and installing energy efficient appliances for heating and cooling;

(B) Methods, techniques, available incentives and funding available for upgrading electrical panels and wiring to accommodate energy efficient appliances for heating and cooling; and

(C) Planning for, installing and operating heat pumps.

(2) The program described in subsection (1) of this section must:

(a) Provide information and assistance that is understandable and usable by developers, builders, community-based organizations and other industry stakeholders with an interest in acquiring, maintaining and using energy efficient technologies for heating and cooling homes and commercial buildings, including heat pump technologies;

(b) Include information on delivering, installing and using high efficiency heating and cooling appliances in instances where variation exists in funding options for various minimum efficiency requirements;

(c) Work with locally connected and culturally connected organizations to provide the program's information, technical assistance, training and support; and

(d) Allow sufficient flexibility for designated state agencies to contract with private entities to provide needed information, assistance, training and support.

(3) The department may incorporate the work described in this section with other programs that serve to educate the public on energy efficiency. [2023 c.442 §4]

Note: See note under 469.760.

469.772 Energy Efficient Technologies Information and Training Fund. (1)(a) The Energy Efficient Technologies Information and Training Fund is established in the State Treasury, separate and distinct from the General Fund. Interest that the Energy Efficient Technologies Information and Training Fund earns must be credited to the fund.

(b) Moneys in the fund may be invested and reinvested as provided in ORS 293.701 to 293.857.

(2) Moneys in the fund consist of:

(a) Appropriations to the State Department of Energy for the purposes described in ORS 469.760 to 469.772;

(b) Moneys from federal sources and other moneys the department receives for the purposes specified in ORS 469.760 to 469.772;

(c) Interest and other earnings on moneys in the fund; and

(d) Other amounts the department receives from any source and deposits into the fund.

(3) Subject to subsection (4) of this section, moneys in the fund are continuously appropriated to the department for the purpose of funding the purposes described in ORS 469.760 to 469.772.

(4)(a) The department may not during any biennium expend more than 10 percent of the average quarterly balance of the fund to pay the cost of administering the fund or the administrative costs of carrying out the purposes described in ORS 469.760 to 469.772.

(b) As used in this subsection, "administrative cost" does not include grants or other funds provided to community-based organizations or other contracted entities. [2023 c.442 §5]

Note: See note under 469.760.

469.785 [2007 c.739 §31; renumbered 469B.400 in 2011]

469.790 [2007 c.739 §5; 2011 c.730 §3; renumbered 469B.403 in 2011]

469.800 [1981 c.49 §1; renumbered 469.803 in 1999]

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

469.802 Definition for ORS 469.802 to 469.845. As used in ORS 469.802 to 469.845, "council" means the Pacific Northwest Electric Power and Conservation Planning Council. [1999 c.59 §141]

469.803 Oregon participation in Pacific Northwest Electric Power and Conservation Planning Council. The State of Oregon agrees to participate in the formation of the Pacific Northwest Electric Power and Conservation Planning Council pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501. Participation of the State of Oregon in the council is essential to assure adequate representation for the citizens of Oregon in decision making to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the Pacific Northwest region of an efficient and adequate power supply and to fulfill the other purposes stated in section 2 of Public Law 96-501. [Formerly 469.800]

469.805 State members of council; confirmation; qualifications. (1) The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the Pacific Northwest Electric Power and Conservation Planning Council for terms of three years.

(2) In making the appointments under subsection (1) of this section, the Governor shall consider but is not limited to:

(a) Prior experience, training and education as related to the duties and functions of the council and the priorities contained in section 4 of Public Law 96-501.

(b) General knowledge of the concerns, conditions and problems of the physical, social and economic environment of the State of Oregon.

(c) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501.

(3) Of the persons appointed under subsection (1) of this section, not more than one member of the Oregon delegation to the council shall reside within the boundary of an area that includes the First and Third Congressional Districts of this state and the Portland, Oregon, Metropolitan Statistical Area. [1981 c.49 §2; 1995 c.156 §1; 1997 c.249 §168; 2009 c.11 §69; 2013 c.1 §71]

469.810 Conflicts of interest prohibited. (1) A Pacific Northwest Electric Power and Conservation Planning Council member or member of the council member's household may not own or have any beneficial interest in any stock or indebtedness of any utility or direct service industry.

(2) A council member or a member of the council member's household may not be a director, officer, agent or employee of any utility or direct service industry.

(3) A council member or a member of the council member's household may not be a director, officer, agent or employee of or hold any proprietary interest in any consulting firm that does business with any utility or direct service industry.

(4) A council member or a member of the council member's household may not receive any compensation from any utility or direct service industry arising out of the member's business, trade or profession.

(5) A council member is a public official subject to the provisions and reporting requirements of ORS chapter 244.

(6) A council member must be a citizen of the United States and must have resided in the State of Oregon for at least one year preceding appointment.

(7) A council member may not hold any other elected or appointed lucrative public office or be principally engaged in any other business or vocation.

(8) As used in this section:

(a) "Beneficial interest" does not include an interest in a pension fund, a mutual fund or an insurance fund.

(b) "Consulting firm" means any corporation, partnership or sole proprietorship whose principal business is providing personal services.

(c) "Member of the household" means any relative who resides with the council member.

(d) "Relative" means the spouse of the council member, any children of the council member or of the council member's spouse, and brothers, sisters or parents of the council member or of the council member's spouse.

(e) "Utility or direct service industry" means a utility or direct service industry customer that purchases electrical energy directly from the Bonneville Power Administration. [1981 c.49 §3; 1987 c.566 §23; 2007 c.865 §38]

469.815 Status of members; duties; attendance at public meetings; technical assistance. (1) Persons appointed by the Governor and confirmed by the Senate to serve as Pacific Northwest Electric Power and Conservation Planning Council members shall be considered to be full-time state public officials. Council members shall perform the duties of members of the council as specified in Public Law 96-501, consistently with the priorities contained in section 4 thereof and as otherwise provided in state law.

(2) If public meetings are held in the State of Oregon, pursuant to section 4(g)(1) of Public Law 96-501, council members must either attend the meeting or otherwise become familiar with the nature and content of the meeting.

(3) A council member may request, and state agencies shall provide, technical assistance to assist the council member in performing the council member's duties. [1981 c.49 §4]

469.820 Term; reappointment; vacancy. (1) Each Pacific Northwest Electric Power and Conservation Planning Council member shall serve a term ending January 15 of the third year following appointment. A council member, except upon removal as provided in ORS 469.830 (2), continues to serve as a member of the council until a successor is appointed and confirmed.

(2) A council member is eligible for reappointment, subject to Senate confirmation, but no member shall serve more than three consecutive terms. A council member who serves 18 months or more of a term shall be considered to have served a full term. However, with respect to the initial term consisting of two years, a council member who serves 12 months or more shall be considered to have served a full term.

(3) Within 30 days of the creation of a vacancy in the position of a council member, the Governor shall appoint a person to serve the succeeding term or the remainder of the unexpired term. However, the Governor need not appoint a person to serve the remainder of the unexpired term if the vacancy occurs within 30 days or less of the expiration of the term. [1981 c.49 §5]

469.825 Prohibited activities of members. (1) A person who has been a Pacific Northwest Electric Power and Conservation Planning Council member shall not engage in any of the activities prohibited by ORS 469.810 (2) and (3), within one year after ceasing to be a council member.

(2) A person who has been a council member shall not appear as a representative of any party on any matter before the council within three years after ceasing to be a council member.

(3) A person who has been a council member shall not represent, aid, counsel, consult or advise for financial gain any person on any matter before the council within three years after ceasing to be a council member.

(4) A person who has been a council member shall not appear for financial gain as a representative of or aid, counsel or advise any party before the council or the Bonneville Power Administration or communicate with the council or the Bonneville Power Administration with the intent to influence the outcome of any decision on any matter in which the council member was substantially and personally involved while on the council.

(5) Notwithstanding the status of council members as state officers, the provisions of 18 U.S.C. 207 relating to post-employment activities shall be considered to be state law in so far as they do not conflict therewith, applicable to council members appointed pursuant to ORS 469.802 to 469.845 and 469.990 (3), regardless of the salary paid to the council members.

(6) Subsections (2) to (5) of this section shall not apply to any appearance, attendance, communication or other action on behalf of the State of Oregon; nor shall subsections (2) to (5) of this section apply to an appearance or communication made in response to a subpoena. [1981 c.49 §6]

469.830 Removal of members; grounds; procedure. (1) Pacific Northwest Electric Power and Conservation Planning Council members shall serve at the pleasure of the Governor, except as provided in subsection (2) of this section.

(2) The Governor shall remove a council member for the following causes:

(a) Failure to attend three consecutive council meetings except for good cause.

(b) Conviction of a felony.

(c) Violation of ORS chapter 244.

(d) Violation of ORS 469.810.

(3) Before removal of a council member by the Governor, the council member shall be given a written statement of the reasons for removal and, upon request by the member, an opportunity to be heard publicly on such reasons before the Governor. A copy of the statement of reasons and a transcript of the record of the hearing shall be filed with the Secretary of State. [1981 c.49 §7]

469.835 Salary of members; staff. (1) Each Pacific Northwest Electric Power and Conservation Planning Council member shall receive a salary not to exceed the salary of a member of the Public Utility Commission, or the maximum salary authorized under section 4(a)(3) of Public Law 96-501.

(2) Each council member is entitled to appoint one secretarial staff assistant who shall be in the unclassified service. [1981 c.49 §8; 1989 c.171 §64]

469.840 Northwest Regional Power and Conservation Account; uses. (1) There is established a Northwest Regional Power and Conservation Account. Moneys received pursuant to Public Law 96-501 shall be placed in the account.

(2) The account created by subsection (1) of this section is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commission, the State Department of Energy, the State Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action. [1981 c.49 §9; 1987 c.158 §99; 2003 c.186 §48]

469.845 Annual report to Governor and legislature. Pacific Northwest Electric Power and Conservation Planning Council members shall prepare a report which shall be presented to the Governor and to the President of the Senate and the Speaker of the House of Representatives of the Legislative Assembly on October 1 of each year. The report shall include a review of the council's actions during the prior year. [1981 c.49 §10]

COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAM

469.860 Definitions for ORS 469.860 to 469.900. (1) As used in ORS 469.865 to 469.875, 469.900 (1) and (2) and subsection (2) of this section:

(a) "Commercial building" means a public building as defined in ORS 455.560.

(b) "Commission" means the Public Utility Commission.

(c) "Conservation services" means providing energy audits or technical assistance for energy conservation measures as part of a program approved under ORS 469.860 to 469.900.

(d) "Electric utility" means a public utility, as defined in ORS 757.005, which produces, transmits, delivers or furnishes electric power and is regulated by the commission under ORS chapter 757.

(e) "Energy conservation measure" means a measure primarily designed to improve the efficiency of energy use in a commercial building. "Energy conservation measures" include, but are not limited to, improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(2) As used in ORS 469.865 and 469.900 (2), "gas utility" means a public utility, as defined in ORS 757.005, which delivers or furnishes natural gas to customers for heat, light or power.

(3) As used in ORS 469.880 to 469.895 and 469.900 (3):

(a) "Commercial building" means a public building as defined in ORS 455.560.

(b) "Conservation services" has the meaning given in subsection (1) of this section.

(c) "Energy conservation measure" has the meaning given in subsection (1) of this section.

(d) "Publicly owned utility" means an electric utility owned or operated, in whole or in part, by a municipality, cooperative association or people's utility district. [1981 c.708 §§1,7,13]

Note: 469.860 (1) and (2) and 469.863 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.863 Gas utility to adopt commercial energy audit program; rules. (1) Within 365 days after November 1, 1981, the Public Utility Commission shall adopt rules governing energy conservation programs provided by gas utilities under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building.

(2) Within 180 days after the effective date of the rules adopted by the commission under subsection (1) of this section, each gas utility shall present for the commission's approval a commercial energy audit program which shall, to the commission's satisfaction:

(a) Make information about energy conservation measures available to any commercial building customer of the gas utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the gas utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the recommended energy conservation measure; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section. [1981 c.708 §8]

Note: See note under 469.860.

469.865 Electric utility to adopt commercial energy conservation services program. (1) Within 180 days after the adoption of the rules by the Public Utility Commission under section 2, chapter 708, Oregon Laws 1981, each electric utility shall present for the commission's approval a commercial energy conservation services program which shall, to the commission's satisfaction:

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

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

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

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the electric utility. [1981 c.708 §3]

469.870 Application of ORS 469.865, 469.870 and 469.900 (1) to electric utility. ORS 469.865, 469.900 (1) and this section shall not apply to an electric utility if the Public Utility Commission determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections. [1981 c.708 §4]

469.875 Fee for gas utility audit. The Public Utility Commission shall determine whether the gas utility may charge a reasonable fee to the customer for the energy audit service and, if so, the fee amount. [1981 c.708 §9]

469.878 [1991 c.711 §6; 1993 c.18 §123; 1995 c.746 §18a; 1999 c.623 §8; 1999 c.765 §6; renumbered 469B.171 in 2011]

469.880 Energy audit program; rules. Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The Director of the State Department of Energy shall adopt rules governing the commercial energy audit program established under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. [1981 c.708 §14; 1987 c.158 §100; 2003 c.186 §49]

469.885 Publicly owned utility to adopt commercial energy audit program; fee. (1) Within 180 days after the adoption of rules by the Director of the State Department of Energy under ORS 469.880, each publicly owned utility shall present for the director's approval a commercial energy audit program that shall, to the director's satisfaction:

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

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

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

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

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§15,16; 2003 c.186 §50]

469.890 Publicly owned utility to adopt commercial energy conservation program; fees; rules. (1) Within 365 days after November 1, 1981, the Director of the State Department of Energy shall adopt rules governing energy conservation programs prescribed by ORS 469.895 and 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the director, each covered publicly owned utility shall present for the director's approval a commercial energy conservation services program that shall, to the director's satisfaction:

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

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

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

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

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§18,19; 2003 c.186 §51]

469.895 Application of ORS 469.890 to 469.900 to publicly owned utility. (1) ORS 469.890 and 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890 and 469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

(2) ORS 469.890 and 469.900 (3) and this section shall not apply to a covered publicly owned utility if the Director of the State Department of Energy determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the director shall publish a list identifying each covered publicly owned utility to which ORS 469.890 and 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c.708 §17; 2003 c.186 §52]

469.900 Duty of commission to avoid conflict with federal requirements. (1) The Public Utility Commission shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

(2) The commission shall insure that each gas utility's commercial energy conservation

services program does not conflict with federal statutes and regulations applicable to gas utilities and energy conservation in commercial buildings.

(3) The Director of the State Department of Energy shall insure that each covered publicly owned utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to covered publicly owned utilities and energy conservation in commercial buildings. [1981 c.708 §§5,10,20]

Note: 469.900 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

469.930 Northwest Interstate Compact on Low-Level Radioactive Waste Management. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is enacted into law by the State of Oregon and entered into with all other jurisdictions lawfully joining therein in a form as provided for as follows:

ARTICLE I
Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II
Definitions

As used in this compact:

(1) "Facility" means any site, location, structure or property used or to be used for the storage, treatment or disposal of low-level waste, excluding federal waste facilities.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III
Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state.

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon.

(3) Authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state.

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

(6) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices

under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

ARTICLE IV
Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state and shall contain at least the following:

(a) The generator's name and address;

(b) A description of the contents of the low-level waste container;

(c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and

(d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in the region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V
Northwest Low-Level
Waste Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI
Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington and Wyoming. As to any eligible party, this compact shall become effective

upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this Article any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

ARTICLE VII
Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c.497 §1]

469.935 [1981 c.497 §3; repealed by 1997 c.632 §14]

POWER COSTS AND RATES

469.950 Authority to enter into interstate cooperative agreements to control power costs and rates; Bonneville Power Administration. The State of Oregon shall pursue and may enter into an interstate cooperative agreement with the states of Washington, Idaho and Montana for the purpose of making collective efforts to control Bonneville Power Administration wholesale power costs and rates by studying and developing a region-wide response to:

(1) Federal attempts to increase arbitrarily the interest rates on federal funds previously used to build public facilities in the Pacific Northwest.

(2) Federal initiatives to sell the Bonneville Power Administration.

(3) Bonneville Power Administration rate increase and budget expenditure proposals in excess of their actual needs.

(4) Regional uses of surplus firm power, including uses by existing or newly attracted Pacific Northwest industries, to provide long-term use of the surplus for job development.

(5) Power transmission intertie access. [1985 c.780 §1]

Note: 469.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.960 [2013 c.774 §1; 2014 c.38 §1; repealed by 2017 c.725 §22]

469.961 [2013 c.774 §2; repealed by 2017 c.725 §22]

469.962 [2013 c.774 §3; 2014 c.38 §2; repealed by 2017 c.725 §22]

469.963 [2013 c.774 §4; 2014 c.38 §3; repealed by 2017 c.725 §22]

469.964 [2013 c.774 §5; 2014 c.38 §4; repealed by 2017 c.725 §22]

469.965 [2013 c.774 §6; 2014 c.38 §5; repealed by 2017 c.725 §22]

469.966 [2013 c.774 §7; 2014 c.38 §6; repealed by 2017 c.725 §22]

PENALTIES

469.990 Penalties. (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, willfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2)(a) Willful disclosure of confidential information in violation of ORS 469.090 is a Class A misdemeanor. Notwithstanding ORS 161.635, the maximum fine for a violation is $10,000.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is a Class A violation.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c.606 §20; subsection (3) enacted as 1981 c.49 §11; 1999 c.1051 §185; 2011 c.597 §212]

469.991 [1989 c.926 §40; 1991 c.67 §142; repealed by 1999 c.880 §2]

469.992 Civil penalties. (1) The Director of the State Department of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than $25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of

$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than $100 per day nor more than $1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than $25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 may be assessed by the circuit court upon complaint of any person injured by the violation. [Formerly 453.994; 1977 c.794 §17; 1981 c.707 §13; 1983 c.273 §4; 1987 c.158 §101; 1989 c.6 §12; 1991 c.480 §8; 1999 c.385 §13; 1999 c.1051 §309; 2003 c.186 §53]

Note: The amendments to 469.992 by section 17, chapter 653, Oregon Laws 1991, become operative when the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. See section 18, chapter 653, Oregon Laws 1991. The text of 469.992 that would become operative upon an exemption or change, including amendments by section 14, chapter 385, Oregon Laws 1999, section 310, chapter 1051, Oregon Laws 1999, and section 54, chapter 186, Oregon Laws 2003, is set forth for the user's convenience.

469.992. (1) The Director of the State Department of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than $25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of $50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than $100 per day nor more than $1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than $25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 or section 14, chapter 653, Oregon Laws 1991, may be assessed by the circuit court upon complaint of any person injured by the violation.

Note: Section 18, chapter 653, Oregon Laws 1991, provides:

Sec. 18. Sections 12 to 16 of this Act and the amendments to ORS 469.992 by section 17 of this Act do not become operative until the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. [1991 c.653 §18]

469.994 [1981 c.894 §8; 1983 c.346 §5; 1989 c.706 §18; 1989 c.880 §13a; 1991 c.734 §38; 1997 c.534 §13; renumbered 469B.991 in 2011]

Chapter 469A

2023 EDITION

Renewable Portfolio Standards; Nonemitting Electricity Targets

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RENEWABLE PORTFOLIO STANDARDS

(Definitions)

469A.005 Definitions for ORS 469A.005 to 469A.210. As used in ORS 469A.005 to 469A.210:

(1) "Acquires service territory" does not include an acquisition by a city of a facility, plant, equipment or service territory within the boundaries of the city, pursuant to ORS 225.020 or city charter, if the city:

(a) Already owns, controls or operates an electric light and power system for supplying electricity to the inhabitants of the city and for general municipal purposes;

(b) Provides fair, just and reasonable compensation to the electric company whose service territory is acquired that:

(A) Gives consideration for the service territory rights and the cost of the facility, plant or equipment acquired and for depreciation, fair market value, reproduction cost and any other relevant factor; and

(B) Is based on the present value of the service territory rights and the facility, plant and equipment acquired, including the value of poles, wires, transformers and similar and related appliances necessarily required to provide electric service; and

(c) Pays any stranded costs obligation established pursuant to ORS 757.483.

(2) "Banked renewable energy certificate" means a bundled or unbundled renewable energy certificate that is not used by an electric utility or electricity service supplier to comply with a renewable portfolio standard in a calendar year, and that is carried forward for the purpose of compliance with a renewable portfolio standard in a subsequent year.

(3) "BPA electricity" means electricity provided by the Bonneville Power Administration, including electricity generated by the Federal Columbia River Power System hydroelectric projects and electricity acquired by the Bonneville Power Administration by contract.

(4) "Bundled renewable energy certificate" means a renewable energy certificate for qualifying electricity that is acquired:

(a) By an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the renewable energy certificate that was issued for the electricity;

(b) By an electric utility by generation of the electricity for which the renewable energy certificate was issued; or

(c) By an electricity service supplier by retirement by an electric company where the renewable energy certificate satisfied paragraph (a) or (b) of this subsection prior to such retirement and was retired on behalf of the electricity service supplier on behalf of a retail electricity consumer that pays transition adjustments to the electric company.

(5) "Compliance year" means the calendar year for which the electric utility or electricity service supplier seeks to establish compliance with the renewable portfolio standard applicable to the electric utility or electricity service supplier in the compliance report submitted under ORS 469A.170.

(6) "Consumer-owned utility" means a municipal electric utility, a people's utility district organized under ORS chapter 261 that sells electricity or an electric cooperative organized under ORS chapter 62.

(7) "Distribution utility" has the meaning given that term in ORS 757.600.

(8) "Electric company" has the meaning given that term in ORS 757.600.

(9) "Electric utility" has the meaning given that term in ORS 757.600.

(10) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(11) "Qualifying electricity" means electricity described in ORS 469A.010.

(12) "Renewable energy source" means a source of electricity described in ORS 469A.025.

(13) "Retail electricity consumer" means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon.

(14) "Unbundled renewable energy certificate" means:

(a) A renewable energy certificate for qualifying electricity that is acquired by an electric utility or electricity service supplier by trade, purchase or other transfer without acquiring the electricity that is associated with the renewable energy certificate; or

(b) A renewable energy certificate that is sold to a retail electricity consumer without selling, on a non-cost-of-service basis, the electricity associated with the renewable energy certificate to the retail electricity consumer. [2007 c.301 §1; 2016 c.28 §3; 2021 c.508 §24]

(Qualifying Electricity)

469A.010 Qualifying electricity. (1) Except as provided in this section, and subject to ORS 469A.135, electricity generated from a renewable energy source may be used to comply with a renewable portfolio standard only if the facility that generates the electricity meets the requirements of ORS 469A.020.

(2)(a) Any electricity that the Bonneville Power Administration has designated as environmentally preferred power, or has given a similar designation for electricity generated from a renewable resource, may be used to comply with a renewable portfolio standard.

(b) Any electricity generated from a renewable energy source by a facility may be used to comply with a renewable portfolio standard, subject to ORS 469A.135, if the facility:

(A) Burned coal as a fuel source;

(B) Completely ceases to burn coal as a fuel source; and

(C) Converts to a renewable energy source after January 1, 2012.

(3) The Legislative Assembly finds that hydroelectric energy is an important renewable energy source and electricity from hydroelectric generators may be used to comply with a renewable portfolio standard as provided in ORS 469A.005 to 469A.210. [2007 c.301 §2; 2011 c.225 §1]

469A.020 Qualifying electricity; age of generating facility. (1) Except as provided in this section, electricity may be used to comply with a renewable portfolio standard only if the electricity is generated by a facility that becomes operational on or after January 1, 1995.

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

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

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

(a) Owned by an electric utility; or

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

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

(6) A facility located in this state that generates electricity from direct combustion of municipal solid waste and that became operational before January 1, 1995, may be used to comply with a renewable portfolio standard for up to 11 average megawatts of electricity generated per calendar year. [2007 c.301 §3; 2010 c.17 §1; 2010 c.71 §1; 2016 c.28 §4]

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

(a) Wind energy.

(b) Solar photovoltaic and solar thermal energy.

(c) Wave, tidal and ocean thermal energy.

(d) Geothermal energy.

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

(a) Organic human or animal waste;

(b) Spent pulping liquor;

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

(d) Wood material from hardwood timber grown on land described in ORS 321.267 (3);

(e) Agricultural residues;

(f) Dedicated energy crops; and

(g) Landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or municipal solid waste.

(3) Electricity generated from the direct combustion of biomass may not be used to comply with a renewable portfolio standard if any of the biomass combusted to generate the electricity includes wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate.

(4) Electricity generated by a hydroelectric facility may be used to comply with a renewable portfolio standard only if:

(a) The facility is located outside any protected area designated by the Pacific Northwest Electric Power and Conservation Planning Council as of July 23, 1999, or any area protected under the federal Wild and Scenic Rivers Act, P.L. 90-542, or the Oregon Scenic Waterways Act, ORS 390.805 to 390.925; or

(b) The electricity is attributable to efficiency upgrades made to the facility on or after January 1, 1995.

(5)(a) Up to 50 average megawatts of electricity per year generated by an electric utility from certified low-impact hydroelectric facilities described in ORS 469A.020 (4)(a) may be used to comply with a renewable portfolio standard, without regard to the number of certified facilities operated by the electric utility or the generating capacity of those facilities. A hydroelectric facility described in this paragraph is not subject to the requirements of subsection (4) of this section.

(b) Up to 40 average megawatts of electricity per year generated by certified low-impact hydroelectric facilities described in ORS 469A.020 (4)(b) may be used to comply with a renewable portfolio standard, without regard to the number of certified facilities or the generating capacity of those facilities. A hydroelectric facility described in this paragraph is not subject to the requirements of subsection (4) of this section.

(6)(a) Direct combustion of municipal solid waste in a generating facility located in this state may be used to comply with a renewable portfolio standard. The qualification of a municipal solid waste facility for use in compliance with a renewable portfolio standard has no effect on the qualification of the facility for a tax credit under ORS 469B.130 to 469B.169.

(b) The total amount of electricity generated in this state by direct combustion of municipal solid waste by generating facilities that became operational in this state on or after January 1, 1995, may not exceed nine average megawatts per year for the purpose of complying with a renewable portfolio standard.

(7) Electricity generated from hydrogen gas, including electricity generated by hydrogen power stations using anhydrous ammonia as a fuel source, may be used to comply with a renewable portfolio standard if:

(a) The electricity is derived from:

(A) Any source of energy described in subsection (1) or (2) of this section; or

(B) A hydroelectric facility that complies with subsection (4) of this section and that is certified as a low-impact hydroelectric facility as described in ORS 469A.020 (4); and

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

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

(9) The State Department of Energy by rule may approve energy sources other than those described in this section that may be used to comply with a renewable portfolio standard. The department may not approve petroleum, natural gas, coal or nuclear fission as an energy source that may be used to comply with a renewable portfolio standard. [2007 c.301 §4; 2010 c.17 §3; 2010 c.71 §2]

469A.027 Certification of eligibility for certain generating facilities; generation date of electricity. The State Department of Energy may certify as eligible for renewable energy certificates a facility that qualifies under ORS 469A.020 (5) and (6) and 469A.025 (6) and (7) only for electricity generated on or after January 1, 2011. [2010 c.17 §4]

Note: 469A.027 to 469A.031 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469A.029 Eligibility; registration date for certain generating facilities with tracking system. To be eligible for renewable energy certificates, the owner or operator of a generating facility that qualifies under ORS 469A.020 (5) and (6) and 469A.025 (6) and (7) must register the generating facility with the Western Renewable Energy Generation Information System or other regional system or trading program designated by the State Department of Energy before January 1, 2011. [2010 c.17 §5]

Note: See note under 469A.027.

469A.031 Eligibility; registration date of generating facility that uses biomass with Western Renewable Energy Generation Information System. Notwithstanding ORS 469A.029, a facility described in ORS 469A.020 (5) is eligible for renewable energy certificates if the owner or operator of the generating facility registered the generating facility with the Western Renewable Energy Generation Information System on or after January 1, 2011. [2017 c.249 §1]

Note: See note under 469A.027.

(Renewable Portfolio Standards)

469A.050 Applicable standard. (1) Electric utilities must comply with the applicable renewable portfolio standard described in ORS 469A.052 or 469A.055.

(2) Electricity service suppliers must comply with the renewable portfolio standard established under ORS 469A.065. [2007 c.301 §5]

469A.052 Large utility renewable portfolio standard. (1) The large utility renewable portfolio standard imposes the following requirements on an electric utility that makes sales of electricity to retail electricity consumers in an amount that equals three percent or more of all electricity sold to retail electricity consumers:

(a) At least five percent of the electricity sold by the electric utility to retail electricity consumers in each of the calendar years 2011, 2012, 2013 and 2014 must be qualifying electricity;

(b) At least 15 percent of the electricity sold by the electric utility to retail electricity consumers in each of the calendar years 2015, 2016, 2017, 2018 and 2019 must be qualifying electricity;

(c) At least 20 percent of the electricity sold by the electric utility to retail electricity consumers in each of the calendar years 2020, 2021, 2022, 2023 and 2024 must be qualifying electricity;

(d) At least 25 percent of the electricity sold by a consumer-owned utility to retail electricity consumers in the calendar year 2025 and subsequent calendar years must be qualifying electricity;

(e) At least 27 percent of the electricity sold by an electric company to retail electricity consumers in each of the calendar years 2025, 2026, 2027, 2028 and 2029 must be qualifying electricity;

(f) At least 35 percent of the electricity sold by an electric company to retail electricity consumers in each of the calendar years 2030, 2031, 2032, 2033 and 2034 must be qualifying electricity;

(g) At least 45 percent of the electricity sold by an electric company to retail electricity consumers in each of the calendar years 2035, 2036, 2037, 2038 and 2039 must be qualifying electricity; and

(h) At least 50 percent of the electricity sold by an electric company to retail electricity consumers in the calendar year 2040 and subsequent calendar years must be qualifying electricity.

(2) If, on June 6, 2007, an electric utility makes sales of electricity to retail electricity consumers in an amount that equals less than three percent of all electricity sold to retail electricity consumers, but in any three consecutive calendar years thereafter makes sales of electricity to retail electricity consumers in amounts that average three percent or more of all electricity sold to retail electricity consumers, the electric utility is subject to the renewable portfolio standard described in subsection (3) of this section. The electric utility becomes subject to the renewable portfolio standard described in subsection (3) of this section in the calendar year following the three-year period during which the electric utility makes sales of electricity to retail electricity consumers in amounts that average three percent or more of all electricity sold to retail electricity consumers.

(3) An electric utility described in subsection (2) of this section must comply with the following renewable portfolio standard:

(a) Beginning in the fourth calendar year after the calendar year in which the electric utility becomes subject to the renewable portfolio standard described in this subsection, at least five percent of the electricity sold by the electric utility to retail electricity consumers in a calendar year must be qualifying electricity;

(b) Beginning in the 10th calendar year after the calendar year in which the electric utility becomes subject to the renewable portfolio standard described in this subsection, at least 15 percent of the electricity sold by the electric utility to retail electricity consumers in a calendar year must be qualifying electricity;

(c) Beginning in the 15th calendar year after the calendar year in which the electric utility becomes subject to the renewable portfolio standard described in this subsection, at least 20 percent of the electricity sold by the electric utility to retail electricity consumers in a calendar year must be qualifying electricity; and

(d) Beginning in the 20th calendar year after the calendar year in which the electric utility becomes subject to the renewable portfolio standard described in this subsection, at least 25 percent of the electricity sold by the electric utility to retail electricity consumers in a calendar year must be qualifying electricity. [2007 c.301 §6; 2016 c.28 §5]

469A.055 Small electric utilities. (1) Except as provided in this section, an electric utility that makes sales of electricity to retail electricity consumers in an amount that equals less than three percent of all electricity sold to retail electricity consumers is not subject to ORS 469A.005 to 469A.210.

(2) Beginning in calendar year 2025, at least five percent of the electricity sold to

retail electricity consumers in a calendar year by an electric utility must be qualifying electricity if the electric utility makes sales of electricity to retail electricity consumers in an amount that equals less than one and one-half percent of all electricity sold to retail electricity consumers.

(3) Beginning in calendar year 2025, at least 10 percent of the electricity sold to retail electricity consumers in a calendar year by an electric utility must be qualifying electricity if the electric utility makes sales of electricity to retail electricity consumers in an amount that equals or is more than one and one-half percent, and less than three percent, of all electricity sold to retail electricity consumers.

(4) The exemption provided by subsection (1) of this section terminates if an electric utility, or a joint operating entity that includes the electric utility as a member, acquires electricity from an electricity generating facility that uses coal as an energy source or makes an investment on or after June 6, 2007, in an electricity generating facility that uses coal as an energy source. Beginning in the calendar year following the year in which an electric utility's exemption terminates under this subsection, the electric utility is subject to the renewable portfolio standard described in ORS 469A.052 (3) and the provisions of ORS 469A.005 to 469A.210 that apply to ORS 469A.052 (3). This subsection does not apply to:

(a) A wholesale market purchase by an electric utility for which the energy source for the electricity is not known;

(b) BPA electricity;

(c) Acquisition of electricity under a contract entered into before June 6, 2007;

(d) A renewal or replacement contract for a contract for purchase of electricity described in paragraph (c) of this subsection;

(e) A purchase of electricity if the electricity is included in a contract for the purchase of qualifying electricity and is necessary to shape, firm or integrate the qualifying electricity;

(f) Electricity provided to an electric utility under a contract for the acquisition of an interest in an electricity generating facility that was entered into by the electric utility before June 6, 2007, or entered into before June 6, 2007, by an electric cooperative organized under ORS chapter 62 of which the electric utility is a member, without regard to whether the electricity is being used to serve the load of the electric utility on June 6, 2007; or

(g) Investments in an electricity generating facility that uses coal as an energy source if the investments are for the purpose of improving the facility's pollution mitigation equipment or the facility's efficiency or are necessary to comply with requirements or standards imposed by governmental entities.

(5) The exemption provided by subsection (1) of this section terminates for a consumer-owned utility if the consumer-owned utility acquires service territory of an electric utility without the consent of the electric utility. Except as provided in subsection (6) of this section, beginning in the calendar year following the year in which a consumer-owned utility's exemption terminates under this subsection, the consumer-owned utility is subject to the renewable portfolio standard described in ORS 469A.052 (3) and the provisions of ORS 469A.005 to 469A.210 that apply to ORS 469A.052 (3).

(6) If an electric utility acquires service territory of another electric utility without the consent of the electric utility from which service territory was acquired, then beginning in the calendar year following the acquisition, the percentage of the acquiring electric utility's electricity sold to all retail electricity consumers of the acquiring electric utility that is sold to retail electricity consumers that are located in the acquired service territory is subject to the renewable portfolio standard that is applicable to the electric utility from which service territory was acquired and the provisions of ORS 469A.005 to 469A.210 that apply to the renewable portfolio standard.

(7) The provisions of this section do not authorize the acquisition by a municipal electric utility of service territory of a people's utility district organized under ORS chapter 261.

(8) The provisions of this section do not affect the requirement that electric utilities offer a green power rate under ORS 469A.205. [2007 c.301 §7; 2016 c.28 §8]

469A.060 Exemptions from compliance with renewable portfolio standard. (1) Electric utilities are not required to comply with the renewable portfolio standards described in ORS 469A.052 and 469A.055 to the extent that:

(a) Compliance with the standard would require the electric utility to acquire electricity in excess of the electric utility's projected load requirements in any calendar year; and

(b) Acquiring the additional electricity would require the electric utility to substitute qualifying electricity for electricity derived from an energy source other than coal, natural gas or petroleum.

(2)(a) Electric utilities are not required to comply with a renewable portfolio standard to the extent that compliance would require the electric utility to substitute qualifying electricity for electricity available to the electric utility under contracts for electricity from dams that are owned by Washington public utility districts and that are located between the Grand Coulee Dam and the Columbia River's junction with the Snake River. The provisions of this subsection apply only to contracts entered into before June 6, 2007, and to renewal or replacement contracts for contracts entered into before June 6, 2007.

(b) If a contract described in paragraph (a) of this subsection expires and is not renewed or replaced, the electric utility must comply, in the calendar year following the expiration of the contract, with the renewable portfolio standard applicable to the electric utility.

(3) A consumer-owned utility is not required to comply with a renewable portfolio standard to the extent that compliance would require the consumer-owned utility to reduce the consumer-owned utility's purchases of the lowest priced electricity from the Bonneville Power Administration pursuant to section 5 of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, P.L. 96-501, as in effect on June 6, 2007. The exemption provided by this subsection applies only to firm commitments for BPA electricity that the Bonneville Power Administration has assured will be available to a consumer-owned utility to meet agreed portions of the consumer-owned utility's load requirements for a defined period of time. [2007 c.301 §8; 2016 c.28 §26]

469A.062 [2016 c.28 §13; repealed by 2021 c.508 §16]

469A.065 Renewable portfolio standard for electricity service suppliers. An electricity service supplier must meet the requirements of the renewable portfolio standards that are applicable to the electric utilities that serve the territories in which the electricity service supplier sells electricity to retail electricity consumers. The Public Utility Commission shall establish procedures for implementation of the renewable portfolio standards for electricity service suppliers that sell electricity in the service territory of an electric company. If an electricity service supplier sells electricity in territories served by more than one electric company, the commission may provide for an aggregate standard based on the amount of electricity sold by the electricity service supplier in each territory. Pursuant to ORS 757.676, a consumer-owned utility may establish procedures for the implementation of the renewable portfolio standards for electricity service suppliers that sell electricity in the territory served by the consumer-owned utility. [2007 c.301 §9]

469A.070 Manner of complying with renewable portfolio standards. (1) Except as provided in subsection (2) of this section, an electric utility or electricity service supplier must comply with the renewable portfolio standard applicable to the utility or supplier in each calendar year by:

(a) Using bundled renewable energy certificates issued or acquired during the compliance year;

(b) Subject to the limitations described in ORS 469A.140 and 469A.145, using unbundled or banked renewable energy certificates; or

(c) Making alternative compliance payments as described in ORS 469A.180.

(2) Bundled or unbundled renewable energy certificates that are issued or acquired by an electric utility or electricity service supplier on or before March 31 in a calendar year may be used by the utility or supplier to comply with the renewable portfolio standard applicable to the utility or supplier for the preceding calendar year. [2007 c.301 §10]

469A.075 Electric company plan for meeting requirements; commission review; rules. (1) An electric company that is subject to a renewable portfolio standard shall describe the electric company's plan for meeting the requirements of the renewable portfolio standard as part of the electric company's integrated resource plan filed with the Public Utility Commission.

(2) At a minimum, a plan for meeting the requirements of the renewable portfolio standard must contain:

(a) Annual targets for acquisition and use of qualifying electricity; and

(b) The estimated cost of meeting the annual targets, including the cost of transmission, the cost of firming, shaping and integrating qualifying electricity, the cost of alternative compliance payments and the cost of acquiring renewable energy certificates.

(3) The commission shall review a plan for meeting the requirements of the renewable portfolio standard and take appropriate action as part of the procedure for acknowledgment of an electric company's integrated resource plan.

(4) The commission shall adopt rules:

(a) Establishing requirements for the content of plans for meeting the requirements of the renewable portfolio standard;

(b) Providing for the least-cost, least-risk acquisition of resources; and

(c) Providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.

(5) A plan for meeting the requirements of the renewable portfolio standard may include procedures that will be used by the electric company to determine whether the costs of constructing a facility that generates electricity from a renewable energy source, or the costs of acquiring bundled or unbundled renewable energy certificates, are consistent with the renewable portfolio standards of the commission relating to least-cost, least-risk planning for acquisition of resources. [2007 c.301 §11; 2016 c.28 §6; 2023 c.54 §1]

(Cost Limitation)

469A.100 Limits on cost of compliance with renewable portfolio standard. (1) Electric utilities are not required to comply with a renewable portfolio standard during a compliance year to the extent that the incremental cost of compliance, the cost of unbundled renewable energy certificates and the cost of alternative compliance payments under ORS 469A.180 exceeds four percent of the electric utility's annual revenue requirement for the compliance year.

(2) For each electric company, the Public Utility Commission shall establish the annual revenue requirement for a compliance year no later than January 1 of the compliance year. For each consumer-owned utility, the governing body of the consumer-owned utility shall establish the annual revenue requirement for a compliance year.

(3) The annual revenue requirement for an electric utility shall be calculated based only on the operations of the electric utility relating to electricity. The annual revenue requirement does not include any amount expended by the electric utility for energy efficiency programs for customers of the electric utility or for low income energy assistance, the incremental cost of compliance with a renewable portfolio standard, the cost of unbundled renewable energy certificates or the cost of alternative compliance payments under ORS 469A.180. The annual revenue requirement does include:

(a) The operating expenses of the electric utility during the compliance year, including depreciation and taxes; and

(b) For electric companies, an amount equal to the total rate base of the electric company for the compliance year multiplied by the rate of return established by the commission for debt and equity of the electric company.

(4) For the purposes of this section, the incremental cost of compliance with a renewable portfolio standard is the difference between the levelized annual delivered cost of the qualifying electricity and the levelized annual delivered cost of an equivalent amount of reasonably available electricity that is not qualifying electricity. For the purpose of this subsection, the commission or the governing body of a consumer-owned utility shall use the net present value of delivered cost, including:

(a) Capital, operating and maintenance costs of generating facilities;

(b) Financing costs attributable to capital, operating and maintenance expenditures for generating facilities;

(c) Transmission and substation costs;

(d) Load following and ancillary services costs; and

(e) Costs associated with using other assets, physical or financial, to integrate, firm or shape renewable energy sources on a firm annual basis to meet retail electricity needs.

(5) For the purposes of this section, the governing body of a consumer-owned utility may include in the incremental cost of compliance with a renewable portfolio standard all expenses associated with research, development and demonstration projects related to the generation of qualifying electricity by the consumer-owned utility.

(6) The commission shall establish limits on the incremental cost of compliance with the renewable portfolio standard for electricity service suppliers under ORS 469A.065 that are the equivalent of the cost limits applicable to the electric companies that serve the territories in which the electricity service supplier sells electricity to retail electricity consumers. If an electricity service supplier sells electricity in territories served by more than one electric company, the commission may provide for an aggregate cost limit based on the amount of electricity sold by the electricity service supplier in each territory. Pursuant to ORS 757.676, a consumer-owned utility may establish limits on the cost of compliance with the renewable portfolio standard for electricity service suppliers that sell electricity in the territory served by the consumer-owned utility. [2007 c.301 §12; 2016 c.28 §25]

(Cost Recovery)

469A.120 Cost recovery by electric companies. (1) Except as provided in ORS 469A.180 (5), all prudently incurred costs associated with complying with ORS 469A.005 to 469A.210 are recoverable in the rates of an electric company, including interconnection costs, costs associated with using

physical or financial assets to integrate, firm or shape renewable energy sources on a firm annual basis to meet retail electricity needs, above-market costs and other costs associated with transmission and delivery of qualifying electricity to retail electricity consumers.

(2)(a) The Public Utility Commission shall establish an automatic adjustment clause as defined in ORS 757.210 or another method that allows timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources, costs related to associated electricity transmission and costs related to associated energy storage.

(b) Notwithstanding any other provision of law, upon the request of any interested person the commission shall conduct a proceeding to establish the terms of the automatic adjustment clause or other method for timely recovery of costs. The commission shall provide parties to the proceeding with the procedural rights described in ORS 756.500 to 756.610, including but not limited to the opportunity to develop an evidentiary record, conduct discovery, introduce evidence, conduct cross-examination and submit written briefs and oral argument. The commission shall issue a written order with findings on the evidentiary record developed in the proceeding.

(3)(a) An electric company must file with the commission for approval of a proposed rate change to recover costs under the terms of an automatic adjustment clause or other method for timely recovery of costs established under subsection (2) of this section. As part of an electric company's request for approval under this subsection, the electric company may specify the date or the dates on which the electric company will begin to include in the electric company's rates, in full or in part, the costs recoverable under subsection (2) of this section. The commission may accept or reject the date or dates specified by the electric company.

(b) Notwithstanding any other provision of law, upon the request of any interested person the commission shall conduct a proceeding to determine whether to approve a proposed change in rates under the automatic adjustment clause or other method for timely recovery of costs. The commission shall provide parties to the proceeding with the procedural rights described in ORS 756.500 to 756.610, including but not limited to the opportunity to develop an evidentiary record, conduct discovery, introduce evidence, conduct cross-examination and submit written briefs and oral argument. The commission shall issue a written order with findings on the evidentiary record developed in the proceeding.

(c) A filing made under this subsection is subject to the commission's authority under ORS 757.215 to suspend a rate, or schedule of rates, for investigation. [2007 c.301 §13; 2010 c.79 §1; 2016 c.28 §11]

(Renewable Energy Certificates)

469A.130 Renewable energy certificates system. (1) The State Department of Energy shall establish a system of renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the applicable renewable portfolio standard. The department shall consult with the Public Utility Commission before establishing a system of renewable energy certificates under this section. The department may allow use of renewable energy certificates that are issued, monitored, accounted for or transferred by or through a regional system or trading program, including but not limited to the Western Renewable Energy Generation Information System. The system established by the department shall allow issuance, transfer and use of renewable energy certificates in electronic form.

(2) The validity of a bundled renewable energy certificate for purposes of compliance with the applicable renewable portfolio standard is not affected by the substitution of any other electricity for the qualifying electricity at any point after the time of generation. [2007 c.301 §14]

469A.132 Thermal renewable energy certificates. (1) If a facility that generates electricity using biomass also generates thermal energy for a secondary purpose, the State Department of Energy shall provide that renewable energy certificates must be issued for the generation of the thermal energy. Notwithstanding the definition of "qualifying electricity" in ORS 469A.005 or any other provision of law stating or implying that a renewable portfolio standard may be complied with only through the generation of electricity, renewable energy certificates for thermal energy:

(a) Shall be provided for pursuant to this subsection as part of the system established under ORS 469A.130;

(b) Shall be subject to the same requirements for issuance, transfer and use as all other renewable energy certificates created pursuant to the system established under ORS 469A.130; and

(c) May be used to comply with a renewable portfolio standard if:

(A) The facility that generates the thermal energy for which the renewable energy

certificate is issued meets the requirements of ORS 469A.020 and 469A.135 for the electricity generated using biomass at the facility; and

(B) Consistent with the provisions of ORS 469A.025 (3), the thermal energy is not generated through the combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate.

(2) For purposes of issuing renewable energy certificates under this section, 3,412,000 British thermal units are equivalent to one megawatt-hour. [2016 c.28 §16; 2019 c.76 §1]

469A.135 Renewable energy certificates that may be used to comply with standards. (1) A bundled renewable energy certificate may be used to comply with a renewable portfolio standard if:

(a) The facility that generates the qualifying electricity for which the bundled renewable energy certificate is issued is located in the United States and within the geographic boundary of the Western Electricity Coordinating Council; and

(b) The qualifying electricity for which the bundled renewable energy certificate is issued is delivered to:

(A) The Bonneville Power Administration;

(B) The transmission system of an electric utility;

(C) A delivery point designated by the electric utility for the purpose of subsequent delivery to the electric utility; or

(D) A delivery point mutually agreed to by a distribution utility and an electricity service supplier for the purpose of subsequent delivery to the distribution utility serving the customer of the electricity service supplier.

(2) An unbundled renewable energy certificate may be used to comply with a renewable portfolio standard if the facility that generates the qualifying electricity with which the unbundled renewable energy certificate is associated is located within the geographic boundary of the Western Electricity Coordinating Council.

(3) Renewable energy certificates issued for any electricity that the Bonneville Power Administration has designated as environmentally preferred power, or has given a similar designation for electricity generated from a renewable resource, may be used to comply with a renewable portfolio standard without regard to the location of the generating facility.

(4) This section does not affect the obligations or requirements:

(a) Imposed under or agreed to in a contract with a distribution utility;

(b) Imposed under tariff schedules approved by the Public Utility Commission;

(c) Imposed under an approved open access transmission tariff; or

(d) Imposed under rules adopted by the commission under ORS 757.600 to 757.687. [2007 c.301 §15; 2016 c.28 §9]

469A.140 Use, transfer and banking of certificates. (1) Renewable energy certificates may be traded, sold or otherwise transferred.

(2) Renewable energy certificates that are not used by a consumer-owned utility to comply with a renewable portfolio standard in a calendar year may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year. For the purpose of a consumer-owned utility complying with a renewable portfolio standard in any calendar year, banked renewable energy certificates with the oldest issuance date must be used to comply with the renewable portfolio standard before banked renewable energy certificates with more recent issuance dates are used.

(3)(a) Renewable energy certificates issued on or before March 8, 2016, that are not used by an electric company or electricity service supplier to comply with a renewable portfolio standard in a calendar year may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year.

(b) For qualifying electricity generated from a renewable energy source that becomes operational on or before March 8, 2016, or for qualifying electricity that is acquired under a contract, having a duration of less than 20 years, for the purchase of electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, renewable energy certificates issued for the qualifying electricity after March 8, 2016, that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward, for up to five compliance years immediately following the compliance year in which the renewable energy certificates are issued, for the purpose of complying with a renewable portfolio standard in one of those five compliance years.

(c) For qualifying electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, or for qualifying

electricity that is acquired under a contract, having a duration of 20 years or more, for the purchase of electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, renewable energy certificates issued for the qualifying electricity during the five-year period after the date the renewable energy source becomes operational that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year.

(d) For qualifying electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, or for qualifying electricity that is acquired under a contract, having a duration of 20 years or more, for the purchase of electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, renewable energy certificates issued for the qualifying electricity more than five years after the renewable energy source becomes operational that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward, for up to five compliance years immediately following the compliance year in which the renewable energy certificates are issued, for the purpose of complying with a renewable portfolio standard in one of those five compliance years.

(e) For qualifying electricity generated from a renewable energy source that becomes operational after December 31, 2022, renewable energy certificates issued for the qualifying electricity that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward, for up to five compliance years immediately following the compliance year in which the renewable energy certificates are issued, for the purpose of complying with a renewable portfolio standard in one of those five compliance years.

(4) An electric utility or electricity service supplier is responsible for demonstrating that a renewable energy certificate used to comply with a renewable portfolio standard is derived from a renewable energy source and that the electric utility or electricity service supplier has not used, traded, sold or otherwise transferred the renewable energy certificate.

(5) A renewable energy certificate may be used by an electric utility or electricity service supplier to comply with both a federal renewable portfolio standard and a renewable portfolio standard established under ORS 469A.005 to 469A.210. An electric utility or electricity service supplier that uses a renewable energy certificate to comply with a renewable portfolio standard imposed by a state other than this state may not use the same renewable energy certificate to comply with a renewable portfolio standard established under ORS 469A.005 to 469A.210. [2007 c.301 §16; 2016 c.28 §7]

469A.145 Limitations on use of unbundled certificates to meet renewable portfolio standard. (1) Except as otherwise provided in this section, unbundled renewable energy certificates, including banked unbundled renewable energy certificates, may not be used to meet more than 20 percent of the requirements of the large utility renewable portfolio standard described in ORS 469A.052 for any compliance year.

(2) The limitation imposed by subsection (1) of this section does not apply to unbundled renewable energy certificates associated with electricity generated in this state from a renewable energy source by a net metering facility, as defined in ORS 757.300, or another generating facility that is not directly connected to a distribution or transmission system.

(3) The limitation imposed by subsection (1) of this section does not apply to unbundled renewable energy certificates associated with electricity generated in this state by a qualifying facility under ORS 758.505 to 758.555.

(4) The limitation imposed by subsection (1) of this section does not apply to an electricity service supplier for purposes of meeting the renewable portfolio standard described in ORS 469A.065 during compliance years before 2021. [2007 c.301 §17; 2016 c.28 §10]

469A.147 Exemption from limitation on use of unbundled certificates for consumer-owned utilities. Unless the exemption provided by ORS 469A.055 (1) terminated for the consumer-owned utility pursuant to ORS 469A.055 (5), a consumer-owned utility described in ORS 469A.052 (2) that is subject to the large utility renewable portfolio standard described in ORS 469A.052 (3) may use, notwithstanding ORS 469A.145 (1), unbundled renewable energy certificates, including banked unbundled renewable energy certificates, to meet:

(1) Up to 100 percent of the standard described in ORS 469A.052 (3)(a); and

(2) Up to 75 percent of the standard described in ORS 469A.052 (3)(b) or (c). [2014 c.100 §2]

469A.150 Multistate electric companies; rules. The Public Utility Commission by rule shall establish a process for allocating the use of renewable energy certificates by an electric company that makes sales of electricity to retail customers in more than one state. [2007 c.301 §18]

(Compliance Reports)

469A.170 Compliance reports; rules. (1) Each electric utility and electricity service supplier that is subject to a renewable portfolio standard shall make an annual compliance report for the purpose of detailing compliance, or failure to comply, with the renewable portfolio standard applicable in the compliance year. An electric company or electricity service supplier shall make the report to the Public Utility Commission. A consumer-owned utility shall make the report to the members or customers of the utility.

(2) The commission shall review each compliance report filed under this section by an electric company or electricity service supplier for the purposes of determining whether the company or supplier has complied with the renewable portfolio standard applicable to the company or supplier and the manner in which the company or supplier has complied. In reviewing the reports, the commission shall consider:

(a) The relative amounts of renewable energy certificates and other payments used by the company or supplier to meet the applicable renewable portfolio standard, including:

(A) Bundled renewable energy certificates;

(B) Unbundled renewable energy certificates;

(C) Banked renewable energy certificates; and

(D) Alternative compliance payments under ORS 469A.180.

(b) The timing of electricity purchases.

(c) The market prices for electricity purchases and unbundled renewable energy certificates.

(d) Whether the actions taken by the company or supplier are contributing to long term development of generating capacity using renewable energy sources.

(e) The effect of the actions taken by the company or supplier on the rates payable by retail electricity consumers.

(f) Good faith forecasting differences associated with the projected number of retail electricity consumers served and the availability of electricity from renewable energy sources.

(g) For electric companies, consistency with the company's plan under ORS 469A.075 for meeting the requirements of the renewable portfolio standard as described in the company's integrated resource plan and as reviewed by the commission.

(h) Any other factors deemed reasonable by the commission.

(3) The commission by rule may establish requirements for compliance reports submitted by an electric company or electricity service supplier. [2007 c.301 §19; 2023 c.54 §2]

(Alternative Compliance Payments)

469A.180 Electric companies; electricity service suppliers. (1) The Public Utility Commission shall establish an alternative compliance rate for each compliance year for each electric company or electricity service supplier that is subject to a renewable portfolio standard. The rate shall be expressed in dollars per megawatt-hour.

(2) The commission shall establish an alternative compliance rate based on the cost of qualifying electricity, contracts that the electric company or electricity service supplier has acquired for future delivery of qualifying electricity and the number of unbundled renewable energy certificates that the company or supplier anticipates using in the compliance year to meet the renewable portfolio standard applicable to the company or supplier. The commission shall also consider any determinations made under ORS 469A.170 in reviewing the compliance report made by the electric company or electricity service supplier for the previous compliance year. In establishing an alternative compliance rate, the commission shall set the rate to provide adequate incentive for the electric company or electricity service supplier to purchase or generate qualifying electricity in lieu of using alternative compliance payments to meet the renewable portfolio standard applicable to the company or supplier.

(3) An electric company or electricity service supplier may elect to use, or may be required by the commission to use, alternative compliance payments to comply with the renewable portfolio standard applicable to the company or supplier. Any election by an electric company or electricity service supplier to use alternative compliance payments is subject to review by the commission under ORS 469A.170. An electric company or electricity service supplier may not be required to make alternative compliance payments

that would result in the company or supplier exceeding the cost limitation established under ORS 469A.100.

(4) The commission shall determine for each electric company the extent to which alternative compliance payments may be recovered in the rates of the company. Each electric company shall deposit any amounts recovered in the rates of the company for alternative compliance payments in a holding account established by the company. Amounts in the holding account shall accrue interest at the rate of return authorized by the commission for the electric company.

(5) Amounts in holding accounts established under subsection (4) of this section may be expended by an electric company only for costs of acquiring new generating capacity from renewable energy sources, investments in efficiency upgrades to electricity generating facilities owned by the company and energy conservation programs within the company's service area. The commission must approve expenditures by an electric company from a holding account established under subsection (4) of this section. Amounts that are collected from customers and spent by an electric company under this subsection may not be included in the company's rate base.

(6) The commission shall require electricity service suppliers to establish holding accounts and make payments to those accounts on a substantially similar basis as provided for electric companies. The commission must approve expenditures by an electricity service supplier from a holding account established under this subsection. The commission may approve expenditures only for energy conservation programs for customers of the electricity service supplier. [2007 c.301 §20]

469A.185 Consumer-owned utilities. The governing body of a consumer-owned utility shall establish an alternative compliance rate for the utility. To the extent possible, the alternative compliance rate shall be determined by the governing body of the consumer-owned utility in a manner similar to that used by the Public Utility Commission in establishing alternative compliance rates under ORS 469A.180. Amounts collected as alternative compliance payments by a consumer-owned utility may be used for the purposes specified in ORS 469A.180 (5) and for the purpose of paying expenses associated with research, development and demonstration projects related to the generation of qualifying electricity by the utility. [2007 c.301 §21]

(Penalty)

469A.200 Penalty. If an electric company or electricity service supplier that is subject to a renewable portfolio standard under ORS 469A.005 to 469A.210 fails to comply with the standard in the manner provided by ORS 469A.005 to 469A.210, the Public Utility Commission may impose a penalty against the company or supplier in an amount determined by the commission. A penalty under this section is in addition to any alternative compliance payment required or elected under ORS 469A.180. Moneys paid for penalties under this section shall be transmitted by the commission to the nongovernmental entity receiving moneys under ORS 757.612 (3)(d) and may be used only for the purposes specified in ORS 757.612 (1). [2007 c.301 §22]

(Green Power Rate)

469A.205 Green power rate. (1) Electric utilities shall allow retail electricity consumers to elect a green power rate. A significant portion of the electricity purchased or generated by a utility that is attributable to moneys paid by retail electricity consumers who elect the green power rate must be qualifying electricity, and the utility must inform consumers of the sources of the electricity purchased or generated by the utility that is attributable to moneys paid by consumers who elect the green power rate. The green power rate shall reasonably reflect the costs of the electricity purchased or generated by the utility that is attributable to moneys paid by retail electricity consumers who elect the green power rate. All prudently incurred costs associated with the green power rate are recoverable in a green power rate offered by an electric company.

(2) Any qualifying electricity procured by an electric utility to provide electricity under a green power rate under subsection (1) of this section or ORS 757.603 (3)(a) may not be used by the utility to comply with the requirements of a renewable portfolio standard.

(3) The provisions of subsection (1) of this section do not apply to electric companies that are subject to ORS 757.603 (3)(a).

(4) An electric utility may comply with the requirements of subsection (1) of this section by contracting with a third-party provider. [2007 c.301 §23; 2021 c.508 §21]

COMMUNITY-BASED RENEWABLE ENERGY PROJECTS

469A.210 Goal for community-based renewable energy projects. (1) The Legislative Assembly finds that community-based renewable energy projects, including but not limited to marine renewable energy resources that are either developed in accor-

dance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, are an essential element of this state's energy future.

(2) For purposes related to the findings in subsection (1) of this section, by the year 2030, at least 10 percent of the aggregate electrical capacity of all electric companies that make sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by one or both of the following sources:

(a) Small-scale renewable energy projects with a generating capacity of 20 megawatts or less that generate electricity utilizing a type of energy described in ORS 469A.025; or

(b) Facilities that generate electricity using biomass that also generate thermal energy for a secondary purpose.

(3) Regardless of the facility's nameplate capacity, any single facility described in subsection (2)(b) of this section may be used to comply with the requirement specified in subsection (2) of this section for up to 20 megawatts of capacity. [2007 c.301 §24; 2010 c.68 §1; 2016 c.28 §14; 2017 c.452 §1; 2021 c.508 §37]

JOB IMPACT STUDY

Note: Sections 25 and 26, chapter 301, Oregon Laws 2007, provide:

Sec. 25. (1) The State Department of Energy shall periodically conduct a study to evaluate the impact of sections 1 to 24 of this 2007 Act [469A.005 to 469A.210] on jobs in this state. The study shall assess the number of new jobs created in the renewable energy sector in this state and the average wage rates and the provision of health care and other benefits for those jobs. In addition, the study shall investigate the extent to which workforce training opportunities are being provided to employees to prepare the employees for jobs in the renewable energy sector.

(2) The department shall conduct the first study under this section not later than two years after the effective date of this 2007 Act [June 6, 2007]. [2007 c.301 §25]

Sec. 26. Section 25 of this 2007 Act is repealed January 2, 2026. [2007 c.301 §26]

HYDROGEN POWER STATIONS

469A.300 Hydrogen power stations; compliance with renewable portfolio standard; cost recovery for prudent energy investments. To facilitate the creation of hydrogen power stations using anhydrous ammonia as a fuel source to comply with a renewable portfolio standard under ORS 469A.005 to 469A.210, the Public Utility Commission may allow full recovery of costs by public utilities in prudent energy investments related to the planning, financing, construction and operation of hydrogen power stations. These investments may include, but need not be limited to:

(1) Systems designed to synthesize anhydrous ammonia fuel using electricity generated from renewable energy sources listed in ORS 469A.025;

(2) Infrastructure designed to store anhydrous ammonia generated from renewable energy sources as a nonpolluting fuel for electricity generation and any other purpose;

(3) Energy systems designed to use anhydrous ammonia generated from renewable energy sources as a fuel to generate electricity; and

(4) Electronic control and management systems designed to effectively integrate hydrogen power station processes into the electricity transmission grid. [2010 c.17 §2]

REDUCTION OF GREENHOUSE GAS EMISSIONS ASSOCIATED WITH ELECTRICITY SOLD

469A.400 Definitions for ORS 469A.400 to 469A.475. As used in ORS 469A.400 to 469A.475:

(1) "Baseline emissions level" means:

(a) For an electric company, the average annual emissions of greenhouse gas for the years 2010, 2011 and 2012 associated with the electricity sold to retail electricity consumers as reported under ORS 468A.280, or rules adopted pursuant thereto.

(b) Except as provided in paragraph (c) of this subsection, for an electricity service supplier, 0.428 metric tons of carbon dioxide equivalent per megawatt-hour associated with the electricity sold by the electricity service supplier to retail electricity consumers as reported under ORS 468A.280, or rules adopted pursuant thereto.

(c) For an electricity service supplier that is first certified under ORS 757.649 on or after September 25, 2021, the baseline emissions level defined in paragraph (b) of this subsection shall be adjusted downward in the certification of the electricity service supplier under ORS 757.649 to a level that:

(A) Reflects the continual progress made by other electricity service suppliers toward meeting the clean energy targets set forth in ORS 469A.410, as demonstrated under ORS 469A.420 (3); and

(B) Prevents the creation of a competitive disadvantage among electricity service suppliers.

(2) "Community-based renewable energy" means one or more renewable energy systems that interconnect to utility distribution or transmission assets and may be combined with microgrids, storage systems or demand response measures, or energy-related infra-

structure that promotes climate resiliency or other such measures, and that:

(a) Provide a direct benefit to a particular community through a community-benefits agreement or direct ownership by a local government, nonprofit community organization or federally recognized Indian tribe; or

(b) Result in increased resiliency or community stability, local jobs, economic development or direct energy cost savings to families and small businesses.

(3) "Electric company," "electricity service supplier" and "electric utility" have the meanings given those terms in ORS 757.600.

(4) "Environmental justice" means equal protection from environmental and health hazards and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality and play.

(5) "Environmental justice communities" includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.

(6) "Greenhouse gas" has the meaning given that term in ORS 468A.210.

(7) "Nonemitting electricity" means electricity, including hydroelectricity, that is generated and may be stored in a manner that does not emit greenhouse gas into the atmosphere.

(8) "Retail electricity consumer" means a retail electricity consumer, as defined in ORS 757.600, that is serviced by a retail electricity provider and located in this state.

(9) "Retail electricity provider" means an electric company or electricity service supplier. [2021 c.508 §1]

469A.405 Policy. It is the policy of the State of Oregon:

(1) That retail electricity providers rely on nonemitting electricity in accordance with the clean energy targets set forth in ORS 469A.410 and eliminate greenhouse gas emissions associated with serving Oregon retail electricity consumers by 2040;

(2) That electricity generated in a manner that produces zero greenhouse gas emissions also be generated, to the maximum extent practicable, in a manner that provides additional direct benefits to communities in this state in the forms of creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency;

(3) That, under existing federal and state law, the state engages in meaningful consultation with federally recognized Indian tribes. This includes consultation on the siting, permitting and construction of new energy facilities as defined in ORS 469.300, and new projects subject to the policy specified in 18 C.F.R. 2.1c, prior to such actions that are likely to adversely impact designated sites of archeological significance as defined in ORS 358.905, or properties of traditional, cultural and religious importance under the National Historical Preservation Act and the 36 C.F.R. 800 implementing regulation; and

(4) That implementation of ORS 469A.400 to 469A.475 be done in a manner that minimizes burdens for environmental justice communities. [2021 c.508 §2]

469A.410 Clean energy targets; reduction of greenhouse gas emissions. (1) A retail electricity provider shall reduce greenhouse gas emissions, measured for an electric company as greenhouse gas emissions reported under ORS 468A.280, and measured for an electricity service supplier as greenhouse gas emissions per megawatt-hour as reported under ORS 468A.280, to the extent compliance is consistent with ORS 469A.400 to 469A.475, by the following targets:

(a) By 2030, 80 percent below baseline emissions level.

(b) By 2035, 90 percent below baseline emissions level.

(c) By 2040, and for every subsequent year, 100 percent below baseline emissions level.

(2) Nothing in ORS 469A.400 to 469A.475 may be construed as establishing a standard that requires a retail electricity provider to track electricity to end use retail customers. [2021 c.508 §3]

469A.415 Electric companies to develop clean energy plans. (1) An electric company shall develop a clean energy plan for meeting the clean energy targets set forth in ORS 469A.410 concurrent with the development of each integrated resource plan.

(2) The electric company shall submit the clean energy plan to the Public Utility Commission and the Department of Environmental Quality.

(3)(a) A clean energy plan must be based on or included in an integrated resource plan filing made no earlier than January 1, 2022, and filed no later than 180 days after the integrated resource plan is filed, or developed within an integrated resource planning proc-

ess and incorporated into the integrated resource plan filed with the commission.

(b) Notwithstanding paragraph (a) of this subsection, a clean energy plan developed by a multistate jurisdictional electric company must be based on or contained in other information developed consistent with a cost-allocation methodology approved by the commission.

(4) A clean energy plan must:

(a) Incorporate the clean energy targets set forth in ORS 469A.410;

(b) Include annual goals set by the electric company for actions that make progress towards meeting the clean energy targets set forth in ORS 469A.410, including acquisition of nonemitting generation resources, energy efficiency measures and acquisition and use of demand response resources;

(c) Include a risk-based examination of resiliency opportunities that includes costs, consequences, outcomes and benefits based on reasonable and prudent industry resiliency standards and guidelines established by the Public Utility Commission;

(d) Examine the costs and opportunities of offsetting energy generated from fossil fuels with community-based renewable energy;

(e) Demonstrate the electric company is making continual progress within the planning period towards meeting the clean energy targets set forth in ORS 469A.410, including demonstrating a projected reduction of annual greenhouse gas emissions; and

(f) Result in an affordable, reliable and clean electric system.

(5) Actions and investments proposed in a clean energy plan may include the development or acquisition of clean energy resources, acquisition of energy efficiency and demand response, including an acquisition required by ORS 757.054, development of new transmission and other supporting infrastructure, retirement of existing generating facilities, changes in system operation and any other necessary action.

(6) The commission shall ensure that an electric company demonstrates continual progress as described in subsection (4)(e) of this section and is taking actions as soon as practicable that facilitate rapid reduction of greenhouse gas emissions at reasonable costs to retail electricity consumers. [2021 c.508 §4]

469A.420 Emissions verification; baseline emissions determination; clean energy plan acknowledgment; annual report; compliance. (1)(a) For the purposes of verifying emissions and determining compliance with the clean energy targets set forth in ORS 469A.410, the Department of Environmental Quality shall determine:

(A) For each electric company, the electric company's baseline emissions level; and

(B) For each retail electricity provider, the amount of emissions reduction necessary for the retail electricity provider to meet the clean energy targets set forth in ORS 469A.410.

(b) The department shall use the method of measuring greenhouse gas emissions set forth in ORS 468A.280 to verify the projected greenhouse gas emissions reductions forecasted in a clean energy plan of an electric company or the information provided by an electricity service supplier under subsection (3) of this section.

(c) The department shall report the department's findings under paragraph (b) of this subsection to the Public Utility Commission and the electric company seeking acknowledgement of a clean energy plan by the commission.

(2) The Public Utility Commission shall acknowledge the clean energy plan if the commission finds the plan to be in the public interest and consistent with the clean energy targets set forth in ORS 469A.410. In evaluating whether a plan is in the public interest, the commission shall consider:

(a) Any reduction of greenhouse gas emissions that is expected through the plan, and any related environmental or health benefits;

(b) The economic and technical feasibility of the plan;

(c) The effect of the plan on the reliability and resiliency of the electric system;

(d) Availability of federal incentives;

(e) Costs and risks to the customers; and

(f) Any other relevant factors as determined by the commission.

(3) In addition to the emissions report required under subsection (4) of this section, an electricity service supplier shall report to the commission:

(a) An estimate of annual greenhouse gas emissions associated with electricity sold by the electricity service supplier to retail electricity consumers for the current year and following three years;

(b) Annual goals set by the electricity service supplier for actions described under paragraph (c)(A) of this subsection, including a projected reduction of annual greenhouse gas emissions associated with the electricity sold to retail electricity consumers by the electricity service supplier;

(c) Other information necessary, as determined by the commission, to demonstrate

the electricity service supplier's anticipated ability to meet the clean energy targets set forth in ORS 469A.410, including:

(A) Actions to make continual progress toward meeting the clean energy targets that are consistent with providing affordable, reliable, and clean electricity service; and

(B) Anticipated actions to facilitate rapid reductions of greenhouse gas emissions at reasonable costs to retail electricity consumers served by the electricity service supplier; and

(d) The commission shall review the information supplied by an electricity service supplier under this subsection for the purposes of determining whether the electricity service supplier is making continual and reasonable progress toward compliance with the clean energy targets set forth in ORS 469A.410.

(4)(a) A retail electricity provider shall report annual greenhouse gas emissions associated with the electricity sold to retail electricity consumers by the retail electricity provider to the Department of Environmental Quality in the manner set forth under ORS 468A.280, or rules adopted pursuant thereto.

(b) The Public Utility Commission shall use the greenhouse gas emissions reported to the department under paragraph (a) of this subsection and provided to the commission to determine whether or not the retail electricity provider has met the clean energy targets set forth in ORS 469A.410. [2021 c.508 §5]

469A.425 Community advisory group; membership; biennial report. (1) An electric company that files a clean energy plan under ORS 469A.415 shall convene a Community Benefits and Impacts Advisory Group. The members of the electric company's Community Benefits and Impacts Advisory Group will be determined by the electric company with input from stakeholders that represent the interests of customers or affected entities within the electric company's service territory. Members must include representatives of environmental justice communities and low-income ratepayers and may include representatives from other affected entities within the electric company's service territory.

(2)(a) The electric company shall develop, in consultation with the Community Benefits and Impacts Advisory Group, a biennial report that assesses the community benefits and impacts of the electric company and shall file the biennial report with the Public Utility Commission. The biennial report must include a description of the following:

(A) Energy burden and disconnections for residential customers and disconnections for small commercial customers;

(B) Opportunities to increase contracting with businesses owned by women, veterans or Black, Indigenous, or People of Color;

(C) Actions within environmental justice communities within the electric company's service territory intended to improve resilience during adverse conditions or facilitate investments in the distribution system, including investments in facilities that generate nonemitting electricity;

(D) Distribution of infrastructure or grid investments and upgrades in environmental justice communities in the electric company's service territory, including infrastructure or grid investments that facilitate the electric company's compliance with the clean energy targets set forth in ORS 469A.410;

(E) Social, economic or environmental justice cobenefits that result from the electric company's investments, contracts or internal practices;

(F) Customer experience, including a review of annual customer satisfaction surveys;

(G) Actions to encourage customer engagement; and

(H) Other items as determined by the electric company and the electric company's Community Benefits and Impacts Advisory Group.

(b) The electric company may engage the Community Benefits and Impacts Advisory Group to advise on other matters, including but not limited to:

(A) The development and equitable implementation of a clean energy plan as determined in ORS 469A.415;

(B) The development and equitable implementation of a distribution system plan;

(C) Equitable contracting practices; and

(D) Best practices and strategies for reducing energy burden and disconnections in the electric company's service territory.

(3) The commission shall establish a process for an electric company to contemporaneously recover the cost associated with the development of biennial reports and the costs associated with compensation or reimbursement for time and travel of members of a Community Benefits and Impacts Advisory Group. [2021 c.508 §6]

469A.430 Treatment of generation resources. For the purposes of determining compliance with ORS 469A.400 to 469A.475, electricity shall have the emission attributes of the underlying generating resource. [2021 c.508 §7]

469A.435 Determining compliance with clean energy targets; unplanned emissions. (1)(a) In determining whether a retail electricity provider has complied with the clean energy targets set forth in ORS 469A.410, the Public Utility Commission shall take into consideration unplanned emissions in excess of the amount projected in an electric company's clean energy plan submitted under ORS 469A.415 or the information provided by an electricity service supplier under ORS 469A.420 (3), to the extent:

(A) The emissions are in excess of the clean energy targets set forth in ORS 469A.410;

(B) Generation of electricity from nonemitting resources forecasted to meet electricity demand is less than expected, including variability in the generation, transmission, constraints or other causes; and

(C) The additional emissions are from the generation of electricity necessary to meet load.

(b) A retail electricity provider that continues to be out of compliance with the clean energy targets set forth in ORS 469A.410 for more than 12 months as a result of unplanned emissions as described in paragraph (a)(A) to (C) of this subsection shall include a detailed plan on how the retail electricity provider will return to compliance as soon as practicable, subject to approval by the commission, for an electric company, in a subsequent clean energy plan or, for an electricity service supplier, in a subsequent submission to the commission under ORS 469A.420 (3).

(2) Greenhouse gas emissions associated with electricity acquired from net metering of customer resources or a qualifying facility under the terms of the Public Utility Regulatory Policies Act shall be excluded from the determination of the retail electricity provider's total greenhouse gas emissions.

(3) For purposes of determining whether a retail electricity provider has complied with the clean energy targets set forth in ORS 469A.410, electricity, other than unspecified market power, purchased from the Bonneville Power Administration for delivery to retail electricity consumers shall be deemed to have the Bonneville Power Administration asset controlling supplier emission factor reported to the Department of Environmental Quality under ORS 468A.280, or rules adopted pursuant thereto.

(4)(a) For an electric company subject to ORS 469A.052, the commission shall initiate a process to update the avoided costs calculated pursuant to ORS 758.525 for a qualifying facility under ORS 758.505 to ensure avoided costs accurately reflect the characteristics of generators that contribute to compliance with ORS 469A.400 to 469A.475.

(b) The process initiated by the commission under paragraph (a) of this subsection may commence no sooner than two calendar years before the calendar year identified in the electric company's acknowledged integrated resource plan that shows the electric company will meet or exceed the requirements described in ORS 469A.052 (1)(h) and must conclude no later than the calendar year identified in the acknowledged integrated resource plan that shows the electric company will meet or exceed the requirements described in ORS 469A.052 (1)(h). [2021 c.508 §8]

469A.440 Temporary exemption; conflicts with reliability. (1) Upon its own motion or at the request of an electric company, the Public Utility Commission may open an investigation pursuant to ORS 756.515 (1) to determine whether to grant a temporary exemption to an electric company's compliance with one or more of the requirements of ORS 469A.052 or a clean energy plan adopted pursuant to ORS 469A.400 to 469A.475.

(2) The commission may grant a temporary exemption if compliance:

(a) Conflicts with or compromises an electric company's obligation to comply with mandatory reliability standards set by the North American Electric Reliability Corporation;

(b) Violates or significantly impairs a resource adequacy requirement or recommendation of a multistate, regional or national entity;

(c) Violates or significantly impairs an electric company's ability to comply with a Balancing Authority Area declaration of an energy emergency alert under categories 1 through 3, as designated by the North American Electric Reliability Corporation, or successor categories adopted after September 25, 2021;

(d) Results, regardless of best efforts to secure cost-effective nonemitting energy resources or funding for energy efficiency and conservation, in the provision of service at other than fair and reasonable rates; or

(e) Otherwise compromises the power quality or integrity of an electric company's system.

(3) An electric company making a request under this section shall submit to the commission an application that includes:

(a) An explanation of how compliance results in one or more of the issues described under subsection (2) of this section;

(b) A description of how a temporary exemption from compliance with one or more of the requirements of ORS 469A.052 or a clean energy plan adopted pursuant to ORS 469A.400 to 469A.475 will avoid the issues identified under paragraph (a) of this subsection; and

(c) A plan to achieve full compliance with the requirements of ORS 469A.052 or a clean energy plan adopted pursuant to ORS 469A.400 to 469A.475, including an estimate of the time needed to achieve full compliance.

(4) In applying for a temporary exemption under this section, an electric company has the burden of demonstrating that the company's compliance will likely result in one or more of the issues described under subsection (2) of this section.

(5) If, after investigation, the commission determines that compliance with one or more of the requirements of ORS 469A.052 or a clean energy plan adopted pursuant to ORS 469A.400 to 469A.475 will, more likely than not, result in one or more of the issues described under subsection (2) of this section, the commission shall:

(a) Issue an order exempting the electric company from one or more of the requirements of ORS 469A.052 or a clean energy plan adopted pursuant to ORS 469A.400 to 469A.475 for a length of time sufficient to allow the electric company to achieve full compliance in a manner that does not result in one or more of the issues described under subsection (2) of this section.

(b) Direct the electric company to take specific actions to remedy the potential issue or issues identified in the order.

(c) Direct the electric company to file within six months from the date the order is issued, or within a length of time determined by the commission to be reasonable, a report on the company's progress toward achieving full compliance with the requirements of ORS 469A.052 or a clean energy plan adopted pursuant to ORS 469A.400 to 469A.475.

(6) An order issued under subsection (5) of this section may not impose a penalty but may require the use of alternative compliance rates or payments, if applicable, as provided in ORS 469A.180 during the period of time a temporary exemption is in effect.

(7) An electric company may request an extension of a temporary exemption granted under this section. The electric company shall include in the company's request for an extension the same information required under subsection (3) of this section and shall have the burden of proof described under subsection (4) of this section.

(8) The commission shall provide the same opportunity to an electricity service supplier as provided an electric company under this section to receive a temporary exemption from compliance with one or more of the requirements of ORS 469A.052, 469A.065 or 469A.400 to 469A.475, or extension of such a temporary exemption, based on comparable procedures and criteria, to the extent the procedures and criteria under this section apply to an electricity service supplier as applied to an electric company under this section.

(9) The commission may grant an electric company or electricity service supplier a temporary exemption that is comparable to a temporary exemption granted to another electric company or electricity service supplier without conducting a separate investigation under subsection (1) of this section, if the commission determines that the conditions that resulted in the granted temporary exemption holds for the electric company or electricity service supplier.

(10) Nothing in this section is intended to permanently relieve an electric company or electricity service supplier of the obligation to comply with the requirements of ORS 469A.052, 469A.065 or 469A.400 to 469A.475. [2021 c.508 §9]

469A.445 Cost cap for electric companies; determining compliance costs and rate impact; exemption. (1) An electric company or an organization that represents broad customer interests and that has a written agreement with an electric company pursuant to ORS 757.072 may request that the Public Utility Commission open an investigation to provide accounting for investments made, costs incurred or forecasted costs estimated by the electric company for the purpose of compliance with ORS 469A.400 to 469A.475. In making a request under this section, the petitioner shall provide information regarding the investments or costs sufficient to determine whether the investments or costs contribute to compliance with ORS 469A.400 to 469A.475.

(2)(a) The commission shall provide parties to the proceeding with the procedural rights described in ORS 756.500 to 756.610, including the opportunity to develop an evidentiary record, conduct discovery, introduce evidence, conduct cross-examination and submit written briefs and oral arguments.

(b) The petitioner shall have the burden of showing, by a preponderance of the evidence, that the investment or cost contributes to compliance with ORS 469A.400 to 469A.475.

(c) The commission shall issue a written order with findings on the evidentiary record development in the proceeding.

(d) Except as provided under ORS 756.610, a determination by the commission that an investment or cost contributes to compliance with ORS 469A.400 to 469A.475 is final and may not be reexamined.

(3) Upon determining that an investment or cost of an electric company contributes to compliance with ORS 469A.400 to 469A.475, the commission shall determine the actual or anticipated rate impact for the investment or cost on the same basis and with the same treatment for similarly situated investments or costs in the most recently approved general rate case or other relevant rate making proceeding. The commission shall use the actual or anticipated rate impact of each investment or cost to calculate the cumulative rate impact and shall:

(a) Cumulatively calculate the rate impact caused by all investments or costs that have been the subject of a proceeding pursuant to this section, and must be included in calculation for the time period that the investment or cost would affect rates, as adjusted by any change in net costs expected or foreseeable at the time of inclusion;

(b) Make any adjustments to the cumulative rate impact if the initial rate treatment was calculated on the basis of forecasted rate impact;

(c) Allow parties to the proceeding to propose alternative rate or accounting treatment of the investment or cost to limit the potential rate impact of the investment or cost; and

(d) Utilize cost allocation methodologies for attributing rate impacts of investments or costs for multistate electric companies.

(4) Upon a determination that the actual or anticipated cumulative rate impact calculated under subsection (3) of this section exceeds six percent of the annual revenue requirement for a year, the commission shall provide an exemption from further compliance with the requirements of ORS 469A.400 to 469A.475. An exemption must be:

(a) Narrowly tailored to otherwise give full force and effect to the requirements of ORS 469A.400 to 469A.475 that can be complied with without regard to the cumulative rate impact; and

(b) Limited in duration to only such time as is necessary to allow for additional investments and actual or forecasted costs to be made or incurred without exceeding the cumulative rate impact.

(5) A determination by the commission made under this section shall have no effect on and may not be used as collateral or presumptive evidence in any other proceeding that determines rate recovery of the investment or cost, including in a general rate case or in a proceeding under ORS 469A.120.

(6) The commission may, on its own motion pursuant to ORS 756.515, open a proceeding under this section and direct an electric company to make a filing described under subsection (1) of this section. [2021 c.508 §10]

469A.450 Cost cap for electricity service suppliers; comparable exemption and procedures. The Public Utility Commission shall provide the same opportunity to an electricity service supplier as provided an electric company under ORS 469A.445 to receive a comparable exemption from further compliance with the requirements of ORS 469A.400 to 469A.475. A comparable exemption shall be provided based on comparable procedures and criteria, to the extent the procedures and criteria apply to an electricity service supplier as applied to an electric company under ORS 469A.445 and adjusted to reflect applicable differences between electricity service suppliers and electric companies. [2021 c.508 §11]

469A.455 Performance incentive for early compliance. In furtherance of the clean energy targets set forth in ORS 469A.410, the Public Utility Commission may apply a performance incentive for early compliance with one or more of the clean energy targets. [2021 c.508 §12]

469A.460 No modification to renewable portfolio standards. The requirements of ORS 469A.400 to 469A.475 do not replace or modify the requirements of ORS 469A.005 to 469A.210. [2021 c.508 §13]

469A.465 Rules; costs recovery. (1) The Public Utility Commission may adopt rules as necessary to implement ORS 469A.400 to 469A.475.

(2) The commission shall review and identify costs incurred by electric companies for obligations not similarly imposed on electricity service suppliers to comply with ORS 469A.400 to 469A.475 that retail electric consumers served by electricity service suppliers may avoid by obtaining electric power through direct access and ensure that the identified costs are recovered from all retail electricity consumers, are calculated and recovered on the basis of electricity consumption and bear a direct relationship to costs borne by retail electricity consumers served by electric companies. [2021 c.508 §14]

469A.475 Legislative findings; electricity markets; review of greenhouse gas emissions rates. (1)(a) The Legislative Assembly finds that existing and future elec-

tricity markets will play a critical role in the transformation of the electric sector to nonemitting sources, as well as enabling load serving entities to reduce costs and serve load reliably by accessing resource and load diversity.

(b) The Legislative Assembly further finds that accounting and compliance frameworks designed to further the State of Oregon's policy objectives should support and be consistent with efforts to enhance the access to and scope of existing and potential future electricity markets.

(c) Acknowledging the inherently regional and multistate nature of electricity markets, the State of Oregon should coordinate and collaborate with other states to achieve the goal of aligning accounting methodologies where possible while also ensuring market rules do not undermine state policy objectives.

(d) Over time, the evolution of regional wholesale electricity markets may necessitate the modification of existing accounting and compliance rules to ensure the benefit of market participation are preserved.

(2) The Department of Environmental Quality may periodically review and update its calculation under ORS 468A.280 of the greenhouse gas emissions rates assigned to unspecified power purchases and purchases of power dispatched by centralized market operators to reflect the current resource mix and associated emissions of such purchases. The department shall ensure that the calculation of emissions rates under this section takes into account the potential for the energy imbalance market and other centralized market operations across a wide geographic area to increase the availability of nonemitting resources to serve load in the state. [2021 c.508 §15]

469A.480 Electric company serving 25,000 or fewer consumers not subject to requirements. ORS 469A.400 to 469A.475 do not apply to an electric company, as defined in ORS 757.600, that serves electricity to 25,000 or fewer retail electricity consumers, as defined in ORS 757.600, located in this state. [2021 c.508 §17]

Chapter 470

2023 EDITION

Small Scale Local Energy Projects

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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) "Jobs, Energy and Schools Fund" means the fund established under ORS 470.575.

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

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

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

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

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

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

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

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

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

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

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

(23) "Primary contractor" means a contractor that:

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

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

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

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

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

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

(26) "Small business" means:

(a) An Oregon business that is:

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

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

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

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

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

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

(28) "Small scale local energy project" means any of the following:

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

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

(c) A recycling project.

(d) An alternative fuel project.

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

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

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

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

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

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

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

(32) "Utility service territory" means the allocated territory in which a utility subject to this chapter provides a utility service. For the purposes of this subsection, "allocated territory" and "utility service" have the meanings given those terms in ORS 758.400. [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; 2011 c.467 §11; 2013 c.8 §1]

SMALL SCALE LOCAL ENERGY LOAN PROGRAM

(General Provisions)

470.060 Application for financing; content; fee. (1) The following may file with the State Department of Energy an application to obtain moneys for a small scale local energy project as provided in this chapter:

(a) An individual who is an Oregon resident;

(b) An Oregon business;

(c) A nonprofit or public cooperative;

(d) A nonprofit corporation;

(e) An eligible federal agency;

(f) An eligible state agency;

(g) A public corporation created by this state;

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

(i) A special district;

(j) A local improvement district;

(k) A public university listed in ORS 352.002; or

(L) A municipal corporation.

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

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

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

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

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

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

(f) Describe the source of moneys for repayment of the loan applied for.

(3) If the application is for a loan other than an energy efficiency and sustainable technology loan to an individual, a fee of one-tenth of one percent of the amount of the loan applied for or $2,500, whichever is less, shall be submitted with each application. In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed the application fee and which the Director of the State Department of Energy determines are incurred solely in connection with processing the application. The applicant shall be advised of any additional costs the applicant must pay before the costs are incurred. [1979 c.672 §2; 1981 c.50 §2; 1983 c.188 §2; 1985 c.593 §3; 1997 c.29 §2; 2005 c.201 §4; 2009 c.753 §55; 2015 c.767 §175]

470.065 Confidentiality of information provided by or on behalf of applicant. (1) The following records, communications and information furnished by or on behalf of the applicant under this chapter shall be confidential and maintained as such, if so requested in writing by the person providing the information:

(a) Personal financial statements;

(b) Financial statements of applicants;

(c) Customer lists;

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur;

(e) Production, sales and cost data;

(f) Marketing strategy information that relates to an applicant's plan to address specific markets or the applicant's strategy regarding specific competitors, or both; and

(g) Technical information or data related to an applicant's proposed small scale local energy project, including but not limited to any description, analysis, evaluation or projection regarding the project or a component of the project.

(2) The confidentiality provided by subsection (1)(d) of this section does not apply to concluded litigation. Nothing in subsection (1)(d) of this section limits any right granted by discovery statutes to a party to litigation or potential litigation. [1991 c.118 §2; 2005 c.201 §5; 2007 c.71 §152]

Note: 470.065 was added to and made a part of ORS chapter 470 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

470.070 Small Scale Local Energy Project Advisory Committee. (1) The Director of the State Department of Energy shall appoint a Small Scale Local Energy Project Advisory Committee to review applications made under ORS 470.060 and rules adopted under ORS 470.080, other than applications for energy efficiency and sustainable technology loans, and make recommendations regarding those applications to the director.

(2) Nine members shall be appointed to the Small Scale Local Energy Project Advisory Committee. Each member shall be appointed to serve a four-year term, commencing on the date of appointment, and until a successor is appointed and qualified. The members shall represent the interest of the citizens of this state and shall be knowledgeable in the areas of small scale energy technology, natural resource development, environmental protection, finance, agriculture, local government operations and utility operations. At least three members shall reside outside the Willamette Valley.

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

(4) Members of the Small Scale Local Energy Project Advisory Committee shall be entitled to expenses as provided by ORS 292.495. [1979 c.672 §3; 1987 c.365 §1; 2003 c.186 §56; 2009 c.753 §56; 2009 c.760 §2]

470.080 Standards for small scale local energy projects; rules; review of applications; referral to committee; committee criteria. (1) After consultation with the Small Scale Local Energy Project Advisory Committee, the Director of the State Department of Energy shall establish by rule standards and criteria for small scale local energy projects to be funded under this chapter other than projects funded through energy efficiency and sustainable technology loans. The standards and criteria shall operate to encourage diversity in projects funded, give preference to the maximum extent practical to projects proposed by individuals and small businesses, ensure acceptability of environmental impacts and shall require consideration of the potential contribution of a project if developed at other suitable locations to meeting the energy needs of this state. The standards and criteria shall give the least preference to projects proposed by an eligible federal agency.

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

(a) Determine whether the application meets the standards and criteria adopted under subsection (1) of this section; and

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

(3) After concluding its review, unless the application meets the criteria established by the committee under subsection (4) of this section, the department shall refer the application and its findings and recommendation to the committee for its review. The department shall notify the applicant of the date, time and place of any oral presentation to the committee on the application. The committee shall review the application and the department's findings and recommendations and advise the director whether the proposed small scale local energy project meets the criteria established by the director under subsection (1) of this section, whether the project should be financed with moneys from the Small Scale Local Energy Project Loan Fund and in what amount the loan should be made if approved.

(4) The committee may provide for direct referral of an application by the department to the director if the application meets criteria established by the committee. [1979 c.672 §4; 1981 c.50 §3; 1997 c.29 §3; 2003 c.186 §57; 2009 c.753 §57]

470.085 [1985 c.593 §8; repealed by 1991 c.118 §4]

470.090 Approval or rejection of project financing by director; certification of amount of loan; findings; notice. (1) After consideration of the recommendation of the Small Scale Local Energy Project Advisory Committee or the State Department of Energy as provided by ORS 470.080, the Director of the State Department of Energy may approve or reject the financing of a small

scale local energy project described in an application filed as provided in ORS 470.060, using moneys in the Small Scale Local Energy Project Loan Fund. Approval of a loan by the director shall include a certification of the amount of the loan.

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

(a) The proposed small scale local energy project meets established standards and criteria under ORS 470.080;

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

(c) The proposed project is feasible and a reasonable risk from practical and economic standpoints;

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

(e) The applicant is qualified, creditworthy and responsible and is willing and able to enter into a contract with the director for development and repayment as provided in ORS 470.150 or 470.645;

(f) There is a need for the proposed small scale local energy project and the applicant's financial resources are adequate to provide the working capital to maintain the project after completion;

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

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

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

(j) The loan will not preclude individuals and small businesses from access to loan moneys.

(3) The director shall notify the applicant and the presiding officer of the committee of the director's action and of the reasons for that action. The director shall inform the applicant of the review procedure established in ORS 470.100. [1979 c.672 §5; 1981 c.50 §4; 1981 c.565 §4; 1983 c.188 §3; 2003 c.186 §58; 2005 c.201 §6; 2009 c.753 §58]

470.100 Committee review of rejection or approval in different amount; committee appeal to Governor; finality of Governor's action. (1) If the Director of the State Department of Energy rejects a loan application or approves a loan amount different than that requested by the applicant, the applicant may request that the Small Scale Local Energy Project Advisory Committee review the director's action.

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

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

(4) The decision of the Governor is final. If the Governor fails to act within 30 days after receiving the appeal, the appeal shall be considered to be denied.

(5) Notwithstanding ORS chapter 183, a decision of the director or the Governor on an application for financing under ORS 470.090 or this section is not subject to judicial review. [1979 c.672 §6; 2003 c.186 §59; 2009 c.753 §59]

470.110 Gifts credited to Small Scale Local Energy Project Loan Fund. The Director of the State Department of Energy may accept gifts of money or other property from any source, given for the purposes of ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210. Money so received shall be paid into the Small Scale Local Energy Project Loan Fund. Money or other property so received shall be used for the purposes for which received. [1979 c.672 §12; 2003 c.186 §60; 2009 c.753 §60]

470.120 Limit on loan to amount not funded by other sources. If the applicant receives from any source other than the Small Scale Local Energy Project Loan Fund, the Energy Project Supplemental Fund or the Energy Project Bond Loan Fund any moneys to assist in the development of the project, the amount of the loan to the applicant from the Small Scale Local Energy Project Loan Fund, Energy Project Supplemental Fund or Energy Project Bond Loan Fund shall be limited to that amount necessary for the development of those portions of the project not funded by other sources. [1979 c.672 §15; 2009 c.753 §61]

470.130 Appropriation of Small Scale Local Energy Project Loan Fund. All moneys in the Small Scale Local Energy Project Loan Fund created by Article XI-J of the Oregon Constitution are appropriated continuously to the State Department of Energy and shall be used for the purposes authorized under this chapter. [1979 c.672 §16; 2003 c.186 §61; 2009 c.753 §62]

470.135 Administration of small scale local energy project loan program funds and accounts. The duties of the Director of the Oregon Department of Administrative Services to establish, maintain and keep accounts of, and make disbursements or transfers out of, the funds and accounts established or identified in the two bond indentures, as supplemented, dated June 1, 1981, and September 1, 1985, that relate to the Small Scale Local Energy Project Loan Program established by Article XI-J of the Oregon Constitution and this chapter are transferred to the State Department of Energy. Notwithstanding the transfer of these fiscal functions to the State Department of Energy, in accordance with ORS 291.015 (2), the State Department of Energy's performance of these fiscal functions shall remain subject to the control of the Oregon Department of Administrative Services. [1993 c.496 §2; 2003 c.186 §62]

470.140 Rulemaking authority; biennial report. (1) In accordance with the applicable provisions of ORS chapter 183, the Director of the State Department of Energy may adopt rules considered necessary to carry out the purposes of this chapter.

(2) The director shall submit to the Legislative Assembly and the Governor a biennial report of the transactions of the Small Scale Local Energy Project Loan Fund and the Small Scale Local Energy Project Administration and Bond Sinking Fund in such detail as will accurately indicate the condition of the funds. [1979 c.762 §§13,27; 2003 c.186 §63; 2009 c.753 §63]

470.145 State Department of Energy to develop marketing plan. The State Department of Energy shall develop, implement and periodically update a marketing plan to inform potential applicants of the availability of small scale local energy project loans. The first priority of the marketing plan shall be to inform individuals and small businesses that small scale local energy project loans are available. [1983 c.188 §9]

(Loans and Repayment)

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

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

(2) Shall provide a plan for repayment by the applicant of moneys borrowed from the loan fund used for the development of the small scale local energy project and interest on those moneys used at a rate of interest the director determines is necessary to provide adequate funds to recover the administrative expenses incurred in connection with the loan. The director shall set the interest rate at an incremental rate above the interest rate on the underlying bonds in an amount sufficient to recover all program-related costs including, but not limited to, implementation, financing, administration and promotional costs for the program. The incremental rate for projects proposed by an eligible federal agency shall be greater than the incremental rate charged to any other governmental borrower. The repayment plan, among other matters:

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

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

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

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

(e) May set forth a procedure for formal declaration of default of payment by the di-

rector, including formal notification of all relevant federal, state and local agencies; and further, a procedure for notification of all relevant federal, state and local agencies that declaration of default has been rescinded when appropriate.

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

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

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

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

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

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

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

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

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

(B) A small scale local energy project;

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

(D) This chapter; or

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

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

(e) A description of any other conditions required by the department. [1979 c.672 §7; 1985 c.593 §4; 1987 c.365 §2; 1997 c.29 §4; 1997 c.482 §1; 1999 c.365 §8; 2003 c.186 §64; 2009 c.753 §64]

470.155 Loan contract in form of intergovernmental agreement; provisions. A loan contract with an eligible state agency for a small scale local energy project may be made in the form of an intergovernmental agreement under ORS chapter 190. The agreement shall set forth, among other matters, that:

(1) The small scale local energy project shall be security for the loan.

(2) The applicant pledges to request each biennium during the term of the loan, spending authorization or appropriation of funds from the Legislative Assembly or pledges to otherwise provide funds sufficient to pay the loan payments due that biennium.

(3) If applicable, the pledge of the applicant to repay the loan shall be contingent upon the continued spending authorization or appropriation by the Legislative Assembly of funds sufficient to pay the loan. [1985 c.593 §6; 1991 c.118 §3; 1997 c.29 §5]

470.160 Payment from loan funds. If the Director of the State Department of Energy approves a loan for a small scale local energy project, the State Treasurer shall pay moneys for such project from the Small Scale Local Energy Project Loan Fund or Energy Project Bond Loan Fund in accordance with the terms of the loan contract, as prescribed by the director. [1979 c.672 §8; 2003 c.186 §65; 2009 c.753 §65]

470.170 Security for loan. (1)(a) Except as otherwise provided in this subsection, when a loan is made under this chapter to an applicant other than a municipal corporation, the loan shall be secured pursuant to a mortgage, trust deed, security agreement, pledge, assignment or similar instrument, by a security interest or lien on real or personal property in the full amount of the loan or as the Director of the State Department of Energy shall require for adequate security, including but not limited to long-term leasehold interests or equitable interests in real property or personal property. In lieu of, or in addition to, any of the collateral otherwise described in this paragraph, the applicant may secure the loan by providing credit

enhancement, including but not limited to a letter of credit or payment bond, or a guaranty acceptable to the director.

(b) To the extent consistent with any declaration, pledge or agreement for bonds issued under ORS 470.220 to 470.290, an energy efficiency and sustainable technology loan shall be secured as provided in ORS 470.680 or 470.685.

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

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

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

(5) The director may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less the director's expenses incurred in foreclosing, into the Small Scale Local Energy Project Administration and Bond Sinking Fund if the loan was issued from the Small Scale Local Energy Project Loan Fund, or into the Energy Project Bond Loan Fund if the loan was from the Energy Project Bond Loan Fund. In a foreclosure proceeding the director may bid on property offered for sale in the proceedings and may acquire title to the property on behalf of the state.

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

(7) The director may settle, compromise or release, for reasons other than uncollectibility as provided in ORS 293.240, all or part of any loan obligation so long as the director's action is consistent with the purposes of this chapter and does not impair the ability to pay the administrative expenses of the State Department of Energy or the obligations of any bonds then outstanding. [1979 c.672 §9; 1981 c.50 §5; 1983 c.188 §4; 1987 c.365 §3; 1999 c.365 §9; 2001 c.584 §10; 2003 c.186 §66; 2009 c.753 §66]

470.180 Withholding of state funds due to municipal corporation that defaults on loan. In addition to any other remedy available to the State Department of Energy, if a municipal corporation entitled by law to share in the apportionment of any state revenues or funds defaults on any payments due to the State of Oregon under a loan contract entered into under ORS 470.150, the State Department of Energy may certify that fact to the Oregon Department of Administrative Services and the Oregon Department of Administrative Services shall withhold payment of any revenues or funds in the State Treasury to which the municipal corporation is entitled, in an amount not to exceed the balance owing on the loan, until the State Department of Energy certifies that the default has been remedied. [1979 c.672 §10; 1987 c.365 §4]

470.190 Remedies. If an applicant fails to comply with a contract entered into with the Director of the State Department of Energy for development and repayment as provided in ORS 470.150 or 470.645, the director, in addition to remedies provided in ORS 470.170 and 470.180, may seek other appropriate legal remedies to secure the loan and may contract as provided in ORS 470.150 with any other person for continuance of development and for repayment of moneys from the Small Scale Local Energy Project Loan Fund or from the Energy Project Bond Loan Fund used therefor and interest thereon. [1979 c.672 §11; 2003 c.186 §67; 2009 c.753 §67]

470.200 Refinancing of project; use of funds. If any small scale local energy project is refinanced or an additional grant or loan intended to finance the project development is obtained from other sources after the execution of the loan from the state, all such funds shall be used to repay the state unless the Director of the State Department of Energy finds that repayment of the state from the additional grant or loan would be contrary to public interest. [1979 c.672 §14; 1983 c.188 §5]

470.210 Municipal corporation may enter into loan contract; purchase of municipal corporation's general or revenue obligation. (1) Notwithstanding any other provision of law, a municipal corporation may enter into a loan contract with the State Department of Energy to finance a small scale local energy project.

(2) In order to finance a small scale local energy project, the Director of the State Department of Energy, on behalf of the state and in lieu of entering into a loan contract under subsection (1) of this section, may purchase or otherwise acquire a municipal corporation's general obligations or revenue obligations, including but not limited to

bonds, notes, certificates of participation, warrants or lease purchase agreements. [1983 c.188 §8; 2003 c.186 §68; 2005 c.201 §7]

(Bonds)

470.220 Issuance of bonds. In order to provide funds for the purposes specified in Article XI-J of the Oregon Constitution, bonds may be issued as provided in ORS 470.220 to 470.290. [1979 c.672 §17; 1981 c.660 §23; 2005 c.201 §8]

470.225 Procedure for bond issuance. The State Treasurer shall issue bonds described in ORS 470.220 to 470.290 in accordance with the applicable provisions of ORS chapter 286A. [2005 c.201 §2; 2007 c.783 §207]

470.230 Bond proceeds credited to Small Scale Local Energy Project Loan Fund; use of funds. Except as provided in ORS 470.270, all moneys obtained from the sale of general obligation bonds under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution shall be credited by the State Treasurer to the Small Scale Local Energy Project Loan Fund. Those moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution, including payment of the costs of issuing the bonds and of obtaining credit enhancement for the bonds, and making payments of interest on bonds issued pursuant to the provisions of ORS 470.220 to 470.290 if there are insufficient funds in the Small Scale Local Energy Project Administration and Bond Sinking Fund to make the payments referred to in ORS 470.300 (1). Moneys loaned to municipal corporations but withheld by the State Department of Energy for security or to pay for future project costs may remain in the loan fund. Pending the use of the moneys in the loan fund for the proper purposes, the moneys may be invested in the manner provided by law. [1979 c.672 §18; 1987 c.365 §5; 2003 c.186 §69; 2005 c.201 §9; 2009 c.753 §68]

470.240 General obligation bonds to include promise to pay principal amount. All general obligation bonds issued under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution shall contain a direct promise of the State of Oregon to pay the principal amount of the bonds, plus any accrued interest and any redemption premium. The principal of and the interest and redemption premium, if any, upon the bonds, when due, shall be paid at the fiscal agency of the State of Oregon. The charges imposed by that agency for its services shall be paid, upon approval by the State Treasurer, from the Small Scale Local Energy Project Administration and Bond Sinking Fund. [1979 c.672 §19; 1993 c.496 §5; 2005 c.201 §10; 2009 c.753 §69]

470.250 [1979 c.672 §20; 1981 c.50 §6; 1987 c.158 §102; 2003 c.186 §70; repealed by 2005 c.201 §14]

470.260 [1979 c.672 §23; 1981 c.50 §7; 2003 c.186 §71; repealed by 2005 c.201 §14]

470.270 General obligation refunding bonds. (1) After consultation with the State Treasurer, the Director of the State Department of Energy may issue general obligation refunding bonds for the purpose of refunding outstanding bonds issued under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution. The refunding bonds may be sold in the same manner as other bonds are sold under ORS 470.220 to 470.290. All moneys obtained from the sale of refunding bonds shall be credited by the State Treasurer to the Small Scale Local Energy Project Administration and Bond Sinking Fund. The refunding bonds may be issued to refund bonds previously issued for refunding purposes. Pending the use of moneys obtained from the sale of refunding bonds for proper purposes, such moneys may be invested in the manner provided by law.

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

(3) The department shall pursue opportunities for refunding bonds to reduce interest sums payable by the department. When the department refunds a bond with tax-exempt bonds, the department shall share, on an equitable basis, the savings from any refunding with the borrowers whose loans were made with the proceeds of the refunded bonds in an amount consistent with a finding by the director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300 (1). The department may not refund tax-exempt bonds with taxable bonds, unless the department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds. At least 120 days before the date on which the department intends to issue refunding bonds, the director shall notify each borrower whose loan was made from the proceeds of the bonds being refunded and shall offer the borrower the opportunity to prepay the borrower's loan. A borrower shall respond within 60 days of the date of the notice described in this subsection if the borrower in-

tends to prepay the borrower's loan. [1979 c.672 §22; 1995 c.282 §1; 1997 c.482 §2; 2003 c.186 §72; 2005 c.201 §11; 2009 c.753 §70]

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

(2) The State Treasurer shall compute and determine in January of each year, after the sale of bonds under ORS 470.220 to 470.290 and Article XI-J of the Oregon Constitution, the amount of principal, interest and redemption premiums that will fall due during the year on bonds then outstanding and unpaid and shall maintain or hold in the sinking fund sufficient moneys to pay such maturing obligations. [1979 c.672 §§21,24; 2005 c.201 §12; 2009 c.753 §71]

470.290 Bond indebtedness limited to constitutional limit. No bonds shall be issued or sold under ORS 470.220 to 470.290 nor indebtedness incurred thereunder, which singly, or in the aggregate with previous debts or liabilities incurred for small scale local energy projects, shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under ORS 470.220 to 470.290 exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 470.220 to 470.290 in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1979 c.672 §25]

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

(a) Administrative expenses of the State Department of Energy and the Director of the State Department of Energy in processing applications, investigating potential small scale local energy projects and proposed loans and servicing and collecting outstanding loans made from the Small Scale Local Energy Project Loan Fund, if the expense is not paid directly by the applicant.

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

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

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

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

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

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

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

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

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

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

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

(g) Moneys transferred from the loan fund.

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

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

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

(4) The director, with the approval of the State Treasurer, may establish separate and distinct accounts within the sinking fund to accomplish the purpose of this section. [1979 c.672 §26; 1981 c.50 §8; 1983 c.188 §6; 1985 c.805 §4; 1987 c.365 §6; 1993 c.496 §6; 2003 c.186 §73; 2005 c.201 §13; 2009 c.753 §72]

470.310 Procedure if sinking fund inadequate. (1) If there are insufficient funds in the Small Scale Local Energy Project Administration and Bond Sinking Fund to make

the payments referred to in ORS 470.300 (1), the Director of the State Department of Energy may request the funds necessary for such payments from the Legislative Assembly or the Emergency Board.

(2) When the director determines that moneys in sufficient amount are available in the sinking fund, the State Treasurer shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1979 c.672 §28; 2003 c.186 §74; 2009 c.753 §73]

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 utility service territories or may delay or suspend any feature of the energy efficiency and sustainable technology loan program. [2009 c.753 §2a; 2013 c.8 §14]

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. (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 compliance with those qualifications. A sustainable energy project manager shall provide the promotion, technical and financial support and verifications necessary to administer an energy efficiency and sustainable technology loan.

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

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

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

(5) The director shall establish a sustainable energy project manager certification program. However, the Public Purpose Fund Administrator or a consumer-owned utility is not required to obtain a sustainable energy project manager certificate and the Public Purpose Fund Administrator is not subject to any qualifications established by the director for a sustainable energy project manager. [2009 c.753 §7; 2010 c.92 §8; 2013 c.8 §5]

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 sustainable energy project manager shall submit information to the director that includes:

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

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

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

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

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

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

(c) The cost at which the applicant can conduct outreach, promotion, loan applicant support and project verification services nec-

essary to implement the energy efficiency and sustainable technology loan program.

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

(4) An applicant may not be certified as a sustainable energy project manager if the applicant has a fiduciary or other obligation that creates an actual or apparent conflict of interest that may interfere with achieving the goals of the energy efficiency and sustainable technology loan program. [2009 c.753 §8; 2013 c.8 §6]

470.540 State Department of Energy to notify unsuccessful applicants; timetable 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 sustainable energy project manager regarding any modifications to the service cost estimates or other features of the applicant's proposed plan that are necessary to ensure that the applicant will meet the goals and requirements of the energy efficiency and sustainable technology loan program and State Department of Energy rules.

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

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

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

(b) The committee does not undertake a review of the proposed certification within 15 days after the date the notice is sent. [2009 c.753 §9; 2013 c.8 §15]

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

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

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

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

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

(d) Failure to perform other certification conditions. [2009 c.753 §11; 2013 c.8 §16]

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) An investor-owned gas utility may act as a sustainable energy project manager for the utility service territory serviced by the

utility or may contract with the Public Purpose Fund Administrator to act as the sustainable energy project manager on behalf of the utility.

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

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

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

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

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

(6) Subject to approval by the director, a sustainable energy project manager may contract with a qualified third party to assist the sustainable energy project manager in serving a utility service territory. If a utility service territory is served by a sustainable energy project manager, the appointment of additional sustainable energy project managers may be made only by entering into a subcontract approved by the existing sustainable energy project manager. If the third party is acting as a financier, the third party is not required to comply with laws regulating utilities based on the actions of the third party as a financier. The sustainable energy project manager may enter into agreements with trade associations and other public and private entities for the promotion or marketing of the energy efficiency and sustainable technology loan program.

(7) The Public Purpose Fund Administrator and sustainable energy project managers shall cooperate with, and coordinate their outreach and promotional efforts with, local utilities and other stakeholders to promote energy efficiency and renewable energy and to use the customer contacts, resources and capacity of the utilities to engage and inform utility customers about the energy efficiency and sustainable technology loan program. The Public Purpose Fund Administrator and sustainable energy project managers shall coordinate with gas utilities regarding any changes to a gas pipeline and with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure. The Public Purpose Fund Administrator and sustainable energy project managers shall coordinate with a gas utility regarding the installation of appliances used for space heating, water heating and compressed natural gas refueling. [2009 c.753 §12; 2013 c.8 §7]

(Primary Contractors)

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

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

(a) Prove that the primary contractor and the primary contractor's subcontractors have sufficient skill to 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 disadvantaged business enterprise, a minority-owned business, a woman-owned business, a veteran-owned business or an emerging small business, 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 certification standards for primary contractors.

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

(5) The State Department of Energy shall identify certified primary contractors that provide employees with health insurance benefits as preferred service providers and may take other actions as practicable to encourage certified primary contractors to provide employees with health insurance benefits. [2009 c.753 §13; 2013 c.8 §2; 2015 c.565 §23; 2023 c.497 §24]

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

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

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

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

(b) The department and the loan applicant agree to an alternative method for ensuring repayment of the loan. [2009 c.753 §14; 2013 c.8 §8]

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

(e) The Energy Revenue Bond Repayment Fund.

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

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

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

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

(4) The State Treasurer may establish any subaccounts in the Energy Project Supplemental Fund that the treasurer or the director considers reasonable for the efficient administration of the fund. [2009 c.753 §15; 2011 c.467 §12]

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

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

(3) The department shall use fund moneys:

(a) To promote energy efficiency, renewable energy and energy conservation projects, including the clean energy deployment program established in ORS 470.810, that would otherwise result in a 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 reduce the overall financing costs associated with related projects; 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; 2010 c.92 §2; 2011 c.467 §9; 2013 c.656 §18]

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 293.857. 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 Jobs, Energy and Schools Fund;

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

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

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

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

(2) The Energy Revenue Bond Repayment Fund shall consist of moneys transferred to the fund from the Energy Project Bond Loan Fund and Energy Project Supplemental Fund by the State Treasurer as provided in ORS 470.610 (2). [2009 c.753 §18; 2011 c.467 §13]

(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 Jobs, Energy and Schools Fund and the Energy Project Supplemental Fund, private activity bonds and grant moneys. [2009 c.753 §19; 2011 c.467 §14]

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 Jobs, Energy and Schools Fund for use within a limited geographic area of this state as a source of capital for financing energy efficiency and sustainable technology loans, small scale local energy program loans or loan offset grants.

(2) Any moneys deposited under this section shall be separately accounted for and shall be managed consistently with small scale local energy project goals and any agreement between the State Department of Energy and the entity providing the moneys. The moneys may be disbursed only for use as designated by, and in the geographic area designated by, the entity providing the moneys. [2009 c.753 §25; 2011 c.467 §15]

(Bonds)

470.610 Issuance of bonds; written declarations 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 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. At least once every six months, the director shall estimate the anticipated demand for loans under the energy efficiency and sustainable technology loan program, and shall make a written declaration of this amount to the State Treasurer.

(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 Direc-

tor 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; 2010 c.92 §5]

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

(2) The sustainable energy project manager may issue a loan from moneys disbursed under this section only if adequate security exists to ensure repayment of the loan. An energy efficiency and sustainable technology loan from a sustainable energy project manager to an applicant located in the utility service territory served by the sustainable energy project manager must have the features described in ORS 470.150 and 470.645 and is subject to the requirements and processes imposed under ORS 470.500 to 470.710 for energy efficiency and sustainable technology loans issued by the Director of the State Department of Energy. A sustainable energy project manager that issues an energy efficiency and sustainable technology loan to support a small scale local energy project may record a fixture filing and lien on the property that benefits from the small scale local energy project as provided in ORS 470.680 or 470.685. [2009 c.753 §26; 2013 c.8 §9]

470.635 Requirement for energy savings projection; form of projection; use of certified primary 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 primary contractor designated by the sustainable energy project manager or a person approved by the department completes an energy savings projection or similar evaluation for the property that will benefit from the small scale local energy project. The projection or other evaluation shall be in writing and shall, at a minimum, identify the following:

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

(b) Any optional package recommended for the structure.

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

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

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

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

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

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

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

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

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

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

(7) The department shall periodically consult with primary contractors certified under ORS 701.119 for the purpose of updating average cost and projected savings figures used for energy savings projections or other evaluations under this section. The department shall encourage the use of methods for conducting energy savings projections or other evaluations under this section that are cost-effective and time-effective, take advantage of economies of scale and produce results that are accurate and are replicable for equivalent base energy packages. [2009 c.753 §27; 2010 c.92 §3; 2013 c.8 §3]

470.640 Amount of loans; exceptions. (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 for residential dwellings served by a single meter of the utility that is to provide on-bill financing. The loan limit described in this subsection does not apply to other buildings such as multifamily housing and mixed-use structures.

(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 Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. [2009 c.753 §28; 2010 c.92 §6; 2019 c.57 §26]

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 sustainable energy project manager from accepting an application from a person who has been denied, or is receiving, assistance under a department weatherization program.

(2) If an applicant for a loan to construct a residential small scale local energy project has household income that is less than 250 percent of the federal poverty guidelines, upon request by the applicant, the State Department of Energy may waive all or part of an application fee for the loan and may waive all or part of the project initiation fee. [2009 c.753 §30; 2013 c.8 §17]

(Fees)

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

(2) The Director of the State Department of Energy may by rule establish a base efficiency package fee for energy efficiency and sustainable technology loans if the loans are not financed by moneys from the Jobs, Energy and Schools Fund. The fee may not exceed 10 percent of the estimated economic benefit for the base efficiency package. Any fees collected by the department under this subsection shall be deposited in the fund. [2009 c.753 §31; 2010 c.92 §4; 2011 c.467 §16]

(On-Bill Financing)

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

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

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

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

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

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

payment 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; 2010 c.92 §7; 2013 c.8 §10]

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 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; 2013 c.8 §11]

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; 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; 2013 c.8 §12]

(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]

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 Jobs, Energy and Schools Fund moneys for accomplishing the purposes described in subsection (1) of this section. [2009 c.753 §40; 2011 c.467 §17]

(Miscellaneous)

470.710 Apprenticeship and job training. (1) The State Department of Energy shall collaborate with the State Workforce and Talent Development 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; 2017 c.185 §14; 2017 c.297 §25]

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 Jobs, Energy and Schools Fund or Energy Project Bond Loan Fund; or

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

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

(b) The transfer will not create the need for issuance of any bonds. [2009 c.753 §47; 2011 c.467 §18]

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.

470.720 Loan program information to be provided by utilities; rules. All investor-owned utilities and consumer-owned utilities that have customers enrolled in energy efficiency and sustainable technology loan programs shall, at the request of the Director of the State Department of Energy, provide the director with the following information in aggregated form regarding the loans:

(1) Repayment performance;

(2) Default rates;

(3) Energy savings data; and

(4) Any other information specified by rule adopted by the director pursuant to ORS 470.140. [2010 c.92 §10]

CLEAN ENERGY DEPLOYMENT PROGRAM

470.800 Clean Energy Deployment Fund; sources; uses. (1) The Clean Energy Deployment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Clean Energy Deployment Fund shall be credited to the Clean Energy Deployment Fund. Moneys in the fund are continuously appropriated to the State Department of Energy for use as provided in ORS 470.810.

(2) The department may accept grants, donations, contributions or gifts from any source for deposit in the Clean Energy Deployment Fund. [2011 c.467 §1]

Note: 470.800, 470.810 and 470.815 were enacted into law by the Legislative Assembly but were 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.

470.805 Renewable Energy Development Subaccount; sources; uses. (1) The Renewable Energy Development Subaccount is established in the Clean Energy Deployment Fund established in ORS 470.800. Interest earned by the Renewable Energy Development Subaccount shall be credited to the subaccount. Moneys in the fund are continuously appropriated to the State Department of Energy for purposes related to renewable energy development.

(2) The department may accept grants, donations, contributions or gifts from any source for deposit in the Renewable Energy Development Subaccount. [2011 c.730 §24a]

Note: 470.805 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.

470.810 Clean energy deployment program; prevailing wage requirements; rules. (1) The State Department of Energy shall establish the clean energy deployment program to provide grants and loans to support energy efficiency or clean energy projects in this state. The department shall establish criteria for qualifications of the projects by rule.

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

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

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

(3) The department may contract for the implementation of the clean energy deployment program in all or parts of this state with a sustainable energy project manager as defined in ORS 470.050. [2011 c.467 §2]

Note: See note under 470.800.

470.815 School district projects. (1) School districts that participate in the clean energy deployment program established in ORS 470.810 may finance projects to:

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

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

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

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

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

(a) Paying directly for the projects;

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

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

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

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

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

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

(d) Using any other source of moneys. [2011 c.467 §3]

Note: See note under 470.800.

COMMUNITY RENEWABLE INVESTMENT PROGRAM

Note: Sections 29 to 33, chapter 508, Oregon Laws 2021, provide:

Sec. 29. Definitions for sections 29 to 32, chapter 508, Oregon Laws 2021. As used in sections 29 to 32 of this 2021 Act:

(1) "Community renewable energy project" means one or more renewable energy systems, storage systems, microgrids or energy-related infrastructures that promote energy resilience, increase renewable energy generation or renewable energy storage capacity and provide a direct benefit to a particular community in the form of increased community energy resilience, local jobs, economic development or direct energy costs savings to families and small businesses.

(2) "Community energy resilience" means the ability of a specific community to maintain the availability of energy needed to support the provision of energy-dependent critical public services to the community following nonroutine disruptions of severe impact or duration to the state's broader energy systems.

(3) "Community energy resilience project" means a community renewable energy project that includes utilizing one or more renewable energy systems to support the energy resilience of structures or facilities that are essential to the public welfare.

(4) "Consumer-owned utility" means a municipal electricity utility, a people's utility district organized under ORS chapter 261 that sells electricity or an electric cooperative organized under ORS chapter 62.

(5) "Energy resilience" means the ability of energy systems, from production through delivery to end-users, to withstand and restore energy delivery rapidly following nonroutine disruptions of severe impact or duration.

(6) "Planning costs" means the costs related to planning paid by an applicant described under section 30 of this 2021 Act.

(7) "Project cost" means the actual cost of the acquisition, construction and installation of a renewable energy system incurred by an applicant described under section 30 of this 2021 Act for the system, before considering utility incentives.

(8) "Public body" means a public body as defined in ORS 174.109.

(9) "Qualifying community" means a community that qualifies as an environmental justice community as defined in section 1 of this 2021 Act [469A.400].

(10) "Renewable energy system" includes:

(a) A system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy.

(b) One or more energy storage systems paired with an existing or newly constructed system described in paragraph (a) of this subsection.

(c) One or more vehicle charging stations paired with an existing or newly constructed system described in paragraph (a) of this subsection.

(d) Microgrid enabling technologies, including microgrid controllers and any other related technologies needed to electrically isolate a community energy resilience project from the electric grid so that the project is capable of operating independently from the electric grid. [2021 c.508 §29]

Sec. 30. Grants for community renewable energy projects; application; rules. (1) The Community Renewable Investment Program is established for the purpose of:

(a) Offsetting the cost of planning and developing community renewable energy projects;

(b) Making community renewable energy projects economically feasible for qualifying communities;

(c) Promoting small-scale renewable energy projects; and

(d) Providing direct benefits to communities across this state in the form of increased community energy resilience, local jobs, economic development or direct energy cost savings to families and small businesses.

(2)(a) A federally recognized Oregon Indian tribe, public body or consumer-owned utility may submit to the State Department of Energy an application for grant moneys from the Community Renewable Investment Fund established under section 33, chapter 508, Oregon Laws 2021, for the purpose of planning or developing a community renewable energy project.

(b) An applicant may partner with a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in this state or owner of rental property in this state, but a grant for an approved application will only be awarded and released to an applicant that is a federally recognized Oregon Indian tribe, public body or consumer-owned utility. Any federally recognized Oregon Indian tribe, public body, nonprofit entity, private business or owner of rental property that partners with the applicant must be listed in the application.

(c) An application must be drafted in consultation with electric utilities that have customers in the communities covered by a community renewable energy project that is in the application and regional stakeholders for the purpose of ensuring feasibility.

(3) An application for a grant for planning a community renewable energy project must demonstrate that the planning:

(a) Is for a project located in this state but outside a city with a population of 500,000 or more;

(b) Will be completed within six months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule;

(c) Will result in a proposal for developing a community renewable energy project; and

(d) Incorporates feedback from:

(A) Members of qualifying communities served by the community renewable energy project;

(B) Businesses located in the communities served by the community renewable energy project;

(C) Electric utilities that have customers in the communities served by the community renewable energy project; and

(D) Other regional stakeholders.

(4)(a) An application for a grant for developing a community renewable energy project must be on a form prescribed by the department and contain:

(A) A detailed description of the project's systems and the systems' operation;

(B) Information showing that the project's systems will operate as represented in the application and, if the project is for producing electricity, remain in operation for at least five years or for at least a period of time established by the Director of the State Department of Energy by rule;

(C) The anticipated total project cost;

(D) Information on the number and types of jobs directly connected to the awarding of the grant that will be:

(i) Created by the project; and

(ii) Sustained throughout construction, installation and operation of the project;

(E) Information demonstrating that the project will comply with applicable state and local laws and regulations and obtain required licenses and permits;

(F) Information demonstrating that the project will be located in and benefit a community in this state but outside a city with a population of 500,000 or more; and

(G) Any other information the director considers necessary to determine whether the project is in compliance with sections 29 to 32, chapter 508, Oregon Laws 2021, and any applicable rules or standards adopted thereunder.

(b) An application for developing a community renewable energy project must demonstrate that the project:

(A) Is located in this state but outside a city with a population of 500,000 or more;

(B) Will begin construction within 12 months of execution of the performance agreement and be completed within 36 months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule;

(C) Results in increased community energy resilience, local jobs, economic development or direct energy cost savings to families and small businesses;

(D) Complies with applicable state and local laws and regulations and has the required licenses and permits;

(E) Does not exceed 20 megawatts of nameplate capacity, if the project is for generating renewable energy; and

(F) Will operate for at least five years, if the project is for producing electricity, or for at least a period of time established by the director by rule.

(5) Upon receipt of an application submitted under this section, the department shall review and determine whether the applicant is eligible to receive a grant from the Community Renewable Investment Program established under this section. The department may approve an application if the department finds that:

(a) The planning or development proposal meets the requirements listed in subsection (3) or (4) of this section;

(b) The proposal meets the standards described in subsection (10) of this section;

(c) The proposal meets any standards adopted by rule under subsection (11) of this section;

(d) The proposal is technically feasible; and

(e) Any federally recognized Oregon Indian tribe, public body, private business or owner of rental property partnered with the applicant is listed in the application.

(6)(a) The department shall issue separate opportunity announcements for each calendar interval that funding is available for the following categories:

(A) Planning a community renewable energy project that qualifies as a community energy resilience project;

(B) Developing a community renewable energy project that qualifies as a community energy resilience project;

(C) Planning a community renewable energy project that does not qualify as a community energy resilience project; and

(D) Developing a community renewable energy project that does not qualify as a community energy resilience project.

(b) Upon receiving an application, the director shall determine whether the application is for a community renewable energy project that qualifies as a community energy resilience project based on the defi-

nition of "community energy resilience project" in section 29, chapter 508, Oregon Laws 2021, and any applicable rules adopted under this section.

(7)(a) The department shall allocate, out of the initial moneys appropriated for the Community Renewable Investment Program under section 34, chapter 508, Oregon Laws 2021:

(A) 50 percent or more for grants to be awarded for planning or developing community renewable energy projects that qualify as community energy resilience projects.

(B) 50 percent or more for grants to be awarded for planning or developing community renewable energy projects that primarily serve one or more qualifying communities.

(b) The department shall allocate, out of any subsequent and additional moneys appropriated to the Community Renewable Investment Program, percentage amounts for grants in a manner consistent with paragraph (a) of this subsection.

(c) After two years of issuing announcements of available funding opportunities from the initial moneys appropriated to the Community Renewable Investment Program and after consultation with the Advisory Committee on Community Renewable Investment described in section 32, chapter 508, Oregon Laws 2021, the department may, by rule, reallocate the percentage of available funds across project categories.

(8) The department shall review and competitively score applications separately for each funding opportunity announcement.

(9) If the department approves an application under this section, the department and the applicant may enter into a performance agreement that meets the requirements set forth in section 31, chapter 508, Oregon Laws 2021.

(10) In approving applications and awarding grant moneys, the department shall prioritize planning and development proposals that:

(a) Include community energy resilience projects.

(b) Demonstrate significant prior investments in energy efficiency measures at the project location or will result in aggregate improvements to demand response capabilities.

(c) Are for projects located in qualifying communities across the state.

(d) When applicable, are for projects constructed in part or in whole by disadvantaged business enterprises, emerging small businesses or businesses that are owned by minorities, women or disabled veterans.

(e) Include inclusive hiring and promotion policies for workers working on the projects.

(f) Incorporate equity metrics developed in coordination with the Environmental Justice Council established by ORS 182.538 for evaluating the involvement of and leadership by people of low income, Black, Indigenous or People of Color, members of tribal communities, people with disabilities, youth, people from rural communities and people from otherwise disadvantaged communities in the siting, planning, designing or evaluating of the proposed community renewable energy projects.

(g) Help the applicants achieve goals included in the applicants' natural hazard mitigation plans as approved by the Federal Emergency Management Agency.

(11) The department shall adopt rules, in consultation with Business Oregon, to carry out sections 29 to 32, chapter 508, Oregon Laws 2021. The rules must:

(a) Define the planning and project costs eligible to be covered by a grant provided under section 31 (1) and (2), chapter 508, Oregon Laws 2021.

(b) Adopt a methodology to identify qualifying communities and assess the geographic diversity of the approved planning and development projects compared with the other planning and development project applications for which grants have been requested in each opportunity announcement.

(c) Establish guidelines for significant, unforeseeable or uncontrollable delays that will constitute good cause for extending the timelines agreed upon in performance agreements.

(12) The department may adopt rules capping the amount of grant funds that may be paid to individual consultants and contractors in each round of funding opportunity announcements if the department finds such limitations necessary to ensure broad distribution of funds and opportunity for emerging small businesses as defined in ORS 200.005. [2021 c.508 §30; 2022 c.58 §8]

Sec. 31. Performance agreements; requirements. (1)(a) A performance agreement for planning a community renewable energy project entered into between the State Department of Energy and an applicant under section 30 (9) of this 2021 Act must provide, at a minimum:

(A) A grant in an amount described in paragraph (b) of this subsection that covers up to 100 percent of the reasonable planning costs including, but not limited to, costs associated with:

(i) Consulting fees.

(ii) Load analysis.

(iii) Siting, excluding property acquisition.

(iv) Ensuring code compliance.

(v) Interconnection studies.

(vi) Transmission studies.

(vii) Other reasonable expenditures made in the community renewable energy project planning process as determined by the department by rule.

(B) A grant may not be used to cover any fixed costs the applicant would incur in the applicant's normal course of business such as existing staff salaries or overhead costs.

(C) The department may recover grant moneys if a project fails to abide by the performance agreement or if planning is not completed within six months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule.

(b) The department may establish differing limits on the maximum amount of grants for planning community renewable energy projects based on the scope and attributes of the planning applications not to exceed an amount of $100,000 per grant.

(c) Notwithstanding paragraph (a) of this subsection, the department may provide a grant that covers up to 100 percent of the reasonable planning costs only if the application demonstrates the planning proposal is for a community renewable energy project that:

(A) If for producing energy:

(i) Will make use of an adequately available renewable energy resource to produce the energy;

(ii) Has a specific market for the energy; and

(iii) Will reasonably and efficiently connect or transmit the energy to the specific community identified in the application under section 30 (3) of this 2021 Act; or

(B) If for increasing energy resilience:

(i) Will increase the energy resilience of a specific structure or facility or collection of structures or facilities essential to the public welfare; and

(ii) Will provide energy resilience benefits to the specific structure or facility or to the collection of structures or facilities.

(2) A performance agreement for developing a community renewable energy project entered into between the State Department of Energy and an applicant under section 30 (9) of this 2021 Act must provide, at a minimum:

(a) For a community renewable energy project that qualifies as a community energy resilience project, a grant that covers up to 100 percent of the project cost not to exceed $1 million. The department shall reduce the grant amount, if the grant combined with other incentives and grants received by the applicant exceeds 100 percent of the total costs associated with the project.

(b) For a community renewable energy project that does not qualify as a community energy resilience project, a grant that covers up to 50 percent of the project cost not to exceed $1 million. The department shall reduce the grant amount, if the grant combined with other incentives and grants received by the applicant exceeds 100 percent of the total costs associated with the project.

(c) The department may release up to 30 percent of the grant moneys provided for in a performance agreement, not to exceed 30 percent of project cost, upon entering into a performance agreement with an applicant for developing a community renewable energy project, with the remaining grant moneys to be released upon project completion under the terms of the performance agreement, if upon entering the performance agreement the applicant demonstrates having:

(A) Taken meaningful steps to seek site control, including but not limited to an option to lease or purchase the site or an executed letter of intent or exclusivity agreement to negotiate an option to lease or purchase the site;

(B) Filed a request for interconnection with a host utility or appropriate transmission provider; and

(C) Met any other requirements provided by the department by rule, such as filing a request for a power purchase or net metering agreement.

(d) The department may recover grant moneys if:

(A) The project fails to abide by the performance agreement;

(B) The project fails to begin construction within 12 months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule; or

(C) The project is not completed within 36 months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated as determined by rule.

(3) The department shall gather information from grantees necessary to evaluate indicators of success as determined by rule. [2021 c.508 §31]

Sec. 32. Advisory committee. The Director of the State Department of Energy may appoint an Advisory Committee on Community Renewable Investment to provide consultation on the implementation of sections 29 to 32, chapter 508, Oregon Laws 2021. A committee appointed under this section shall consist of:

(1) A member of the Environmental Justice Council;

(2) A representative of Business Oregon;

(3) A representative of electric companies;

(4) A representative of consumer-owned utilities;

(5) A representative from an organization that represents community renewable energy development;

(6) A representative from a federally recognized Oregon Indian tribe;

(7) Three representatives of local government to represent the interests of counties, cities and special districts;

(8) Representatives from nongovernmental organizations that represent communities of low income or disadvantaged households; and

(9) Representatives from relevant state and federal emergency management or response agencies. [2021 c.508 §32; 2022 c.58 §9]

Sec. 33. Community Renewable Investment Fund. (1) The Community Renewable Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Community Renewable Investment Fund shall be credited to the fund. The fund consists of:

(a) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly;

(b) Moneys received from federal, state or local sources;

(c) Gifts, grants or other moneys contributed to the fund; and

(d) Other amounts deposited in the fund from any source.

(2) Moneys in the fund are continuously appropriated to the State Department of Energy for the purpose of providing grants to applicants approved under section 30 of this 2021 Act.

(3) The department may use reasonable amounts from the fund necessary, but no more than 10 percent of the fund, to administer the Community Renewable Investment Program described in section 30 of this 2021 Act.

(4) The Director of the State Department of Energy shall submit a biennial report to the Legislative Assembly in the manner provided by ORS 293.640 regarding the expenditures of moneys deposited in the Community Renewable Investment Fund and status of ongoing projects funded by the moneys, including but not limited indicators of program success.

(5) Upon the expenditure of all grant moneys in the Community Renewable Investment Fund or four years from the effective date of this 2021 Act [September 25, 2021], whichever occurs earlier, the director shall submit a report to the Legislative Assembly regarding the expenditures of moneys deposited in the Community Renewable Investment Fund and status of ongoing projects that have received moneys from the fund, including but not limited to indicators of program success. [2021 c.508 §33]

TITLE 57

UTILITY REGULATION

Chapter 756. Public Utility Commission
757. Utility Regulation Generally
758. Utility Rights of Way and Territory Allocation; Cogeneration
759. Telecommunications Utility Regulation
772. Rights of Way for Public Uses
774. Citizens' Utility Board

Chapter 756

2023 EDITION

Public Utility Commission

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GENERAL PROVISIONS

756.010 Definitions. As used in ORS chapters 756, 757, 758 and 759, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Commission" means the Public Utility Commission of Oregon.

(2) "Commissioner" means a member of the Public Utility Commission of Oregon.

(3) "Customer" includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a public utility or telecommunications utility.

(4) "Environmental justice" means equal protection from environmental and health hazards and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality and play.

(5) "Environmental justice communities" includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including but not limited to seniors, youth and persons with disabilities.

(6) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(7) "Person" includes individuals, joint ventures, partnerships, corporations and associations or their officers, employees, agents, lessees, assignees, trustees or receivers.

(8) "Public utility" has the meaning given that term in ORS 757.005.

(9) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

(10) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

(11) "Telecommunications utility" has the meaning given that term in ORS 759.005. [Amended by 1971 c.655 §2; 1973 c.776 §14; 1977 c.337 §1; 1985 c.834 §6; 1987 c.447 §75; 1991 c.841 §1; 1995 c.733 §52; 2021 c.90 §1]

COMMISSION POWERS AND DUTIES

(Generally)

756.014 Public Utility Commission; appointment; confirmation; term; removal. (1) There is created the Public Utility Commission of Oregon. The commission shall be composed of three members appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. No more than two of such members shall be of the same political party.

(2) Each commissioner shall hold office for the term of four years. A commissioner shall hold office until a successor has been appointed and qualified. The chairperson shall be designated by the Governor and shall serve as chairperson at the pleasure of the Governor.

(3) Any vacancy occurring in the office of commissioner shall be filled by appointment by the Governor to hold office for the balance of the unexpired term.

(4) The Governor may at any time remove a commissioner for any cause deemed by the Governor sufficient. Before such removal the Governor shall give the commissioner a copy of the charges, and shall fix a time when the commissioner can be heard, which shall not be less than 10 days thereafter. The hearing shall be open to the public. If the commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the commissioner, and the findings thereon with a record of the proceedings. Such power of removal is absolute, and there is no right of review of the same in any court. [1985 c.834 §2; 1999 c.1102 §1]

756.016 Quorum; seal; individual commissioner authorized to act for commission. (1) A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the Public Utility Commission.

(2) The commission shall have a seal with the words "Public Utility Commission of Oregon" and such other design as the commission may prescribe engraved thereon, by which the proceedings of the commission shall be authenticated and of which the courts shall take judicial notice.

(3) Any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated by order of the commission. Except as provided in ORS 756.055, all investigations, inquiries and hearings so held shall be conducted as though by the full commission with such commissioner empowered to exercise all the powers of the commission with respect thereto. [1985 c.834 §§3,4,5]

756.020 [Amended by 1973 c.792 §48; 1983 c.540 §1; repealed by 1985 c.834 §12]

756.022 Oath of office. Before entering upon the duties of office, each commissioner shall take and subscribe to an oath or affirmation to support the Constitution of the

United States and of this state, and to faithfully and honestly discharge the duties of office. The oath shall be filed with the Secretary of State. [1971 c.655 §3; 1985 c.834 §7]

756.026 Prohibited interests of commissioner and family. (1) No member of the Public Utility Commission shall:

(a) Hold any other office of profit;

(b) Hold any office or position under any political committee or party;

(c) Hold any pecuniary interest in any business entity conducting operations which if conducted in this state would be subject to the commission's regulatory jurisdiction; or

(d) Hold any pecuniary interest in, have any contract of employment with, or have any substantial voluntary transactions with any business or activity subject to the commission's regulatory jurisdiction.

(2) The prohibitions of subsection (1)(c) and (d) of this section apply to the spouse and minor children of each commissioner.

(3) If the Governor determines that any commissioner has done any act prohibited by subsection (1) of this section, or that a commissioner's spouse or a minor child has done any act prohibited by subsection (2) of this section, the Governor shall remove the commissioner in the manner provided in ORS 756.014 (4).

(4) Subsection (3) of this section does not apply to a commissioner if the commissioner or the commissioner's spouse or a minor child acquires any pecuniary interest prohibited by subsection (1) or (2) of this section, advises the Governor of such acquisition, and causes divestiture of such interest within the time specified by the Governor.

(5) For purposes of subsection (1) of this section, a business or activity shall not be considered subject to the commission's regulatory jurisdiction solely because the business or activity is a private carrier as defined by ORS 825.005. [1971 c.655 §4; 1985 c.834 §8; 1987 c.123 §1; 1995 c.306 §41]

756.028 Employee statements regarding prohibited interests. Each employee of the Public Utility Commission shall file with the commission a statement regarding holdings of the employee and the holdings of the employee's spouse and minor children of any pecuniary interest in any business or activity subject to the commission's regulatory jurisdiction. Supplementary statements shall be filed as such pecuniary interests are acquired or divested. The statements shall be in such form as the commission prescribes. If the commission determines that an employee or spouse or minor child of the employee holds any such pecuniary interest that may interfere with the impartial discharge of the employee's duties, the commission shall order divestiture of the interest. [1971 c.655 §5]

756.030 [Repealed by 1971 c.655 §250]

756.032 Employee dismissal for retention of prohibited interests or failure to file statements. (1) The Public Utility Commission shall dismiss an employee:

(a) Who fails to file the statement required by ORS 756.028 before the 11th day after the date of employment.

(b) Who fails to file the supplementary statement required by ORS 756.028 before the 11th day after the acquisition of a pecuniary interest.

(c) Who fails to cause divestiture of a pecuniary interest within the time specified in an order issued pursuant to ORS 756.028.

(2) Dismissal of an employee under subsection (1) of this section is subject to the procedure and appeal provided in ORS 240.555, 240.560 and 240.570. An employee so dismissed is eligible for reemployment. [1971 c.655 §6; 1979 c.468 §34; 2003 c.14 §452; 2014 c.22 §2]

756.034 Intent of prohibited interest provisions. Nothing in ORS 756.022 to 756.032 is intended to authorize any act otherwise prohibited by law. [1971 c.655 §7]

756.036 Duties and functions. (1) The Public Utility Commission may:

(a) Organize and reorganize the office of the Public Utility Commission in the manner that it considers necessary to properly discharge the responsibilities of the Public Utility Commission.

(b) Contract for or procure on a fee or part-time basis, or both, such experts, technical or other professional services as it may require for the discharge of its duties.

(c) Obtain such other services as it considers necessary or desirable.

(d) Participate in organizations of regional and national utility commissions.

(e) Appoint advisory committees. A member of an advisory committee so appointed shall receive no compensation for services as a member. Subject to any applicable law regulating travel and other expenses of state officers and employees, the member shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(2) Subject to any applicable law regulating travel and other expenses of state officers and employees, the commissioners and the officers and employees of the commission shall be reimbursed for such reasonable and necessary travel and other expenses incurred in the performance of their official duties.

(3) The chairperson of the commission appointed under ORS 756.014 shall serve as the administrative head of the commission and has the power to:

(a) With the consent of one or more of the other members of the commission, appoint and employ all subordinate officers and employees, including, but not limited to, deputies, assistants, engineers, examiners, accountants, auditors, inspectors and clerical personnel, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law.

(b) Prescribe internal policies and procedures for the government of the commission, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law. [1971 c.655 §8; 1985 c.834 §9; 1999 c.1102 §2; 2003 c.14 §453]

756.037 Commission authority to provide assistance, information, resources and advice to Legislative Assembly. The Public Utility Commission and commission staff may provide such assistance to the Legislative Assembly and its committees as required by the Legislative Assembly for the performance of its duties, and may furnish to the Legislative Assembly and its committees such information, resources and advice as the members of the Legislative Assembly consider necessary for the performance of legislative duties. [2001 c.558 §2]

756.040 General powers. (1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates. Rates are fair and reasonable for the purposes of this subsection if the rates provide adequate revenue both for operating expenses of the public utility or telecommunications utility and for capital costs of the utility, with a return to the equity holder that is:

(a) Commensurate with the return on investments in other enterprises having corresponding risks; and

(b) Sufficient to ensure confidence in the financial integrity of the utility, allowing the utility to maintain its credit and attract capital.

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

(3) The commission may participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the public generally and the customers of the services of any public utility or telecommunications utility operating or providing service to or within this state.

(4) The commission may make joint investigations, hold joint hearings within or without this state and issue concurrent orders in conjunction or concurrence with any official, board, commission or agency of any state or of the United States. [Amended by 1961 c.467 §1; 1971 c.655 §9; 1973 c.776 §15; 1987 c.447 §76; 1995 c.733 §53; 2001 c.569 §1]

756.045 Employing legal counsel. Upon request by the Public Utility Commission, the Attorney General shall furnish to the commission such attorneys as the commission finds necessary. [Formerly 756.150]

756.047 Authority of commission to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the Public Utility Commission may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the commission; or

(b) Provides services or seeks to provide services to the commission as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person has access to chemicals or hazardous materials, to facilities in which chemicals and hazardous materials are present or to information regarding the transportation of chemical or hazardous materials;

(b) In which the person inspects gas or electrical lines or facilities;

(c) In which the person has access to critical infrastructure or security-sensitive facilities or information; or

(d) That has fiscal, payroll or purchasing responsibilities as one of the position's primary responsibilities. [2005 c.730 §69]

Note: 756.047 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 756 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

756.050 Office, office supplies and sessions of commission. (1) The Public Utility Commission shall keep office at the capital and shall be provided with suitable office quarters under ORS 276.004. Necessary office furniture, supplies, stationery, books, periodicals and maps shall be furnished, and all necessary expenses therefor shall be audited and paid as other state expenses are audited and paid.

(2) The commission may hold sessions and maintain offices at places other than the capital for the more convenient and efficient performance of the duties imposed upon the commission by law, and shall upon request be provided by the county court or board of county commissioners of any county in the state with suitable rooms for offices and hearings. [Amended by 1969 c.706 §64g; 1971 c.655 §11]

756.055 Delegation of authority. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may designate by order or rule any commissioner or any named employee or category of employees who shall have authority to exercise any of the duties and powers imposed upon the commission by law. The official act of any commissioner or employee so exercising any such duties or powers is considered to be an official act of the commission.

(2) The commission may not delegate to any commissioner, named employee or category of employees under subsection (1) of this section the authority to:

(a) Sign an interim or final order after hearing;

(b) Sign any order upon any investigation the commission causes to be initiated;

(c) Sign an order that makes effective a rule;

(d) Enter orders on reconsideration or following rehearing; or

(e) Grant immunity from prosecution, forfeiture or penalty. [1971 c.655 §12; 1985 c.834 §10]

756.060 Authority to adopt rules and regulations. The Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission. [Amended by 1971 c.655 §13; 1973 c.776 §16; 1987 c.447 §77; 1995 c.733 §54]

756.062 Substantial compliance with laws adequate for commission activities; construction of laws generally. (1) A substantial compliance with the requirements of the laws administered by the Public Utility Commission is sufficient to give effect to all the rules, orders, acts and regulations of the commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(2) The provisions of such laws shall be liberally construed in a manner consistent with the directives of ORS 756.040 (1) to promote the public welfare, efficient facilities and substantial justice between customers and public and telecommunications utilities. [Formerly 757.025; 1973 c.776 §17; 1987 c.447 §78; 1995 c.733 §55; 2001 c.569 §2]

756.064 [1971 c.655 §15; 1973 c.776 §18; repealed by 1975 c.605 §33]

756.068 Service of notice or other legal process. The service or delivery of any notice, order, form or other document or legal process required to be made by the Public Utility Commission may be made by mail. If by mail, service or delivery is made when the required material is deposited in the post office, in a sealed envelope with postage paid, addressed to the person on whom it is to be served or delivered, at the address as it last appears in the records of the commission. [1971 c.655 §16]

(Investigatory Powers)

756.070 Investigating management of utilities. The Public Utility Commission may inquire into the management of the business of all public utilities and telecommunications utilities and shall keep informed as to the manner and method in which they are conducted and has the right to obtain from any public utility or telecommunications utility all necessary information to enable the commission to perform duties. [Amended by 1971 c.655 §17; 1973 c.776 §19; 1987 c.447 §70; 1995 c.733 §56]

756.075 Right of entry for examination of equipment, records or employees; use of findings. (1) The Public Utility Commission or authorized representatives may enter upon any premises, or any equipment or facilities operated or occupied by any public utility or telecommunications utility for the purpose of making any inspection, examination or test reasonably required in the administration of ORS chapter 756, 757, 758 or 759 and to set up and use on such premises equipment or facilities any apparatus and appliances and occupy reasonable space therefor.

(2) The commission or authorized representatives shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility or telecommunications utility and to examine under oath any officer, agent or employee of such public utility or telecommunications utility in relation to its business and affairs.

(3) Any person who on behalf of the commission makes demand of a public utility or telecommunications utility for an examination, inspection or test shall, upon request therefor, produce a certificate under the seal of the commission showing authority to make such examination, inspection or test.

(4) Nothing in this section authorizes the commission to use any information developed thereunder for any purpose inconsistent with any statute administered by the commission or to make a disclosure thereof for other than regulatory purposes. [Formerly 757.260; 1973 c.776 §20; 1987 c.447 §80; 1995 c.733 §57]

756.080 [Repealed by 1971 c.655 §250]

756.090 Maintaining and producing records; expenses of examining out-of-state records. (1) The Public Utility Commission may require by rule, or by order or subpoena to be served on any public utility or telecommunications utility the maintaining within this state or the production within this state at such time and place as the commission may designate, of any books, accounts, papers or records kept by such public utility or telecommunications utility in any office or place within or without this state, or verified copies in lieu thereof, if the commission so orders, in order that an examination thereof may be made by the commission or under direction of the commission.

(2) When a public utility or telecommunications utility keeps and maintains its books, accounts, papers or records outside the state, the commission may examine such documents and shall be reimbursed by the public utility or telecommunications utility for all expenses incurred in making such out-of-state examination. [Amended by 1971 c.655 §19; 1973 c.776 §21; 1987 c.447 §81; 1995 c.733 §58]

756.100 [Repealed by 1953 c.25 §2]

756.105 Duty to furnish information to commission. (1) Every public utility or telecommunications utility shall furnish to the Public Utility Commission all information required by the commission to carry into effect the provisions of ORS chapters 756, 757, 758 and 759 and shall make specific answers to all questions submitted by the commission.

(2) If a public utility or telecommunications utility is unable to furnish any information required under subsection (1) of this section for any reason beyond its control, it is a good and sufficient reason for such failure. The answer or information shall be verified under oath and returned to the commission at the commission's office within the period fixed by the commission. [Formerly 757.115; 1973 c.776 §22; 1987 c.447 §82; 1995 c.733 §59]

756.110 [Repealed by 1953 c.25 §2]

756.115 Failure to furnish requested information. No officer, agent or employee of any public utility, or telecommunications utility shall:

(1) Fail or refuse to fill out and return any forms required by the Public Utility Commission;

(2) Fail or refuse to answer any question therein propounded;

(3) Knowingly or willfully give a false answer to any such question or evade the answer to any such question where the fact inquired of is within the person's knowledge;

(4) Upon proper demand, fail or refuse to exhibit to the commission or any person authorized to examine the same, any book, paper, account, record or memorandum of such public utility or telecommunications utility which is in possession or under the control of the person;

(5) Fail to properly use and keep a system of accounting or any part thereof, as prescribed by the commission; or

(6) Refuse to do any act or thing in connection with such system of accounting when so directed by the commission or authorized representative. [Formerly 757.180; 1973 c.776 §23; 1987 c.447 §83; 1995 c.733 §60]

756.120 [Repealed by 1971 c.655 §250]

756.125 Interference with commission equipment. No person shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the Public Utility Commission, or any apparatus or appliance sealed by the commission. [Formerly 757.340]

756.130 [Repealed by 1971 c.655 §250]

756.140 [Repealed by 1971 c.655 §250]

756.150 [Amended by 1971 c.655 §10; renumbered 756.045]

ENFORCEMENT AND REMEDIES

756.160 Enforcement of statutes and ordinances relating to utilities. (1) The Public Utility Commission shall inquire into any neglect or violation of any law of this state or any law or ordinance of any municipality thereof relating to public utilities and telecommunications utilities by any public utility or telecommunications utility doing business therein, its officers, agents or employees and shall enforce all laws of this state relating to public utilities and telecommunications utilities and may enforce all such laws and ordinances of a municipality. The commission shall report all violations of any such laws or ordinances to the Attorney General.

(2) The Attorney General, district attorney of each county, all state, county and city police officers and police officers commis-

sioned by a university under ORS 352.121 or 353.125 shall assist the commission in the administration and enforcement of all laws administered by the commission, and they, as well as assistants and employees of the commission, shall inform against and diligently prosecute all persons whom they have reasonable cause to believe guilty of violation of any such laws or of the rules, regulations, orders, decisions or requirements of the commission made pursuant thereto.

(3) Upon the request of the commission, the Attorney General or the district attorney of the proper county shall aid in any investigation, hearing or trial, and shall institute and prosecute all necessary suits, actions or proceedings for the enforcement of those laws and ordinances referred to in subsection (1) of this section.

(4) Any forfeiture or penalty provided for in any law administered by the commission shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction. [Amended by 1971 c.655 §23; 1973 c.776 §24; 1987 c.447 §84; 1995 c.733 §61; 2011 c.506 §46; 2013 c.180 §51]

756.170 [Repealed by 1971 c.655 §250]

756.180 Enforcing utility laws. (1) Whenever it appears to the Public Utility Commission that any public utility or telecommunications utility or any other person subject to the jurisdiction of the commission is engaged or about to engage in any acts or practices which constitute a violation of any statute administered by the commission, or any rule, regulation, requirement, order, term or condition issued thereunder, the commission may apply to any circuit court of the state where such public utility or telecommunications utility or other person subject to the jurisdiction of the commission operates for the enforcement of such statute, rule, regulation, requirement, order, term or condition.

(2) Such court, without bond, has jurisdiction to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such public utility or telecommunications utility or any other person subject to the jurisdiction of the commission, or its officers, agents, employees and representatives from further violations of such statute, rule, regulation, requirement, order, term or condition, and enjoining upon them obedience thereto.

(3) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in any statute administered by the commission. [Amended by 1971 c.655 §24; 1973 c.232 §5; 1973 c.776 §25; 1987 c.447 §85; 1995 c.733 §62]

756.185 Right to recover for wrongs and omissions; treble damages. (1) Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If the party seeking damages alleges and proves that the wrong or omission was the result of gross negligence or willful misconduct, the public utility is liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(4) This section does not apply with respect to the liability of any public utility for personal injury or property damage. [Formerly 757.335; 1973 c.776 §26; 1981 c.856 §1; 1981 c.897 §104a; 1987 c.447 §86; 1989 c.827 §1; 1995 c.696 §48; 1995 c.733 §63]

756.190 [Repealed by 1971 c.655 §250]

756.200 Effect of utility laws on common law and other statutory rights of action, duties and liabilities. (1) The remedies and enforcement procedures provided in ORS chapters 756, 757, 758 and 759 do not release or waive any right of action by the state or by any person for any right, penalty or forfeiture which may arise under any law of this state or under an ordinance of any municipality thereof.

(2) All penalties and forfeiture accruing under said statutes and ordinances are cumulative and a suit for and recovery of one, shall not be a bar to the recovery of any other penalty.

(3) The duties and liabilities of the public utilities or telecommunications utilities shall be the same as are prescribed by the common law, and the remedies against them the same, except where otherwise provided by the Constitution or statutes of this state, and the provisions of ORS chapters 756, 757, 758 and 759 are cumulative thereto. [Formerly 760.045; 1973 c.776 §27; 1987 c.447 §87; 1995 c.733 §64]

FUNDS AND FEES

756.305 Public Utility Commission Account. (1) There hereby is established in the General Fund an account to be known as the Public Utility Commission Account. Except as limited by ORS 756.360, all moneys, without regard to their sources, credited to the Public Utility Commission Account hereby are appropriated continuously to the Public Utility Commission for the payment of any and all of the expenses of the Public Utility Commission.

(2) The Public Utility Commission shall keep a record of all moneys deposited in the Public Utility Commission Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [1957 c.459 §1; 1971 c.655 §27; 1997 c.249 §220]

756.310 Annual fees payable by utilities and telecommunications providers. (1) Subject to the provisions of subsections (3) and (4) of this section, each public utility and telecommunications provider shall pay a fee to the Public Utility Commission in each calendar year. The amount of the fee shall equal the amount that the commission finds and determines to be necessary, together with the amount of all other fees paid or payable to the commission by such public utilities and telecommunications providers in the current calendar year, to defray the costs of performing the duties imposed by law upon the commission with respect to the public utilities and telecommunications providers.

(2) In each calendar year the percentage rate of the fee required to be paid by public utilities shall be determined by orders entered by the commission on or after March 1 of each year. Notice of the orders shall be given to each utility. The utility shall pay to the commission the fee or portion thereof so computed upon the date specified in the notice. The date of payment shall be at least 15 days after the date of mailing of the notice.

(3) The fee payable under subsection (1) of this section by each public utility may not be less than $10, or more than forty-five hundredths of one percent of the utility's gross operating revenues derived within this state in the preceding calendar year. For the purpose of this subsection, the gross operating revenues of an electric company do not include revenues from sales of power for resale to the extent that the revenues from those sales exceed an amount equal to 25 percent of the total revenues received by the electric company from sales of electricity to end users in the preceding calendar year.

(4)(a) For a telecommunications provider, the fee payable under subsection (1) of this section shall be a percentage amount not to exceed thirty-five hundredths of one percent of the provider's gross retail intrastate revenue for each calendar year, but may not be less than $100. The percentage amount shall be determined by order of the commission not less than 60 days prior to the calendar year upon which the fee is based. The fee shall be payable to the commission not later than April 1 of the year following that calendar year.

(b) A telecommunications provider shall collect the fee payable under subsection (1) of this section by charging an apportioned amount to each of the provider's retail customers. The amount of the charge shall be described on the retail customer's bill in a manner determined by the provider.

(c) In the event a telecommunications utility has an approved rate that includes the fee required under subsection (1) of this section and separately charges retail customers for the fee described in this section, at the time the utility begins collecting the charge the utility shall file with the commission a rate schedule reducing rates in an amount projected to equal the amount separately charged to customers.

(5) The commission may use any of its investigatory and enforcement powers provided under this chapter for the purpose of administering and enforcing the provisions of this section.

(6) As used in this section:

(a) "Electric company" means any entity that is a public utility under ORS 757.005 that is engaged in the business of distributing electricity to retail electric customers in Oregon.

(b) "Retail customer" does not include a purchaser of intrastate telecommunications services who is a telecommunications provider, telecommunications cooperative, interexchange carrier or radio common carrier.

(c) "Telecommunications provider" means any entity that is a telecommunications utility or a competitive telecommunications provider as defined in ORS 759.005. [Amended by 1953 c.10 §2; 1957 c.464 §1; 1959 c.355 §1; 1961 c.109 §1; 1963 c.89 §1; 1971 c.132 §1; 1973 c.170 §1; 1975 c.127 §1; 1985 c.293 §1; 1987 c.439 §1; 1987 c.447 §88; 1991 c.841 §2; 1995 c.733 §65; 1997 c.826 §8; 1999 c.339 §1; 2007 c.245 §1; 2015 c.289 §1; 2019 c.173 §1]

756.315 [1989 c.1041 §2; repealed by 1991 c.841 §4]

756.320 Statements accompanying fees; audit and refunding by commission. Payment of each fee or portion thereof provided for in ORS 756.310 shall be accompanied by a statement verified by the public utility or telecommunications provider involved, showing the basis upon which the fee or portion thereof is computed. This statement shall be in such form and detail as the

Public Utility Commission shall prescribe and shall be subject to audit by the commission. The commission may refund any overpayment of any such fee in the same manner as other claims and expenses of the commission are payable as provided by law. [Amended by 1987 c.447 §89; 1995 c.733 §66; 1997 c.826 §9; 1999 c.339 §2]

756.325 Distribution of information filed with commission; fees; rules. (1) The Public Utility Commission may by rule prescribe for the free distribution for public information or educational purposes or applicable charge for any blank forms, transcript, document, order, statistical data or publication prepared by and on file in the office of the commission. In no event shall the fee exceed the cost of preparing, reproducing and distributing such blank forms, transcript, document, order, statistical data or publication.

(2) In the ordinary course of distribution, no fee shall be charged or collected for copies of published documents furnished to public officers for use in their official capacity, or for annual reports of the commission. [1971 c.655 §28]

756.330 [Amended by 1965 c.288 §1; repealed by 1971 c.655 §250]

756.340 [Repealed by 1971 c.655 §250]

756.350 Penalty for failure to pay fees; action to collect unpaid fees and penalties. Every person who fails to pay any fees provided for in ORS 756.310 or 756.320 after they are due and payable shall, in addition to such fees, pay a penalty of two percent of such fees for each and every month or fraction thereof that they remain unpaid. If, in the judgment of the Public Utility Commission, action is necessary to collect any unpaid fees or penalties, the commission shall bring such action or take such proceedings as may be necessary thereon in the name of the State of Oregon in any court of competent jurisdiction, and be entitled to recover all costs and disbursements incurred therein. [Amended by 1971 c.655 §29]

756.360 Disposal and use of fees and penalties collected. All fees, penalties and other moneys collected by the Public Utility Commission under ORS 756.310, 756.320, 756.350, 758.015, 758.400 to 758.475 and ORS chapter 759 shall be paid by the commission into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility Commission Account and the fees, penalties and other moneys collected from:

(1) Public utilities shall be used only for the purpose of paying the expenses of the commission in performing the duties imposed by law upon the commission in respect to utilities, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs.

(2) Telecommunications providers shall be used only for the purpose of paying the expenses of the commission in performing the duties imposed by law upon the commission in respect to telecommunications providers, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs. [Amended by 1957 c.459 §7; 1967 c.164 §3; 1971 c.655 §30; 1973 c.776 §28; 1974 c.59 §1; 1987 c.447 §90; 1995 c.733 §67; 1999 c.339 §3; 2011 c.597 §298]

756.370 [Formerly 757.065; repealed by 1983 c.40 §1]

756.375 [Formerly 757.070; repealed by 1983 c.40 §1]

756.380 [Formerly 757.080; 1995 c.306 §42; renumbered 823.071 in 1995]

756.385 [Formerly 757.085; 1995 c.733 §67a; renumbered 823.073 in 1995]

756.390 [Formerly 757.090; 1983 c.78 §1; 1995 c.733 §67b; renumbered 823.075 in 1995]

756.400 [1971 c.655 §31; repealed by 1983 c.540 §10]

756.410 [1971 c.655 §32; 1977 c.253 §1; repealed by 1983 c.540 §10]

756.420 [1971 c.655 §33; repealed by 1983 c.540 §10]

756.430 [1971 c.655 §34; repealed by 1983 c.540 §10]

756.440 [1971 c.655 §35; repealed by 1983 c.540 §10]

DECLARATORY RULINGS

756.450 Declaratory rulings. On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission. A declaratory ruling is binding between the commission and the petitioner on the state of facts alleged, unless it is modified, remanded or set aside by a court. However, the commission may review the ruling and modify or set it aside if requested by the petitioner or other party to the proceeding. Binding rulings issued under this section are subject to judicial review as orders in the manner provided by ORS 756.610. [1971 c.655 §36; 2005 c.638 §2; 2017 c.312 §2]

COMPLAINT AND INVESTIGATION PROCEDURE

756.500 Complaint; persons entitled to file; contents; amendments. (1) Any person may file a complaint before the Public Utility Commission, or the commission may, on the commission's own initiative, file such complaint. The complaint shall be against any person whose business or activities are regulated by some one or more of the statutes, jurisdiction for the enforcement or regulation of which is conferred upon the commission. The person filing the complaint shall be known as the complainant and the

person against whom the complaint is filed shall be known as the defendant.

(2) It is not necessary that a complainant have a pecuniary interest in the matter in controversy or in the matter complained of, but the commission shall not grant any order of reparation to any person not a party to the proceedings in which such reparation order is made.

(3) The complaint shall state all grounds of complaint on which the complainant seeks relief or the violation of any law claimed to have been committed by the defendant, and the prayer of the complaint shall pray for the relief to which the complainant claims the complainant is entitled.

(4) The complaint may, at any time before the completion of taking of evidence, be amended by order of the commission. However, if a charge not contained in the original complaint or a prior amended complaint is sought to be made by any such amendment, the defendant shall be given a reasonable time to investigate the new charge and answer the amended complaint. The final hearing shall, if necessary, be continued until some date after the defendant has had a reasonable time to investigate and be prepared to meet the amended complaint.

(5) Notwithstanding subsection (1) of this section, any public utility or telecommunications utility may make complaint as to any matter affecting its own rates or service with like effect as though made by any other person, by filing an application, petition or complaint with the commission. [Formerly 756.520; 1987 c.447 §91; 1995 c.733 §68]

756.505 [Repealed by 1971 c.655 §250]

756.510 [Amended by 1971 c.655 §40; renumbered 756.518]

756.512 Notice of complaint to defendant; responsive pleadings; setting cause for hearing. (1) The Public Utility Commission shall serve a copy of the complaint upon the defendant, and shall give the defendant at least 10 days within which to respond to the complaint. Within the time so fixed, or such further time as the commission shall fix, the defendant shall file an answer to the complaint, taking issue on such parts of the complaint as the defendant desires and setting forth such additional matter as shall be pertinent to the matter in controversy. Such additional matter shall be deemed denied without the filing of any other pleading by the complainant. After the filing of the answer the commission shall set the matter for hearing, giving the defendant at least 10 days' written notice of the time and place of the hearing, unless the commission for good reason stated in the notice, fixes a shorter time. Amendment of any answer may be permitted by order of the commission.

(2) If the defendant fails to file a responsive pleading or otherwise appear within the time prescribed in subsection (1) of this section, or if the responsive pleading filed raises no issue of law or fact, the commission may act on the complaint without a hearing. [Formerly 756.530]

756.515 Investigations and hearings on commission's own motion; hearings for aggrieved persons. (1) Whenever the Public Utility Commission believes that any rate may be unreasonable or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or that an investigation of any matter relating to any public utility or telecommunications utility or other person should be made, or relating to any person to determine if such person is subject to the commission's regulatory jurisdiction, the commission may on motion summarily investigate any such matter, with or without notice.

(2) If after making such investigation the commission is satisfied that sufficient grounds exist to warrant a hearing being ordered upon any such matter, the commission shall furnish any public utility or telecommunications utility or other person interested a statement notifying it of the matters under investigation, which statement shall be accompanied by a notice fixing the time and place for hearing upon such matters in the manner provided in ORS 756.512 for notice of complaint.

(3) Thereafter proceedings shall be had and conducted in reference to the matters investigated in like manner as though complaint had been filed with the commission relative thereto, and the same orders may be made in reference thereto as if such investigation had been made on complaint.

(4) The commission may, after making an investigation on the commission's motion, but without notice or hearing, make such findings and orders as the commission deems justified or required by the results of such investigation. Except as provided in subsections (5) and (6) of this section such findings and orders have the same legal force and effect as any other finding or order of the commission.

(5) In addition to any other remedy provided by law, any party aggrieved by an order entered pursuant to subsection (4) of this section may request the commission to hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the commission not later than 15 days after the date of service of the order, and the commission shall hold the hearing not later than 60 days after receipt of such a request for hearing.

(6) If the commission receives a request for hearing pursuant to subsection (5) of this section, the order is suspended pending the outcome of the hearing unless the commission finds that the order is necessary for the public health or safety or to prevent the dissipation of assets of a business or activity subject to the commission's regulatory jurisdiction. [Formerly 757.515; 1973 c.776 §29; 1975 c.318 §1; 1983 c.703 §18; 1987 c.447 §92; 1995 c.733 §69]

HEARING PROCEDURE

756.518 Procedures applicable to all matters before commission; oral hearing; rules. (1) Except as otherwise provided the provisions of ORS 756.500 to 756.610 apply to and govern all hearings upon any matter or issue coming before the Public Utility Commission under any statute administered by the commission, whether instituted on the application, petition or complaint of others or initiated by the commission, together with the orders of the commission therein and the review thereof in the courts.

(2) Upon request of any party in a major proceeding before the commission, the commission shall afford the parties an opportunity for oral argument before a final order is issued. There must be a quorum of the commission present at the time the oral argument is made. The commission shall adopt rules that establish criteria for determining which proceedings give rise to a right to oral argument under this subsection. In addition, the commission may adopt rules governing participation in oral arguments, cross-examination of witnesses, draft or proposed orders or such other matters as the commission deems appropriate. [Formerly 756.510; 2001 c.558 §3]

756.519 [1977 c.424 §2; 1985 c.59 §1; repealed by 1995 c.733 §74]

756.520 [Amended by 1971 c.655 §37; renumbered 756.500]

756.521 Public hearings; record required; furnishing transcripts. All hearings shall be open to the public and may be had before the Public Utility Commission, an examiner or any other person authorized to hold such hearing. A full record thereof shall be kept. However, it shall not be necessary to transcribe testimony unless requested. For purposes of rehearing or reconsideration under ORS 756.561, a transcription shall be made at the commission's expense, and copies of such transcription shall be supplied to the parties, at cost. A copy of the transcript shall be supplied to a party without cost upon the filing with the commission of a satisfactory affidavit of indigency. [1971 c.655 §41; 2005 c.638 §3]

756.525 Parties to proceedings. (1) The Public Utility Commission may permit any person to become a party who might, on the institution of the proceeding, have been such a party, if application therefor is made before the final taking of evidence in the proceeding.

(2) At any time before the final taking of evidence in a proceeding, any person may apply to the commission for permission to appear and participate in the proceeding. The commission shall determine the interest of the applicant in the proceeding and shall grant the application, subject to appropriate conditions, if the commission determines that such appearance and participation will not unreasonably broaden the issues or burden the record, and otherwise may deny the application.

(3) This section does not apply to any person who might have been an original party in a proceeding before the commission if that person is required by statute to file a pleading or other response in the proceeding within a specified time. [1971 c.655 §42]

756.528 Segregation of issues. At any time before the conclusion of the taking of evidence in a proceeding, the Public Utility Commission may segregate the issues involved and order separate hearings thereon at such times and places as the commission may prescribe. [1971 c.655 §43; 2005 c.638 §4]

756.530 [Amended by 1971 c.655 §38; renumbered 756.512]

756.534 Place of hearings; continuation. Except as provided in ORS 756.040 (4), the hearing may be held at any place designated by the Public Utility Commission within this state, or different parts of the hearing may be held at different places in this state, as shall be designated by the commission. The hearing may be continued from time to time and place to place as ordered and fixed by the commission. [Formerly 756.560]

756.538 Taking and use of depositions; rules. (1) In any investigation, the Public Utility Commission may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use in the investigation.

(2) In any proceeding requiring a hearing, the commission or any party to the proceeding may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes.

(3) Depositions may be taken within or without the State of Oregon by the commission, or any other person authorized to ad-

minister oaths, in accordance with procedures prescribed by the rules of the commission.

(4) The commission shall promulgate rules concerning the manner of applying for and taking depositions and the use thereof. Such rules shall provide reasonable provisions against abuse of such procedure and for protection of the rights of all persons affected. [1971 c.655 §45]

756.540 [Repealed by 1971 c.655 §250]

756.543 Issuance of subpoenas; failure to comply. (1) The Public Utility Commission shall issue subpoenas to any party to a proceeding before the commission upon request and proper showing of the general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or their officers or employees, or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the commission certifies that the testimony of a witness was relevant and material, any person who paid fees and mileage to that witness shall be reimbursed by the commission and from moneys referred to in ORS 756.360, subject to the limitations provided in ORS 756.360.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the person may be lawfully interrogated, the judge of the circuit court of any county, on the application of the commission, or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1971 c.655 §46; 1983 c.540 §2; 1987 c.980 §23; 1997 c.249 §221]

756.549 Self-incrimination of witnesses in commission proceedings. (1) No person shall be excused from testifying or from producing evidence in any proceeding held by the Public Utility Commission on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to prosecution, penalty or forfeiture if:

(a) The person has been directed by the commission to testify or produce evidence under oath;

(b) The person claims, at the time the person is directed by the commission to testify or produce evidence, that the testimony or evidence required of the person may tend to incriminate the person or subject the person to prosecution, penalty or forfeiture; and

(c) The commission specifically grants the person immunity from prosecution, penalty or forfeiture regarding those matters about which the person testifies or produces evidence as directed.

(2) Except for prosecution and punishment for perjury, no person who testifies or produces evidence in accordance with subsection (1) of this section shall be prosecuted or subjected to any penalty or forfeiture concerning any matter about which the person so testified or produced evidence. [1971 c.655 §47]

756.550 [Amended by 1957 c.599 §1; 1971 c.655 §50; renumbered 756.558]

756.552 Self-incrimination of witnesses in court proceedings. No person shall be excused from testifying or from producing books and papers in any court proceeding based upon or growing out of any violation of the provisions of ORS chapter 756, 757, 758, 759 or 825 or ORS 824.020 to 824.042, 824.050 to 824.110, 824.200 to 824.256 or 824.300 to 824.310 on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which the person may have testified or produced any documentary evidence. However, no person shall be exempted from prosecution or punishment for perjury while so testifying. The immunity conferred by this section shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. [Formerly 757.590; 1989 c.827 §2]

756.555 Powers of commission at hearings. The Public Utility Commission may administer oaths, certify to official acts, issue notices in the name of the commission, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony, and take and receive testimony, conduct hearings and investigations, whether upon complaint or upon the commission's own motion. [Formerly 757.555]

756.558 Taking of evidence; findings; issuance of orders; providing copies of orders. (1) At the conclusion of the taking of evidence, the Public Utility Commission shall declare the taking of evidence concluded. Thereafter no additional evidence shall be received except upon the order of the commission and a reasonable opportunity of the parties to examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.

(2) After the completion of the taking of evidence, and within a reasonable time, the commission shall prepare and enter findings of fact and conclusions of law upon the evidence received in the matter and shall make and enter the order of the commission thereon. The findings of fact and conclusions of law may be embodied in the same instrument with the order or may be embodied in a separate instrument. The findings of fact, conclusions of law and order thereon shall be signed by the commission. The order shall state the date it becomes effective. A copy of the findings of fact and conclusions of law and a copy of the order shall, forthwith upon the entry of the same, be served upon each of the parties to the proceeding.

(3) Upon application of any person, the commission shall furnish certified copies, under the seal of any order made by the commission. [Formerly 756.550]

756.560 [Amended by 1971 c.655 §44; renumbered 756.534]

756.561 Rehearing; reconsideration. (1) After an order has been made by the Public Utility Commission in any proceeding, any party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of service of such order. The commission may grant such a rehearing or reconsideration if sufficient reason therefor is made to appear.

(2) No such application shall excuse any party against whom an order has been made by the commission from complying therewith, nor operate in any manner to stay or postpone the enforcement thereof without the special order of the commission.

(3) If a rehearing is granted, the proceedings thereupon shall conform as nearly as possible to the proceedings in an original hearing, except as the commission otherwise may direct. If in the judgment of the commission, after such rehearing and the consideration of all facts, including those arising since the former hearing, the original order is in any respect unjust or unwarranted, the commission may reverse, change or modify the same accordingly. Any order made after such rehearing, reversing, changing or modifying the original determination is subject to the same provisions as an original order. [Formerly 756.570]

756.565 Prima facie effect of commission actions. All rates, tariffs, classifications, regulations, practices and service fixed, approved or prescribed by the Public Utility Commission and any order made or entered upon any matter within the jurisdiction of the commission shall be in force and shall be prima facie lawful and reasonable, until found otherwise in a proceeding brought for that purpose under ORS 756.610. [Formerly 760.575; 2005 c.638 §5]

756.568 Rescission, suspension and amendment of orders. The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders. [Formerly 757.540; 1973 c.776 §30; 1987 c.447 §92a; 1995 c.733 §70]

756.570 [Amended by 1971 c.655 §51; renumbered 756.561]

756.572 Effect of orders on successors in interest. (1) An order of the Public Utility Commission issued in accordance with the provisions of ORS chapters 756, 757, 758 and 759 is binding upon the successors in interest of each person affected thereby, until set aside, rescinded, suspended or modified as provided by law.

(2) Any investigation, hearing or other proceeding involving the issuance of an order of the commission that has not been finally determined when a transfer of any interests of a person is effected may be continued and finally determined, notwithstanding any such transfer of interest. Any order issued in such investigation, hearing or other proceeding is binding upon the successors in interest. [1971 c.655 §54; 1973 c.776 §31; 1987 c.447 §93; 1995 c.733 §71]

756.575 Notice of acceptance of terms of orders. The Public Utility Commission may provide by rule that any public utility or telecommunications utility affected by any order shall within a time to be fixed by the commission, notify the commission whether the terms of the order are accepted and will be obeyed. [1971 c.655 §55; 1973 c.776 §32; 1987 c.447 §94; 1995 c.733 §72]

756.580 [Amended by 1971 c.655 §56; repealed by 2005 c.638 §21]

756.585 [1971 c.655 §57; repealed by 2005 c.638 §21]

756.590 [Amended by 1971 c.655 §58; 1995 c.781 §46; repealed by 2005 c.638 §21]

756.594 [1971 c.655 §59; repealed by 2005 c.638 §21]

756.598 [1971 c.655 §60; 1979 c.284 §197; repealed by 2005 c.638 §21]

756.600 [Amended by 1971 c.655 §61; 2003 c.576 §558; repealed by 2005 c.638 §21]

756.610 Judicial review. (1)(a) Except as provided in subsections (2) and (3) of this section, final orders of the Public Utility Commission are subject to judicial review as orders under the provisions of ORS 183.480 to 183.497.

(b) Binding rulings issued under ORS 756.450 are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases.

(2) ORS 183.482 (3) does not apply to judicial review of an order of the Public Utility Commission. At any time after filing a petition for judicial review of a final order of the commission in a contested case, the petitioner may apply to the Court of Appeals for a stay of the order until the final disposition of the appeal. The court may grant a stay for cause shown. As a condition of granting a stay, the court may require a bond or other security, or impose such other conditions as the court deems appropriate. A stay may be granted only after notice to the commission and opportunity for hearing. Any bond required by the court must be executed in favor of the commission for the benefit of interested persons, and may be enforced by the commission or by any interested person.

(3) An order of the Public Utility Commission related to the petition for a certificate of public convenience and necessity under ORS 758.015, where the petitioner also seeks approval from the Energy Facility Siting Council for the proposed transmission line, is subject to judicial review as provided in ORS 758.017. [Amended by 1971 c.655 §62; 2003 c.576 §559; 2005 c.638 §6; 2013 c.335 §4; 2017 c.312 §3]

PENALTIES

756.990 Penalties. (1) Any public utility or telecommunications utility that fails to comply with an order or subpoena issued pursuant to ORS 756.090 shall forfeit, for each day it so fails, a sum of not less than $50 nor more than $500.

(2) Except where a penalty is otherwise provided by law, any public utility, telecommunications utility or other person subject to the jurisdiction of the Public Utility Commission shall forfeit a sum of not less than $100 nor more than $10,000 for each time that the person:

(a) Violates any statute administered by the commission;

(b) Does any act prohibited, or fails to perform any duty enjoined upon the person;

(c) Fails to obey any lawful requirement or order made by the commission; or

(d) Fails to obey any judgment made by any court upon the application of the commission.

(3) Violation of ORS 756.115 is a Class A violation.

(4) Violation of ORS 756.125 is a Class C misdemeanor.

(5) Violation of ORS 756.543 (1) is a Class A misdemeanor.

(6) In construing and enforcing this section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility, telecommunications utility or other person subject to the jurisdiction of the commission acting within the scope of the person's employment shall in every case be deemed to be the act, omission or failure of such public utility, telecommunications utility or other person subject to the jurisdiction of the commission. With respect to any violation of any statute administered by the commission, any penalty provision applying to such a violation by a public utility or telecommunications utility shall apply to such a violation by any other person.

(7) Except when provided by law that a penalty, forfeiture or other sum be paid to the aggrieved party, or as provided in ORS 757.994 (1), all penalties or forfeitures or other sums collected or paid under the provisions of any law administered by the commission shall be paid into the General Fund and credited to the Public Utility Commission Account. [1971 c.655 §63; 1973 c.232 §4; 1973 c.776 §33; 1977 c.105 §1; 1979 c.415 §1; 1987 c.447 §95; 1995 c.733 §73; 1999 c.1051 §223; 2003 c.202 §9; 2003 c.576 §560; 2011 c.597 §299]

Chapter 757

2023 EDITION

Utility Regulation Generally

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GENERAL PROVISIONS

757.005 Definition of public utility. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.

(b) As used in this chapter, "public utility" does not include:

(A) Any plant owned or operated by a municipality.

(B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

(C) Any corporation, company, individual or association of individuals providing heat, light or power:

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(iii) From solar or wind resources to any number of customers; or

(iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555.

(E) Any person furnishing heat, but not delivering electricity or natural gas to its customers, except:

(i) As provided in ORS 757.007 and 757.009; or

(ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally owned system that was furnishing steam or other thermal forms of heat to its customers.

(F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership, individual or association of individuals furnishing heat to a single thermal end user from an electric generating facility, plant or equipment that is physically interconnected with the single thermal end user.

(G) Any corporation, company, partnership, individual or association of individuals that furnishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any number of customers for use in motor vehicles and does not furnish any utility service described in paragraph (a) of this subsection.

(H) An electricity service supplier, as defined in ORS 757.600.

(2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer. [Amended by 1953 c.583 §2; 1967 c.241 §1; 1967 c.314 §1; 1971 c.655 §64a; 1973 c.726 §1; 1979 c.62 §1; 1981 c.360 §1; 1981 c.749 §21; 1983 c.118 §1; 1983 c.799 §7; 1985 c.550 §1; 1985 c.633 §7; 1985 c.779 §1; 1987 c.447 §96; 1987 c.900 §3; 1989 c.5 §2; 1989 c.999 §§1,2; 1991 c.294 §1; 1995 c.267 §1; 1999 c.330 §2; 1999 c.491 §1; 1999 c.865 §21; 2001 c.104 §292; 2003 c.82 §4]

757.006 People's utility districts and electric cooperatives excluded from term "public utility." For purposes of ORS chapter 757, the term "public utility" does not include a people's utility district organized under ORS chapter 261 or an electric cooperative organized under ORS chapter 62. [2016 c.28 §18c]

Note: 757.006 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.007 Contract and rate schedule filing for certain furnishers of heat exempt from regulation; procedure. (1) Every person exempt from regulation under ORS 757.005 (1)(b)(E) shall file with the Public Utility Commission, not later than 30 days prior to their effective date, all contracts and schedules establishing rates, terms and conditions for the provision of heating services.

(2) Prior to the effective date, the commission may suspend the effective date of such contracts or schedules for an additional period of not more than 120 days in order to determine the reasonableness of such contracts or schedules, taking into consideration the services being provided, the costs and risks of service, the availability and costs of alternative forms of service and other reasonable considerations, including the impact on existing customers of the utilities fur-

nishing electricity and natural gas and on the public generally.

(3) If the contract or schedule is not suspended, or if the contract or schedule is determined reasonable by the commission after suspension, the contract or schedule shall not be subject to further commission review during its term or such other period as the commission may specify, except as provided in ORS 757.009.

(4) In any proceeding before the commission to determine the reasonableness of contracts or schedules proposed under this section, the burden shall be upon the proponent of the contract or schedule to establish its reasonableness. [1989 c.999 §§4a,4c; 2003 c.82 §5]

757.009 Procedure for reregulation of furnishers of heat. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may, upon written complaint or upon the commission's own motion, regulate, under ORS 757.205 to 757.240, or any part thereof, any person otherwise exempt from regulation under ORS 757.005 (1)(b)(E) as follows:

(a) With respect to any or all customers, if the commission finds that the activities of such person have an adverse effect upon the customers of public utilities furnishing electricity or natural gas and the benefits of such regulation outweigh any adverse effect on the public generally; or

(b) With respect to any customer receiving service not exceeding 500 million British thermal units per year or any residential customer, if the commission finds that such person has engaged in unjust or unreasonable practices with respect to the services or rates available to the customer and the customer has no reasonable alternative to the services provided.

(2) The commission shall not regulate persons under subsection (1)(a) of this section with respect to contracts that became effective prior to the date of service of the complaint or with respect to heating systems already in place on the date of service of the complaint if the commission determines that continued expansion will increase the efficiency of those systems. [1989 c.999 §§4b,4d; 2003 c.82 §6]

757.010 [Repealed by 1971 c.655 §250]

757.015 "Affiliated interest" defined for ORS 757.105 (1) and 757.495. As used in ORS 757.105 (1) and 757.495, "affiliated interest" with a public utility means:

(1) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of five percent or more of voting securities of such public utility.

(3) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(5) Every corporation that has two or more officers or two or more directors in common with such public utility.

(6) Every corporation and person, five percent or more of which is directly or indirectly owned by a public utility.

(7) Every corporation or person that the Public Utility Commission determines as a matter of fact after investigation and hearing actually is exercising any substantial influence over the policies and actions of such public utility, even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(8) Every person or corporation that the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated. [Amended by 1971 c.655 §65; 1989 c.17 §1; 2015 c.27 §60]

757.020 Duty of utilities to furnish adequate and safe service at reasonable rates. Every public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited. [Amended by 1971 c.655 §66]

757.025 [Amended by 1971 c.655 §14; renumbered 756.062]

757.030 [Repealed by 1971 c.655 §250]

757.035 Adoption of safety rules and regulations; enforcement. (1) The Public Utility Commission has power, after a hearing had upon the motion of the commission

or upon complaint, to require by general or special orders embodying reasonable rules or regulations, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of telegraph, telephone, signal or power lines within this state, upon the public streets or highways, and also upon all other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every line, plant, system, equipment or apparatus in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health or safety of all employees, customers or the public.

(2) When acting pursuant to subsection (1) of this section, the Public Utility Commission shall adopt by rule as the standard of such construction, operation and maintenance the 1973 edition of the American National Standard, National Electrical Safety Code, C2.

(3) In lieu of subsection (2) of this section, or in addition thereto, the commission may adopt by rule any revision or edition of or amendment to the National Electrical Safety Code approved by the American National Standards Institute after July 14, 1977, and in effect on the date of adoption by the commission. [Amended by 1969 c.530 §1; 1971 c.655 §68; 1975 c.658 §1; 1977 c.346 §1]

757.039 Regulation of hazardous substance distribution and storage operations; cooperation with federal agencies; disclosure of reports and information. (1) As used in this section, "hazardous substance or material" means:

(a) Fuel gas, whether in a gaseous, liquid or semisolid state;

(b) Petroleum or petroleum products; and

(c) Any other substance or material which may pose an unreasonable risk to life or property when transported by pipeline facilities.

(2) The Public Utility Commission has power, after a hearing had upon the commission's own motion or upon complaint, to require by general or special orders embodying reasonable rules, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of a hazardous substance or material by pipeline; or of facilities for the storage or treatment of a hazardous substance or material to be transmitted or distributed by pipeline or upon the public streets or highways; or of any other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every pipeline, plant, system, equipment or apparatus used in the transmission, distribution, storage or treatment of a hazardous substance or material to be transmitted by pipeline or upon the public streets or highways in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health and safety of all employees, customers or the public.

(3) The commission is authorized to cooperate with, make certifications to and enter into agreements with the Secretary of Transportation of the United States of America and to assume responsibility for, and carry out on behalf of the Secretary of Transportation, safety jurisdiction relating to pipeline facilities and transportation of hazardous substances and materials in Oregon in any manner not otherwise subject to the jurisdiction of any other agency of this state.

(4) Notwithstanding any other provisions to the contrary, the commission shall make public such reports as are required to be made public under applicable federal law and regulations and provide such information as is required by the Secretary of Transportation.

(5) The jurisdiction of the commission over propane, butane or mixtures of these gases shall be limited to systems transporting such gases to 10 or more customers, or to systems any portion of which is located in a public place. [Formerly 757.095; 1983 c.540 §3; 2001 c.35 §1]

757.040 [Amended by 1971 c.655 §101; renumbered 758.035]

757.045 [Amended by 1967 c.394 §1; repealed by 1971 c.781 §1]

757.050 Authority of commission to order extension of service to unserved areas. The Public Utility Commission has power to require any public utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and

service. However, no such extension of service shall be required until the public utility has been granted such reasonable franchises as may be necessary for the extension of service, and unless the conditions are such as to reasonably justify the necessary investment by the public utility in extending its line, plant or system into such locality and furnishing such service. [Amended by 1971 c.655 §67]

757.053 Alternative means for meeting energy conservation requirements. Notwithstanding the specific requirements imposed on an electric company by ORS 469.631 to 469.645 and 469.860 to 469.900, an electric company meets the requirements of ORS 469.631 to 469.645 and 469.860 to 469.900 if the electric company:

(1) Meets the public purpose expenditure standard established under ORS 757.612; and

(2) Plans for and pursues cost-effective energy efficiency and demand response resources as required under ORS 757.054. [2021 c.547 §7]

757.054 Cost-effective energy efficiency resources and demand response resources; legislative findings; planning and pursuit by electric company required; consumer credit; rules. (1) As used in this section:

(a) "Electric company" has the meaning given that term in ORS 757.600.

(b) "Retail electricity consumer" means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon.

(2) The Legislative Assembly finds and declares that:

(a) Energy efficiency programs promote lower energy bills, protect the public health and safety, improve environmental benefits, stimulate sustainable economic development, create new employment opportunities and reduce reliance on imported fuels; and

(b) Demand response resources result in more efficient use of existing resources and reduce the need for procuring new power generating resources, which, in turn, reduces energy bills, protects the public health and safety and improves environmental benefits.

(3) For the purpose of ensuring prudent investments by an electric company in energy efficiency and demand response before the electric company acquires new generating resources, and in order to produce cost-effective energy savings, reduce customer demand for energy, reduce overall electrical system costs, increase the public health and safety and improve environmental benefits, each electric company serving customers in this state shall:

(a) Plan for and pursue all available energy efficiency resources that are cost effective, reliable and feasible; and

(b) As directed by the Public Utility Commission by rule or order, plan for and pursue the acquisition of available cost-effective demand response resources.

(4) All funds necessary to plan for and pursue cost-effective energy efficiency resources pursuant to subsection (3)(a) of this section must be collected in the rates of an electric company through charges paid by all retail electricity consumers, including those retail electricity consumers receiving electricity from electricity service suppliers subject to the limitations set forth in section 3, chapter 547, Oregon Laws 2021. The commission may require that a portion of all of the funds collected under this subsection be paid to a nongovernmental entity to make expenditures consistent with this section.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against the amount charged in rates pursuant to subsection (4) of this section for that site for qualifying expenditures for energy efficiency resources made by the retail electricity consumer. The amount of the credit may not exceed the lesser of:

(A) The amount charged to the retail electricity consumer in rates; or

(B) The total amount of qualifying energy efficiency expenditures described in subsection (3)(a) of this section made by the retail electricity consumer for that site, less administration costs incurred under this subsection.

(b) The State Department of Energy shall adopt by rule procedures and other provisions necessary for a retail electricity consumer to obtain a credit under this subsection. [2016 c.28 §19; 2021 c.547 §2]

Note: 757.054 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 3 and 4, chapter 547, Oregon Laws 2021, provide:

Sec. 3. Caps on amounts charged for larger consumers of retail electricity. (1) As used in this section:

(a) "Single contiguous area" includes an area of land crossed by a public or railroad right of way, but does not include infrastructure facilities located within the public or railroad right of way for purposes of determining whether the single contiguous area of land constitutes a site.

(b) "Site" means:

(A) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter;

(B) A single contiguous area of land containing buildings or other structures within which each building or structure is no more than 1,000 feet from at least one other building or structure, if the buildings and structures and the land containing and connecting the buildings and structures are all owned by a single retail electricity consumer, either directly or through a wholly owned subsidiary, that is billed for electricity use at the buildings and structures; or

(C) For any single retail electricity consumer, each account of the retail electricity consumer that has exceeded 4,000 kilowatts at least twice within the most recent 13-month period and for which the retail electricity consumer maintains a load factor of 80 percent or greater, if the combined electricity usage across all of the accounts described in this subparagraph, in the aggregate, equals 100 average megawatts or more in a calendar year.

(2) For the period beginning on the effective date of this 2021 Act [September 25, 2021] and ending December 31, 2025, a retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may not be charged an amount in rates pursuant to ORS 757.054 (4) that exceeds 1.7 percent of the total revenue received from the sale of electricity services to the site from any source.

(3) For the period beginning January 1, 2026, and ending December 31, 2035, the combined annual amount charged under ORS 757.054 and 757.612 to a retail electricity consumer that uses more than one average megawatt and less than 10 average megawatts of electricity at any site in the prior year may not exceed $250,000.

(4)(a) For the period beginning January 1, 2026, and ending December 31, 2030, the combined annual amount charged under ORS 757.054 and 757.612 to a retail electricity consumer that uses more than 10 average megawatts of electricity at any site in the prior year may not exceed $4 million.

(b) For the period beginning January 1, 2031, and ending December 31, 2035, the combined annual amount charged under ORS 757.054 and 757.612 to a retail electricity consumer that uses more than 10 average megawatts of electricity at any site in the prior year may not exceed $4.5 million. [2021 c.547 §3]

Sec. 4. Section 3 of this 2021 Act is repealed on January 2, 2036. [2021 c.547 §4]

757.055 [Repealed by 1971 c.655 §250]

757.056 Information on energy conservation to be furnished by certain utilities; rules. (1) As used in this section, "energy conservation services" means services provided by public utilities to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) All public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such rules as the Public Utility Commission may prescribe. [1977 c.197 §2; 1977 c.887 §11]

757.060 [Amended by 1955 c.145 §1; repealed by 1961 c.691 §20]

757.061 Regulation of water utilities; rules. (1) For the purposes of this section:

(a) "Rate regulation" means regulation under this chapter, except for regulation under ORS 757.105 to 757.110.

(b) "Service regulation" means regulation under this chapter, except for regulation under ORS 757.105 to 757.110, 757.140, 757.205 to 757.220, 757.225, 757.245, 757.259, 757.355, 757.400 to 757.463, 757.485, 757.490, 757.495 and 757.500.

(2) Except as provided in this section, water utilities are not subject to regulation under this chapter or required to pay the fee provided for in ORS 756.310.

(3) The following utilities are subject to rate regulation and must pay the fee provided for in ORS 756.310:

(a) A water utility that serves 500 or more customers.

(b) A water utility that serves fewer than 500 customers, if the water utility also provides wastewater services to the public inside the boundaries of a city.

(c) A water utility that serves fewer than 500 customers, if the Public Utility Commission grants a petition from the water utility requesting that the water utility be subject to rate regulation.

(d) A water utility that satisfies all of the following conditions:

(A) The water utility serves fewer than 500 customers;

(B) The water utility proposes to charge a rate for water service that exceeds the maximum rates established by the commission under subsection (5) of this section; and

(C) Twenty percent or more of the customers of the water utility file a petition with the commission requesting that the water utility be subject to rate regulation.

(4) The following utilities are subject to service regulation and must pay the fee provided for in ORS 756.310:

(a) A water utility that serves fewer than 500 customers and that is found by the commission, pursuant to an investigation under ORS 756.515, to have provided inadequate or discriminatory service at any time.

(b) A water utility that serves fewer than 500 customers and that at any time charges an average annual residential rate of $24 per month or more.

(5)(a) The commission shall adopt rules establishing maximum rates for water utilities serving fewer than 500 customers for the purpose of determining whether a petition

may be filed under subsection (3)(d)(C) of this section.

(b) To encourage metered water systems for water utilities serving fewer than 500 customers, the commission shall establish a higher maximum rate for water utilities with metered water systems than for water utilities with unmetered systems.

(6) Not less than 60 days before a water utility that serves fewer than 500 customers increases any rate to exceed any maximum rate prescribed under subsection (5) of this section, the water utility shall provide written notice to all of its customers advising the customers of their right to file a petition under subsection (3)(d)(C) of this section. The commission shall adopt rules prescribing the content of the written notice. [1989 c.403 §2; 1999 c.330 §1; 2003 c.82 §1; 2009 c.429 §1; 2011 c.76 §1; 2013 c.96 §4]

757.063 Regulation of associations furnishing water upon petition. (1) Any association of individuals that furnishes water to members of the association is subject to regulation in the same manner as provided by this chapter for public utilities, and must pay the fee provided for in ORS 756.310, if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation.

(2) The provisions of this section apply to an association of individuals even if the association does not furnish water directly to or for the public. The provisions of this section do not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109. [2003 c.82 §3]

757.065 [Renumbered 756.370]

757.068 Use of fees to make emergency repairs to water service plants. (1) In each biennium the Public Utility Commission may use not more than $5,000 of the fees collected under ORS 756.310 to make emergency repairs to the plants of public utilities providing water service. The commission may expend moneys under the provisions of this section only if the commission determines that:

(a) Customers of the utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The commission shall attempt to recover fees used under this section from the utility providing water service. The commission may also recover a penalty as provided in ORS 756.350 from the time the fees are expended. [2003 c.202 §8]

757.069 Notice of delinquency on water bill. (1) If a customer of a water utility fails to pay a water bill for more than 120 days after the bill becomes due, the water utility shall mail notice of the delinquency to the persons who are listed as the owners of the property in the real property tax records for the county only if the utility asserts that the property owners are responsible for the bill. The notice must be mailed to the addresses of the owners as reflected in the real property tax records.

(2) The provisions of this section apply to water utilities operated by public utilities, municipalities, cooperatives and unincorporated associations. [2005 c.168 §2; 2007 c.211 §1]

757.070 [Renumbered 756.375]

757.072 Agreements for financial assistance to organizations representing customer interests; rules. (1) A public utility providing electricity or natural gas may enter into a written agreement with an organization that represents broad customer interests in regulatory proceedings conducted by the Public Utility Commission relating to public utilities that provide electricity or natural gas. The agreement shall govern the manner in which financial assistance may be provided to the organization. The agreement may provide for financial assistance to other organizations found by the commission to be qualified under subsection (2) of this section. More than one public utility or organization may join in a single agreement. Any agreement entered into under this section must be approved by the commission before any financial assistance is provided under the agreement.

(2)(a) Financial assistance under an agreement entered into under this section may be provided only to organizations that represent interests in regulatory proceedings before the commission relating to public utilities that provide electricity or natural gas that are:

(A) The broad interests of customers;

(B) The interests of low-income residential customers; or

(C) The interests of residential customers that are members of environmental justice communities.

(b) The commission by rule shall establish such qualifications as the commission deems appropriate for determining which organizations are eligible for financial assistance under an agreement entered into under this section.

(c) The total aggregate financial assistance available to all organizations that rep-

resent the interests described in paragraph (a)(B) and (C) of this subsection from all public utilities providing electricity or natural gas may not exceed $500,000 annually.

(d) The commission shall establish a process for evaluating and approving an agreement described in this section that includes the provision of financial assistance to organizations that represent the interests described in paragraph (a)(B) or (C) of this subsection. The commission must evaluate and approve an agreement described in this paragraph before financial assistance may be provided under the agreement. The agreement described in this paragraph shall govern the manner in which financial assistance may be provided to an organization found by the commission to be qualified under paragraph (a)(B) or (C) of this subsection. More than one public utility or organization may join in a single agreement described in this paragraph.

(3) In administering an agreement entered into under this section, the commission by rule or order may determine:

(a) The amount of financial assistance that may be provided to any organization;

(b) The manner in which the financial assistance will be distributed;

(c) The manner in which the financial assistance will be recovered in the rates of the public utility under subsection (4) of this section; and

(d) Other matters necessary to administer the agreement.

(4) The commission shall allow a public utility that provides financial assistance under this section to recover the amounts so provided in rates. The commission shall allow a public utility to defer inclusion of those amounts in rates as provided in ORS 757.259 if the public utility so elects. An agreement under this section may not provide for payment of any amounts to the commission. [2003 c.234 §2; 2021 c.90 §3]

Note: Sections 4 and 5, chapter 90, Oregon Laws 2021, provide:

Sec. 4. Study on agreements for financial assistance approved under ORS 757.072. The Public Utility Commission shall, no later than September 15, 2025, provide a report to the interim committees of the Legislative Assembly related to energy that discusses, for the period beginning on the effective date of this 2021 Act [January 1, 2022] and ending December 31, 2024, the implementation and impacts of the amendments to ORS 757.072 by section 3 of this 2021 Act. The report shall include, but need not be limited to:

(1) A description of the process established under ORS 757.072 (2)(d) and any other rules, orders, processes or polices adopted or established by the commission as necessary to implement the amendments to ORS 757.072 by section 3 of this 2021 Act; and

(2) A detailed description of the organizations described in ORS 757.072 (2)(a)(B) and (C) that received funding during the period subject to reporting that includes, for each organization, a description of:

(a) The proceedings for which the organization received financial assistance;

(b) The amount of financial assistance received by the organization for each proceeding;

(c) The issues raised by the organization in each proceeding for which the organization received financial assistance; and

(d) The outcome within each proceeding with regard to the issues described in paragraph (c) of this subsection. [2021 c.90 §4]

Sec. 5. Section 4 of this 2021 Act is repealed on January 2, 2026. [2021 c.90 §5]

757.075 [Repealed by 1971 c.655 §250]

757.077 Incorrect billings; collections; refunds. (1) If a public utility determines that a current or former customer of the public utility was previously billed an incorrect amount for a service provided by the public utility under rate schedules or tariffs in effect for the public utility on the date on which the service was provided, the public utility may:

(a) If the public utility underbilled the customer, issue a bill to the customer for amounts the customer owes the public utility in accordance with subsection (2) of this section; or

(b) If the public utility overbilled the customer, refund the customer for amounts the public utility owes the customer in accordance with subsection (3) of this section.

(2)(a) Except as provided in paragraph (b) of this subsection, when issuing a bill under subsection (1)(a) of this section, a public utility:

(A) May only collect amounts incorrectly billed during the 12-month period ending on the date on which the public utility issued the last incorrect bill; and

(B) May not collect amounts incorrectly billed more than two years before the date on which the public utility identified the incorrect bill.

(b) If an incorrect billing described in subsection (1) of this section is the result of fraud, tampering, diversion, theft, misinformation or other dishonest or unlawful conduct for which the customer is responsible, the public utility may collect full payment for any amount that the customer of the public utility owes the public utility.

(3) When making a refund under subsection (1)(b) of this section, a public utility:

(a) May only refund amounts incorrectly received during the 12-month period ending on the date on which the public utility issued the last incorrect bill; and

(b) May not refund amounts incorrectly received more than three years before the

date on which the public utility identified the incorrect bill. [2013 c.170 §2]

757.080 [1953 c.356 §1; 1961 c.354 §1; 1971 c.655 §30a; renumbered 756.380]

757.085 [1953 c.356 §2; 1961 c.354 §2; renumbered 756.385]

757.090 [1953 c.356 §3; 1961 c.354 §3; renumbered 756.390]

757.095 [1969 c.372 §2; 1971 c.655 §69; renumbered 757.039]

BUDGET, ACCOUNTS AND REPORTS OF UTILITIES

757.105 Filing of budget; rules; review by commission; pensions as operating expenses. (1) The Public Utility Commission has the right and power of regulation, restriction and control over the budgets of expenditures of public utilities, as to all items covering:

(a) Proposed payment of salaries of executive officers;

(b) Donations;

(c) Political contributions and political advertising;

(d) Expenditures for pensions or for a trust to provide pensions for employees and officers;

(e) Other expenditures and major contracts for the sale or purchase of equipment; and

(f) Any payment or contemplated payment to any person or corporation having an affiliated interest for service, advice, auditing, associating, sponsoring, engineering, managing, operating, financing, legal or other services.

(2) On or before a date prescribed by the commission by rule, each public utility shall prepare a budget showing the amount of money which, in its judgment, shall be needed during the ensuing year for covering all such activities and expenditures, and file it with the commission.

(3) When any such budget has been filed with the commission, the commission shall examine into and investigate the same and unless rejected within 60 days thereafter, the proposed budget is presumptively fair and reasonable and not contrary to public interest.

(4) Proposed expenditures for pensions or for a trust to provide pensions for the employees and officers of such utility whether for future service or past service or both, shall be recognized as an operating expense if the trust fund is irrevocably committed to the payment of pensions or benefits to employees and if such pensions are reasonable and nondiscriminatory. The commission may disallow as an operating expense any expenditure for pension purposes in excess of the amount necessary and proper to maintain an actuarially sound retirement plan for the employees of the utility in Oregon. [Amended by 1957 c.593 §1; 1971 c.655 §82; 2013 c.96 §1]

757.107 Supplemental budgets and orders. Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the Public Utility Commission. The provisions of ORS 757.105 (3) apply to adjustments and additions to budgets. [Amended by 1971 c.655 §83]

757.110 Effect of budget orders. (1) Any finding and order made and entered by the Public Utility Commission under ORS 757.105 or 757.107 shall have the effect of prohibiting any unapproved or rejected expenditure from being recognized as an operating expense or capital expenditure in any rate valuation proceeding or in any proceeding or hearing unless and until the propriety thereof has been established to the satisfaction of the commission. Any such finding and order shall remain in full force and effect, unless and until it is modified or set aside by the commission or is set aside, modified or remanded in a proceeding for judicial review of an order in the manner provided by ORS 756.610.

(2) Nothing in ORS 757.105 or 757.107 prevents the commission from at any time making and filing orders rejecting imprudent and unwise expenditures or payments. Such orders when so made shall be in full force and effect, and the public utility shall not have the right to make such expenditures or payments found to be imprudent or unwise until the order has been modified or set aside by the commission or is set aside, modified or remanded in a proceeding for judicial review of an order in the manner provided by ORS 756.610. [Amended by 1971 c.655 §84; 2005 c.638 §7; 2017 c.312 §4]

757.115 [Amended by 1971 c.655 §20; renumbered 756.105]

757.120 Accounts required. (1) Every public utility shall keep and render to the Public Utility Commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every public utility engaged directly or indirectly in any other business than that of a public utility shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the ac-

counts and records of such other business. [Amended by 1971 c.655 §85]

757.125 Duty of utility to keep records and accounts; duty of commission to furnish blanks. (1) The Public Utility Commission shall prescribe the accounts and records required to be kept, and every public utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.

(2) No public utility shall keep any other accounts or records of its public utility business transacted than those prescribed or approved by the commission except such as may be required by the laws of the United States.

(3) The commission shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each public utility. [Amended by 1971 c.655 §86]

757.130 [Repealed by 1971 c.655 §250]

757.135 Closing accounts and filing balance sheet; rules; auditing accounts. (1) Except as provided in subsection (2) of this section, the accounts required under ORS 757.120 and 757.125 shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before a date prescribed by the Public Utility Commission by rule, such balance sheet, together with such other information as the commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

(2) If a public utility maintains its accounts and records on a fiscal year basis, the accounts required by ORS 757.120 and 757.125 shall be closed annually on the last day of the fiscal year and a balance sheet shall be promptly taken from those accounts. On or before the first day of the fourth month following the end of the public utility's fiscal year, the balance sheet together with such information as the commission shall prescribe must be verified by an officer of the public utility and filed with the commission. The commission may require that a public utility filing information at the time specified in this subsection also file with the commission on a calendar year basis such additional information as may be prescribed by the commission.

(3) The commission may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commission. [Amended by 1983 c.540 §4; 2001 c.733 §1; 2013 c.96 §2]

757.140 Depreciation accounts; use of certain undepreciated investment in rates. (1) Every public utility shall carry a proper and adequate depreciation account. The Public Utility Commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [Amended by 1971 c.655 §87; 1989 c.956 §2]

757.145 [Repealed by 1971 c.655 §250]

757.150 [Repealed by 1971 c.655 §250]

757.155 [Amended by 1971 c.655 §90; renumbered 757.480]

757.160 [Amended by 1971 c.655 §91; renumbered 757.485]

757.165 [Amended by 1971 c.655 §92; renumbered 757.490]

757.170 [Amended by 1971 c.655 §93; renumbered 757.495]

757.175 [Amended by 1971 c.655 §94; renumbered 757.500]

757.180 [Amended by 1971 c.655 §21; renumbered 756.115]

RATE SCHEDULES; MEASURING EQUIPMENT

757.205 Filing schedules with commission; data filed with schedules. (1) Every public utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

(2) Every public utility shall file with and as part of every such schedule all rules and

regulations that in any manner affect the rates charged or to be charged for any service. Every public utility shall also file with the commission copies of interstate rate schedules and rules and regulations issued by it or to which it is a party.

(3) Where a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedules shall in like manner be printed and filed with the commission. [Amended by 1971 c.655 §70]

757.210 Hearing to establish new schedules; alternative regulation plan. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule that provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, taxes paid to units of government or revenues earned by a utility and that is subject to review by the commission at least once every two years.

(2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative form of regulation plan, including a resource rate plan under ORS 757.212.

(b) Any alternative form of regulation plan shall include provisions to ensure that the plan operates in the interests of utility customers and the public generally and results in rates that are just and reasonable and may include provisions establishing a reasonable range for rate of return on investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

(A) Promotes increased efficiencies and cost control;

(B) Is consistent with least-cost resources acquisition policies;

(C) Yields rates that are consistent with those that would be obtained following application of ORS 757.269;

(D) Is consistent with maintenance of safe, adequate and reliable service; and

(E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

(c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation.

(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility shall present a report that demonstrates the calculation of any proposed rate change at a public meeting of the commission.

(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to appear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this section are in conformity with the plan and are just and reasonable. Except as provided in ORS 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also shall be subject to complaint under ORS 756.500.

(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the impact of the plan on rates paid by utility customers.

(5) The commission and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based on the record made at the hearing. [Amended by 1971 c.655 §70a; 1981 c.715 §1; 1985 c.550 §2; 1987 c.447 §97; 1987 c.613 §1; 1989 c.5 §§3,23; 1995 c.785 §1; 2001 c.913 §3; 2005 c.845 §5; 2011 c.137 §3]

757.212 Resource rate plans; customers who may elect to be exempt; order approving plan; effect of approving plan; rules. (1) For purposes of this section:

(a) "Resource rate plan" means a plan by a public utility to construct a generating plant or to enter into a wholesale power purchase or sales agreement with a term that is longer than one year.

(b) "Site" means:

(A) Buildings or other related structures that are interconnected by facilities owned by a single public utility customer and that are served through a single electric meter; or

(B) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(i) Each building or structure included in the site is not more than 1,000 feet from at least one other building or structure in the site;

(ii) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a public utility customer who is billed for electricity use at the buildings and structures; and

(iii) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights-of-way land on which municipal infrastructure facilities exist, such as street lighting, sewerage transmission and roadway controls, shall not be considered contiguous.

(2) The Public Utility Commission may approve a resource rate plan as an alternative form of regulation plan under ORS 757.210. A public utility must make a separate tariff filing for each proposed resource rate plan. If the commission approves a resource rate plan by a public utility based on the construction of a generating plant, the order approving the plan must state how the commission will reflect the costs and revenues of the generating plant in the utility's rates during all or a portion of the expected useful life of the generating plant. If the commission approves a resource rate plan based on a wholesale power purchase or sales agreement with a term longer than one year, the order approving the plan must state how the commission will reflect the costs and revenues under the wholesale power purchase or sales agreement in the utility's rates during all or a portion of the term of the agreement.

(3) A customer receiving electricity from a public utility may elect to be exempt from the costs and benefits of a resource rate plan for any single site at which the customer has had a peak load in excess of nine megawatts in any hour during the 12-month period immediately preceding the date on which the public utility files a tariff under this section. A public utility filing a tariff under this section must give written notice of the provisions of this subsection to all of its customers that are eligible to make an election under this subsection. The notice must be given within three days after the tariff is filed. An election under this subsection must be made by a customer within 30 days after the tariff is filed.

(4) A public utility customer that elects to be exempt under subsection (3) of this section may also elect to be exempt from the costs and benefits of a resource rate plan for any single site at which the customer has had a peak load in excess of one megawatt in any hour during the 12-month period immediately preceding the date on which the public utility files a tariff under this section. An election under this subsection must be made as part of the election under subsection (3) of this section.

(5) The commission shall ensure that customers making an election under subsection (3) or (4) of this section are charged the market cost for all electricity that is required to replace the electricity that would otherwise have been provided under the resource rate plan, and that the election does not result in increased costs or risks to the public utility or to other customers of the public utility.

(6) The commission, by rule, may allow customers of a public utility other than those customers described in subsection (3) of this section to elect to be exempt from the costs and benefits of a resource rate plan.

(7) If the commission approves a resource rate plan, the order of the commission must also address:

(a) The extent to which the public utility will use power from the generating plant or from the power purchase or sales agreement to serve its retail customers in Oregon;

(b) The allocation of power available from the generating plant or power purchase or sales agreement among different classes of the public utility's customers;

(c) The ratemaking consequences of the generating plant or power purchase or sales agreement, including the consequences of variations in the amount of power that is actually available after the plan is in operation compared with the amount of power that was anticipated to be available at the time the plan was approved; and

(d) Any other issue the commission chooses to consider.

(8) If the commission approves a resource rate plan, the commission may not thereafter review the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, or consider any complaint under ORS 756.500 seeking review of the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, except for the purpose of determining whether the public utility is

in compliance with the plan and has established rates in accordance with the plan.

(9) A resource rate plan and a public utility's rates under a resource rate plan are not subject to ORS 757.355.

(10) The commission may not set aside or modify an order approving a resource rate plan unless the public utility operating under the plan approves the setting aside or modification. [2001 c.913 §2; 2005 c.638 §8]

Note: 757.212 was added to and made a part of 757.205 to 757.220 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.215 Commission authorized to suspend new rates or order interim rates during hearings; revenues collected under unapproved rates to be refunded; order after hearing. (1) The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates for a period of up to nine months beyond the time when such rate or schedule would otherwise go into effect.

(2) This section does not prevent the commission and the utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commission may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

(4) If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 757.210, but does not order a suspension thereof, any increased revenue collected by the utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in such manner as the commission orders.

(5) The commission may in a suspension order authorize an interim rate or rate schedule under which the utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility. Any such interim increase for a public utility as defined in ORS 757.005 that produces, transmits, delivers or furnishes heat, light or power shall be effected by rates designed to increase the utility's revenues without materially changing the revenue relationships among customer classes or between the revenues derived from demand charges and from energy charges. An interim rate or rate schedule shall remain in effect until terminated by the commission. Upon completion of the hearing and decision, the commission shall order the utility to refund that portion of the increase in the interim rate or schedule that the commission finds is not justified. Any refund of an interim increase under this subsection shall be based upon an analysis of the utility's earnings for a period reasonably representative of the period during which the interim increase was in effect. Refunds shall be made as nearly as possible to the customers against whom the interim rates were charged, by credits against future bills or in such other manner as the commission orders.

(6) Refunds ordered by the commission under subsection (4) or (5) of this section shall include interest on the amount determined to be subject to refund from the date such interim rate or rate schedules took effect. [Amended by 1981 c.715 §2; 1991 c.964 §1; 2023 c.53 §1]

757.220 Notice of schedule changes required; exception for alternative regulation. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the Public Utility Commission. All changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect. This section does not apply to rate changes authorized under an alternative form of regulation plan under ORS 757.210 (2). [Amended by 1995 c.785 §2]

757.225 Utilities required to collect for their services in accordance with schedules. No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220. [Amended by 1971 c.655 §71; 1985 c.550 §3; 1991 c.67 §204]

757.227 Rate mitigation for certain electric company rate increases. (1) As used in this section, "electric company" has the meaning given that term in ORS 757.600.

(2) The Public Utility Commission shall require that an electric company mitigate a rate increase payable by a class of customers described in subsection (5) of this section if:

(a) The increase results from a transition to an electric company's generally applicable cost-based rate from the rates established under the contracts described in subsection (5) of this section; and

(b) The increase in the cost of electricity to that class of customers by reason of the transition will exceed 50 percent during the first 12 calendar months after the transition occurs.

(3) The commission shall require an electric company to mitigate a rate increase under this section by means of a schedule of rate credits for the class of customers described in subsection (5) of this section. The rate credits provided by an electric company under the schedule shall automatically decrease each year to the lowest credit necessary to avoid a rate increase that is greater than 50 percent in any subsequent year. Rate credits under this section may not be provided for more than seven years after the transition occurs.

(4) For the purpose of determining the increase in the cost of electricity to a class of customers by reason of a transition described in subsection (2)(a) of this section, the commission shall:

(a) Include the total charges for electricity service, including all special charges and credits other than the rate credit provided under this section; and

(b) Exclude any local taxes or fees paid by the class of customers.

(5) This section applies only to customers of an electric company that purchase electricity at metering points that before the transition described in subsection (2)(a) of this section were eligible for rates that were set under contracts entered into before 1960 and remained unchanged throughout the period of the contract.

(6) The full cost of providing rate credits under this section shall be spread equally among all other customers of the electric company. [2005 c.594 §3]

757.230 Control of commission over classification of services and forms of schedules; rules. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service, differential energy burdens on low-income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of utility customers, and any other reasonable consideration. Based on such considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. The service classifications and schedule forms shall be designed consistently with the requirements of ORS 469.010. Each public utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 757.205 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates;

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the utility;

(c) For electric and natural gas utilities:

(A) Whether it is appropriate to incorporate interruption of service in the utility's rate agreement with the customer; and

(B) Whether the rate agreement requires the utility to acquire new resources to serve the load; and

(d) For electric utilities, for service to load not previously served, the effect of the rate on the utility's average system cost through the residential exchange provision of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501, as amended.

(2) The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. The commission shall adopt rules which allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [Amended by 1971 c.655 §72; 1977 c.682 §1; 1987 c.900 §1; 2021 c.90 §2]

757.235 [Amended by 1953 c.285 §2; repealed by 1981 c.715 §3]

757.240 Filing schedules in business office. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public shall be printed in plain type and kept on file in every business office of such public utility, open to the public, and in such form and place as to be readily accessible to the public for convenient inspection.

(2) Copies of all new schedules shall be filed in every business office of such public

utility 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [Amended by 1971 c.655 §73]

757.245 Establishment of joint rates. (1) A public utility may establish reasonable through service and joint rates and classifications with other public utilities. Public utilities establishing joint rates shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof as between the public utilities participating therein, which shall not unduly prefer or prejudice any of such participating public utilities, and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited.

(2) The Public Utility Commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission's own initiative without complaint, establish through service, classifications and joint rates, the divisions of such rates and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate or classification without the consent of all the public utilities parties thereto or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the public utilities proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is of the opinion that the divisions of joint rates between the public utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the public utilities parties thereto, whether agreed upon by such public utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several public utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several public utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates, the commission shall give due consideration, among other things, to:

(a) The efficiency with which the public utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their public utility property held for and used in service;

(c) The importance to the public of the services of such public utilities;

(d) Whether any particular participating public utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one public utility to a greater or less proportion of the joint rate than another. [Amended by 1971 c.655 §74]

757.247 Tariff schedules for energy resource measures; rules. (1) The Public Utility Commission may authorize a public utility, upon application of the utility, to file and place into effect a tariff schedule establishing rates or charges for the cost of energy resource measures provided to an individual property owner or customer pursuant to an agreement entered into between the individual property owner or customer and the public utility. Energy resource measures provided under this section may include:

(a) The installation of renewable energy generation facilities on the property of property owners or the premises of customers;

(b) The implementation of energy conservation measures, including measures that are not cost-effective;

(c) The installation of equipment or devices or the implementation of measures that enable demand reduction, peak load reduction, improved integration of renewable energy generation or more effective utilization of energy resources;

(d) Loans for the purposes described in paragraphs (a) to (c) of this subsection; and

(e) Direct payments to third parties for the purposes described in paragraphs (a) to (c) of this subsection.

(2) Subject to the agreement entered into between the individual property owner or customer and the public utility, a tariff schedule placed into effect under this section may include provisions for:

(a) The payment of the rates or charges over a period of time;

(b) Except as provided in subsection (5) of this section, a reasonable rate of return on any investment made by the public utility;

(c) The application of any payment obligation to successive owners of the property to which the energy resource measure is attached or to successive customers located at the premises to which the energy resource measure is attached; and

(d) The application of the payment obligation to the current property owner or customer alone, secured by methods agreed to by the property owner or customer and the public utility.

(3) Application of a tariff schedule under this section is subject to approval by the commission.

(4) If a payment obligation applies to successive property owners or customers as described in subsection (2)(c) of this section, a public utility shall record a notice of the payment obligation in the records maintained by the county clerk under ORS 205.130. The commission may prescribe by rule other methods by which the public utility shall notify property owners or customers of such payment obligations.

(5) A public utility may use moneys obtained through a rate established under ORS 757.603 (3)(a) to provide a renewable energy generation facility to a property owner or customer under this section. A public utility may not charge interest to a property owner or customer for a renewable energy generation facility acquired with moneys obtained through a rate established under ORS 757.603 (3)(a).

(6) Agreements entered into and tariff schedules placed into effect under this section are not subject to ORS 470.500 to 470.710, 757.054 or 757.612. [1991 c.268 §2; 2007 c.885 §3; 2013 c.344 §1; 2021 c.508 §22; 2021 c.547 §23]

757.250 Standards and appliances for measuring service; rules. (1) The Public Utility Commission shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the service rendered by any public utility and prescribe reasonable regulations for examination and testing of such service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. [Amended by 1971 c.655 §75]

757.255 Testing of measuring appliances; rules; fees. (1) The Public Utility Commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a public utility, and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any public utility until it has been examined and tested by the commission and found to be accurate.

(2) The commission shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commission by the public utility.

(3) The commission shall declare and establish reasonable fees for the testing of such appliances on the application of the customer, the fee to be paid by the customer at the time of the customer's request, but to be repaid to the customer by the commission and to be paid by the public utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commission into the State Treasury.

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [Amended by 1971 c.655 §76]

757.259 Amounts includable in rate schedule; deferral; limit in effect on rates by amortization; rules. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in this section, under amortization schedules set by the commission, a rate or rate schedule:

(a) May reflect:

(A) Amounts lawfully imposed retroactively by order of another governmental agency; or

(B) Amounts deferred under subsection (2) of this section.

(b) Shall reflect amounts deferred under subsection (3) of this section if the public utility so requests.

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice, opportunity for comment and a hearing if any party requests a hearing, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission;

(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980;

(c) Direct or indirect costs arising from any purchase made by a public utility from the Bonneville Power Administration pursuant to ORS 757.663, provided that such costs shall be recovered only from residential and small-farm retail electricity consumers;

(d) Amounts accruing under a plan for the protection of short-term earnings under ORS 757.262 (2); or

(e) Identifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers.

(3) Upon request of the public utility, the commission by order shall allow deferral of amounts provided as financial assistance under an agreement entered into under ORS 757.072 for later incorporation in rates.

(4) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application. However, amounts deferred under subsection (2)(c) and (d) or (3) of this section are not subject to subsection (5), (6), (7), (8) or (10) of this section, but are subject to such limitations and requirements that the commission may prescribe and that are consistent with the provisions of this section.

(5) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral. The commission may require that amortization of deferred amounts be subject to refund. The commission's final determination on the amount of deferrals allowable in the rates of the utility is subject to a finding by the commission that the amount was prudently incurred by the utility.

(6) Except as provided in subsections (7), (8) and (10) of this section, the overall average rate impact of the amortizations authorized under this section in any one year may not exceed three percent of the utility's gross revenues for the preceding calendar year.

(7) The commission may allow an overall average rate impact greater than that specified in subsection (6) of this section for natural gas commodity and pipeline transportation costs incurred by a natural gas utility if the commission finds that allowing a higher amortization rate is reasonable under the circumstances.

(8) The commission may authorize amortizations for an electric utility under this section with an overall average rate impact not to exceed six percent of the electric utility's gross revenues for the preceding calendar year. If the commission allows an overall average rate impact greater than that specified in subsection (6) of this section, the commission shall estimate the electric utility's cost of capital for the deferral period and may also consider estimated changes in the electric utility's costs and revenues during the deferral period for the purpose of reviewing the earnings of the electric utility under the provisions of subsection (5) of this section.

(9) The commission may impose requirements similar to those described in subsection (8) of this section for the amortization of other deferrals under this section, but may not impose such requirements for deferrals under subsection (2)(c) or (d) or (3) of this section.

(10) The commission may authorize amortization of a deferred amount for an electric utility under this section with an overall average rate impact greater than that allowed by subsections (6) and (8) of this section if:

(a) The deferral was directly related to extraordinary power supply expenses incurred during 2001;

(b) The amount to be deferred was greater than 40 percent of the revenue received by the electric utility in 2001 from Oregon customers; and

(c) The commission determines that the higher rate impact is reasonable under the circumstances.

(11) If the commission authorizes amortization of a deferred amount under subsection (10) of this section, an electric utility customer that uses more than one average megawatt of electricity at any site in the immediately preceding calendar year may prepay the customer's share of the deferred amount. The commission shall adopt rules governing the manner in which:

(a) The customer's share of the deferred amount is calculated; and

(b) The customer's rates are to be adjusted to reflect the prepayment of the deferred amount.

(12) The provisions of this section do not apply to a telecommunications utility. [1987

c.563 §2; 1989 c.18 §1; 1989 c.956 §1; 1993 c.175 §1; 1999 c.865 §31; 2001 c.733 §3; 2003 c.132 §1; 2003 c.234 §3]

757.260 [Amended by 1971 c.655 §18; renumbered 756.075]

757.262 Rates to encourage acquisition of cost-effective conservation resources; rules. (1) The Public Utility Commission, by rule, may adopt policies designed to encourage the acquisition of cost-effective conservation resources and small-scale, renewable-fuel electric generating resources.

(2) In furtherance of the policies adopted pursuant to subsection (1) of this section, and in such manner as the commission considers proper, the commission may authorize periodic rate adjustments for the purpose of providing some protection to a utility from reduction of short-term earnings that may result from implementation of such policies. The adjustments may include, but are not limited to, adjustments based in whole or in part upon the extent to which actual sales deviate from a base level of sales the commission considers appropriate. [1993 c.175 §3; 1999 c.944 §3]

757.264 Annual forecast of certain projected production tax credits required; inclusion in rates. Each public utility that makes sales of electricity shall forecast on an annual basis the projected state and federal production tax credits received by the public utility due to variable renewable electricity production, and the Public Utility Commission shall allow those forecasts to be included in rates through any variable power cost forecasting process established by the commission. [2016 c.28 §18b]

757.265 [Repealed by 1971 c.655 §250]

757.266 Rates may encourage tree planting programs as offset to carbon dioxide emissions. The Public Utility Commission of Oregon may allow a rate or rate schedule of a public utility to reflect amounts for small scale programs that enable the utility to gain experience with tree planting on underproducing forestland, as defined by the State Forestry Department, as an offset to carbon dioxide emissions. [1993 c.286 §1]

Note: 757.266 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.267 [2005 c.845 §2; repealed by 2011 c.137 §5]

757.268 [2005 c.845 §3; repealed by 2011 c.137 §5]

757.269 Setting of rates based upon income taxes paid by utility; limitation on use of tax information; rules. (1) When establishing schedules and rates under ORS 757.210 for an electricity or natural gas utility, the Public Utility Commission shall act to balance the interests of the customers of the utility and the utility's investors by setting fair, just and reasonable rates that include amounts for income taxes. Subject to subsections (2) and (3) of this section, amounts for income taxes included in rates are fair, just and reasonable if the rates include current and deferred income taxes and other related tax items that are based on estimated revenues derived from the regulated operations of the utility.

(2) During ratemaking proceedings conducted pursuant to ORS 757.210, the Public Utility Commission must ensure that the income taxes included in the electricity or natural gas utility's rates:

(a) Include all expected current and deferred tax balances and tax credits made in providing regulated utility service to the utility's customers in this state;

(b) Include only the current provision for deferred income taxes, accumulated deferred income taxes and other tax related items that are based on revenues, expenses and the rate base included in rates and on the same basis as included in rates;

(c) Reflect all known changes to tax and accounting laws or policy that would affect the calculated taxes;

(d) Are reduced by tax benefits generated by expenditures made in providing regulated utility service to the utility's customers in this state, regardless of whether the taxes are paid by the utility or an affiliated group;

(e) Contain all adjustments necessary in order to ensure compliance with the normalization requirements of federal tax law; and

(f) Reflect other considerations the commission deems relevant to protect the public interest.

(3) During a ratemaking proceeding conducted under ORS 757.210 for an electricity or natural gas utility that pays taxes as part of an affiliated group, the Public Utility Commission may adjust the utility's estimated income tax expense based upon:

(a) Whether the utility's affiliated group has a history of paying federal or state income taxes that are less than the federal or state income taxes the utility would pay to units of government if it were an Oregon-only regulated utility operation;

(b) Whether the corporate structure under which the utility is held affects the taxes paid by the affiliated group; or

(c) Any other considerations the commission deems relevant to protect the public interest.

(4)(a) Because tax information of unregulated nonutility business in an electricity or natural gas utility's affiliated group is commercially sensitive, and public disclosure of

such information could provide a commercial advantage to other businesses, the Public Utility Commission may not use the tax information obtained under this section for any purpose other than those described in this section, in ORS 757.511 and as necessary for the implementation and administration of this section and ORS 757.511.

(b) The commission shall adopt rules to implement paragraph (a) of this subsection that:

(A) Identify all documents and tax information that an electricity or natural gas utility must file in its initial filing in a proceeding to change rates that include amounts for income taxes, recognizing that any party may object to providing such documents on the grounds that they are not relevant; and

(B) Determine the procedures under which intervenors in such proceedings may obtain and use documents and tax information to fully participate in the proceeding.

(5) As used in this section, "affiliated group" means a group of corporations of which the public utility is a member and that files a consolidated federal income tax return. [2011 c.137 §1]

Note: 757.269 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ATTACHMENTS REGULATION

757.270 Definitions for ORS 757.270 to 757.290. As used in ORS 757.270 to 757.290, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or consumer-owned utility.

(2) "Consumer-owned utility" means a people's utility district organized under ORS chapter 261, a municipal utility organized under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(3) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association that is authorized to construct attachments upon, along, under or across the public ways.

(4) "Public utility" has the meaning for that term provided in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government.

(5) "Telecommunications utility" has the meaning for that term provided in ORS 759.005, and does not include any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government. [1979 c.356 §2; 1989 c.5 §4; 1999 c.832 §4]

757.271 Authorization from pole owner required for attachment. (1) Subject to applicable regulations of the Public Utility Commission, a person shall not establish an attachment to a pole or other facility of a public utility, telecommunications utility or consumer-owned utility unless the person has executed a contract with and has authorization from the utility allowing the attachment.

(2) A licensee shall report all pole attachments to the pole owner. A pole owner may impose on a licensee a penalty charge for failing to report an attachment. The pole owner also may charge the licensee for any expenses incurred as a result of an unauthorized attachment or any attachment that exceeds safety limits established by rule of the commission. [1999 c.832 §2]

757.272 Pole owner may approve or reject attachment. (1) A licensee shall notify a public utility, telecommunications utility or consumer-owned utility of all attachments to the utility's poles according to the terms of any agreement between the licensee and the utility.

(2) Notwithstanding subsection (1) of this section, the public utility, telecommunications utility or consumer-owned utility may approve or reject the attachment. If the attachment is rejected, the licensee shall remove the attachment within three business days of the date the attachment is rejected. If the attachment is not removed within three business days of the date the attachment is rejected, the utility may remove the attachment and charge the licensee for all costs incurred by the utility in removing the attachment. [1999 c.832 §3]

757.273 Attachments to public utility and telecommunications utility facilities regulated. The Public Utility Commission of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of public utilities and telecommunications utilities. All rates, terms

and conditions made, demanded or received by any public utility or telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §3; 1989 c.5 §5]

757.276 Attachments by licensees to consumer-owned utility facilities regulated. The Public Utility Commission of Oregon shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of consumer-owned utilities. All rates, terms and conditions made, demanded or received by any consumer-owned utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §4; 1987 c.414 §164; 1999 c.832 §5]

757.279 Fixing rates or charges by commission; cost of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee, a public utility, a telecommunications utility or a consumer-owned utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility, telecommunications utility or consumer-owned utility that owns the facility upon which the attachment is made.

(2) When the order applies to a consumer-owned utility, the order shall also provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable. [1979 c.356 §5; 1983 c.251 §1; 1987 c.414 §165; 1989 c.5 §6; 1999 c.832 §6]

757.282 Criteria for just and reasonable rate for attachments; rate reduction. (1) A just and reasonable rate shall ensure the public utility, telecommunications utility or consumer-owned utility the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the public utility, telecommunications utility or consumer-owned utility attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses that remain available to the owner or owners of the subject facilities.

(2) A licensee shall receive a rental deduction if the licensee is in compliance with rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole attachments. A licensee is eligible for the rental reduction unless the commission or the utility authorizing the attachment notifies the licensee in writing that the licensee has failed to comply with either the commission's rules or the terms of a contract between the licensee and the utility authorizing the attachment.

(3) For purposes of determining the rental rate for a pole attachment, the usable space on the pole shall include 20 inches of safety clearance space between communication circuits and electric circuits, provided the licensee is in compliance with rules and agreements as described in subsection (2) of this section. [1979 c.356 §6; 1989 c.5 §7; 1999 c.832 §7]

757.285 Presumption of reasonableness of rates set by private agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable, unless the Public Utility Commission finds upon complaint by a public utility, telecommunications utility, consumer-owned utility or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1979 c.356 §7; 1987 c.414 §166; 1989 c.5 §8; 1999 c.832 §8]

757.287 Application to electrical utility attachments. Nothing in ORS 757.270 to 757.290 shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities. [1979 c.356 §8]

757.290 Regulatory procedures. The procedures of the Public Utility Commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those otherwise generally applicable to the commission. [1979 c.356 §9; 1987 c.414 §167]

NET METERING FACILITIES

757.300 Net metering facility allowed to connect to public utility; conditions for connecting and measuring energy; rules; application to out-of-state utilities. (1) As used in this section:

(a) "Customer-generator" means a user of a net metering facility.

(b) "Electric utility" means a public utility, a people's utility district operating under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(c) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator and fed back to the electric utility over the applicable billing period.

(d) "Net metering facility" means a facility for the production of electrical energy that:

(A) Generates electricity using:

(i) Solar power;

(ii) Wind power;

(iii) Fuel cells;

(iv) Hydroelectric power;

(v) Landfill gas;

(vi) Digester gas;

(vii) Waste;

(viii) Dedicated energy crops available on a renewable basis;

(ix) Low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues;

(x) Geothermal energy; or

(xi) Renewable marine energy, including wave energy, wave-wind hybrid energy and tidal energy;

(B) Is located on the customer-generator's premises, the territorial sea as defined in ORS 196.405, or the outer continental shelf;

(C) If located on the territorial sea or the outer continental shelf, is directly interconnected to the customer-generator's premises;

(D) Can operate in parallel with an electric utility's existing transmission and distribution facilities; and

(E) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(2) An electric utility that offers residential and commercial electric service:

(a) Shall allow net metering facilities to be interconnected using a standard meter that is capable of registering the flow of electricity in two directions.

(b) May at its own expense install one or more additional meters to monitor the flow of electricity in each direction.

(c) May not charge a customer-generator a fee or charge that would increase the customer-generator's minimum monthly charge to an amount greater than that of other customers in the same rate class as the customer-generator. However, the Public Utility Commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may authorize an electric utility to assess a greater fee or charge, of any type, if the electric utility's direct costs of interconnection and administration of the net metering outweigh the distribution system, environmental and public policy benefits of allocating such costs among the electric utility's entire customer base. The commission may authorize a public utility to assess a greater fee or charge under this paragraph only following notice and opportunity for public comment. The governing body of a municipal electric utility, electric cooperative or people's utility district may assess a greater fee or charge under this paragraph only following notice and opportunity for comment from the customers of the utility, cooperative or district.

(3)(a) For a customer-generator, an electric utility shall measure the net electricity produced or consumed during the billing period in accordance with normal metering practices.

(b) If an electric utility supplies a customer-generator more electricity than the customer-generator feeds back to the electric utility during a billing period, the electric utility shall charge the customer-generator for the net electricity that the electric utility supplied.

(c) Except as provided in paragraph (d) of this subsection, if a customer-generator feeds back to an electric utility more electricity than the electric utility supplies the customer-generator during a billing period, the electric utility may charge the minimum monthly charge described in subsection (2) of this section but must credit the customer-generator for the excess kilowatt-hours generated during the billing period. An electric utility may value the excess kilowatt-hours at the avoided cost of the utility, as determined by the commission or the appropriate governing body. An electric utility that values the excess kilowatt-hours at the avoided cost shall bear the cost of measuring the excess kilowatt-hours, issuing payments and billing for the excess hours. The electric utility also shall bear the cost of providing and installing additional metering to measure the reverse flow of electricity.

(d) For the billing cycle ending in March of each year, or on such other date as agreed to by the electric utility and the customer-generator, any remaining unused kilowatt-hour credit accumulated during the previous

year shall be granted to the electric utility for distribution to customers enrolled in the electric utility's low-income assistance programs, credited to the customer-generator or dedicated for other use as determined by the commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, following notice and opportunity for public comment.

(4)(a) A net metering facility shall meet all applicable safety and performance standards established in the state building code. The standards shall be consistent with the applicable standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers and Underwriters Laboratories or other similarly accredited laboratory.

(b) Following notice and opportunity for public comment, the commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may adopt additional control and testing requirements for customer-generators to protect public safety or system reliability.

(c) An electric utility may not require a customer-generator whose net metering facility meets the standards in paragraphs (a) and (b) of this subsection to comply with additional safety or performance standards, perform or pay for additional tests or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering facility, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

(5) Nothing in this section is intended to prevent an electric utility from offering, or a customer-generator from accepting, products or services related to the customer-generator's net metering facility that are different from the net metering services described in this section.

(6) The commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may not limit the cumulative generating capacity of solar, wind, geothermal, renewable marine, fuel cell and microhydroelectric net metering systems to less than one-half of one percent of a utility's, cooperative's or district's historic single-hour peak load. After a cumulative limit of one-half of one percent has been reached, the obligation of a public utility, municipal electric utility, electric cooperative or people's utility district to offer net metering to a new customer-generator may be limited by the commission or governing body in order to balance the interests of retail customers. When limiting net metering obligations under this subsection, the commission or the governing body shall consider the environmental and other public policy benefits of net metering systems. The commission may limit net metering obligations under this subsection only following notice and opportunity for public comment. The governing body of a municipal electric utility, electric cooperative or people's utility district may limit net metering obligations under this subsection only following notice and opportunity for comment from the customers of the utility, cooperative or district.

(7) The commission or the governing body may adopt rules or ordinances to ensure that the obligations and costs associated with net metering apply to all power suppliers within the service territory of a public utility, municipal electric utility, electric cooperative or people's utility district.

(8) This section applies only to net metering facilities that have a generating capacity of 25 kilowatts or less, except that the commission by rule may provide for a higher limit for customers of a public utility.

(9) Notwithstanding subsections (2) to (8) of this section, an electric utility serving fewer than 25,000 customers in Oregon that has its headquarters located in another state and offers net metering services or a substantial equivalent offset against retail sales in that state shall be deemed to be in compliance with this section if the electric utility offers net metering services to its customers in Oregon in accordance with tariffs, schedules and other regulations promulgated by the appropriate authority in the state where the electric utility's headquarters are located. [1999 c.944 §2; 2005 c.145 §1; 2013 c.648 §5; 2014 c.33 §1]

757.305 [Amended by 1971 c.655 §77; repealed by 1979 c.190 §431]

CONTRACTOR LABOR STANDARDS

757.306 Contractor labor standards for covered projects; attestation or declaration; project labor agreement. (1) As used in this section:

(a) "Apprentice" and "apprenticeable occupation" have the meanings given those terms in ORS 660.010.

(b) "Apprenticeship training program" means the total system of apprenticeship that a particular local joint committee, as defined in ORS 660.010, operates, including the local joint committee's registered standards and all other terms and conditions for qualifying, recruiting, selecting, employing and training apprentices in an apprenticeable occupation.

(c) "Community solar project" has the meaning given that term in ORS 757.386.

(d) "Construction" includes on-site and off-site construction and fabrication and covers 30 days after project completion.

(e) "Covered project" means:

(A) Except as provided in subparagraph (B) of this paragraph, a renewable energy generation, sequestration or storage facility with a capacity rating of 10 megawatts or greater.

(B) A community solar project with a capacity rating above three megawatts.

(f) "Minority individual" and "woman" have the meanings given those terms in ORS 200.005.

(g) "Repower" means replacement of enough of the original generation equipment or components to make an original energy generation facility equivalent to a new facility, such that at least 80 percent of the fair market value of the facility derives from new generation equipment or components installed as part of the replacement project.

(h) "Veteran" has the meaning given that term in ORS 408.225.

(2) A person who constructs or repowers a covered project sited in this state shall, within 30 days from the date the construction begins, provide a signed attestation or declaration stating to the best of their knowledge and belief, subject to penalty of perjury as described in ORS 162.065, that during all periods of construction all contractors and subcontractors working on the construction or repowering project will:

(a)(A)(i) Except as provided in sub-subparagraph (ii) of this subparagraph, participate in an apprenticeship program registered with the State Apprenticeship and Training Council and with graduation rates equal to or higher than the national average for each respective trade in a manner consistent with the respective apprenticeship training programs, such that 15 percent of the total work hours on a given covered project is performed by apprentices in apprenticeable occupations; or

(ii) If less than 15 percent of total work hours on a given covered project is performed by apprentices in apprenticeable occupations, demonstrate good faith with meeting the requirement described in sub-subparagraph (i) of this subparagraph by providing documented and verifiable information including:

(I) Internet addresses of employment advertisements or job announcements;

(II) Dates, times, Internet addresses and attendance lists of a prejob conference with apprenticeship, preapprenticeship and workforce providers in construction;

(III) Contacts requesting apprentices with an apprenticeship program approved by the Bureau of Labor and Industries including the date, time, telephone contact, electronic mail contact and whether a response was provided within 48 hours of the request;

(IV) Contacts requesting apprentices from a union hall including the date, time, telephone contact, electronic mail contact and whether a response was provided within 48 hours of the request; and

(V) Documentation of job offers and number of job offers made to apprentices;

(B) Establish and execute a plan for outreach, recruitment and retention of women, minority individuals, veterans and people with disabilities to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups;

(C) Have policies in place that are designed to limit or prevent workplace harassment and discrimination and that promote workplace diversity, equity and inclusion for communities who have been underrepresented in the clean energy sector, including women, veterans and Black, Indigenous and People of Color;

(D) Maintain a license and good standing to perform the work and remain eligible to receive a contract or subcontract for public works under ORS 279C.860;

(E) Materially demonstrate a history of material compliance in the previous seven years, or provide available history for new businesses, with the rules and other requirements of state agencies with oversight regarding workers' compensation, building codes and occupational safety and health;

(F) Materially demonstrate a history of compliance, in the previous seven years, or provide available history for new businesses, with federal and state wage and hour laws; and

(G) Provide quarterly reporting and recordkeeping to the project owner or electric utility and respond to records requests and verification; and

(b) If the covered project has a capacity rating of 10 megawatts or greater:

(A) Pay no less than the prevailing wage rate for an hour's work in the same trade or occupation in the locality where the labor is performed. Prevailing wage rate includes the calculation of wages and fringe benefits per trade and locality and will be treated as standards defined in ORS 279C.800 to 279C.870.

(B) Offer health care and retirement benefits to the employees performing the labor on the project.

(C) Provide quarterly reporting and recordkeeping to the project owner or electric utility and respond to records requests and verification.

(3) The person shall provide the attestation or declaration and any good faith effort documentation described in subsection (2) of this section to the State Department of Energy within 30 days from the date construction begins and shall notify the purchaser of the project or of the energy from the project of this provision or of the provision of a project labor agreement under subsection (4) of this section, the notice of which shall identify the signatories to the agreement. In addition to the requirements described in subsection (2) of this section, the attestation or declaration must include the following information:

(a) The megawatt capacity and physical footprint in acres of the project;

(b) The geographic location of the project;

(c) The estimated workforce requirements of the project;

(d) A collated list of good faith effort documentation; and

(e) A description of any policies in place for ensuring the person meets the requirements in this section.

(4)(a) In lieu of providing an attestation or declaration described in subsection (2) of this section, the person may provide a copy of a project labor agreement, if a project labor agreement is used on the covered project and shall be exempted from the requirements described in subsection (2) of this section.

(b) As used in this subsection, "project labor agreement" means a prehire collective bargaining agreement as described in 29 U.S.C. 158(f) that establishes the terms and conditions of employment for a specific construction project or contract.

(c) A project labor agreement may include additional provisions that:

(A) Prohibit discrimination based on race, national origin, religion, gender, sexual orientation, political affiliation or membership in a labor organization in hiring and dispatching workers for the project.

(B) Permit qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to a collective bargaining agreement.

(C) Permit and promote qualified business enterprises owned by women, minorities, veterans and disadvantaged individuals without regard to whether the individuals are otherwise parties to a collective bargaining agreement.

(D) Guarantee against work stoppages, strikes, lockouts and similar disruptions of the project.

(5)(a) The department shall retain an attestation or declaration filed with the department in a manner consistent with the department's record retention policies.

(b) Notwithstanding any provisions of ORS 192.345 or 192.355, an attestation or declaration provided to the department pursuant to this subsection is subject to public records disclosure and the department shall provide a copy of the attestation or declaration upon request.

(c) An attestation or declaration filed under this section is for reporting purposes only and the department may not use an attestation or declaration to investigate, regulate or enforce matters addressed in the attestation or declaration.

(6)(a) Nothing in this section:

(A) Applies to a contract or subcontract with a tribal government, agent or instrumentality of an Oregon Indian tribe for a covered project located in whole or in part on the tribe's reservation or on land held in trust by the United States for the benefit of the tribe, unless the tribal government elects to adopt the standards in this section for the contract or subcontract; or

(B) Affects the wage rates overseen by a tribal government, agent or instrumentality of an Oregon Indian tribe.

(b) As used in this subsection, "Oregon Indian tribe" and "tribal government" have the meanings given those terms in ORS 294.805.

(7) Nothing in this section:

(a) Prohibits the inclusion of labor standards in addition to those required by subsection (2) of this section in contracts that are subject to this section; or

(b) Prohibits a person from using a project labor agreement to meet the minimum requirements of subsection (2) of this section. [2021 c.508 §26; 2022 c.51 §1]

Note: 757.306 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.308 Requirements related to request for proposals that may result in procurement of covered project. (1) A request for proposals submitted by an electric company, as defined in ORS 757.600, for resource procurement that is subject to com-

petitive bidding requirements adopted by the Public Utility Commission by rule and that may result in the procurement of a covered project must:

(a) Include a reference to and information regarding the requirements in ORS 757.306; and

(b) Require that a successful bidder within 30 days from the date construction begins, provide a copy of the attestation or declaration or executed project labor agreement as required under ORS 757.306.

(2) The State Department of Energy shall, upon request from the commission, provide a copy of the attestation or declaration or project labor agreement to the commission. [2022 c.51 §2]

Note: 757.308 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ILLEGAL PRACTICES

757.310 Prohibition related to charges for service. (1) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount prescribed in the schedules or tariffs for the public utility.

(2) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.

(3) A difference in rates or amounts charged does not constitute a violation of subsection (2) of this section if the difference is based on:

(a) Service classification under ORS 757.230;

(b) Contracts for services under ORS 757.516; or

(c) An optional schedule or tariff for the provision of energy service that takes into account a customer's past energy usage and provides price incentives designed to encourage changes in the customer's energy usage that correspond to changes in the cost of providing energy. [Amended by 1971 c.655 §78; 1987 c.900 §2; 1993 c.485 §3; 2005 c.594 §1]

757.315 When free service or reduced rates allowed. (1) ORS 757.310 does not prevent any public utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

(b) Former employees of such public utilities or members of their families where such former employees have become disabled in the service of such public utility or are unable from physical disqualification, including retirement, to continue in the service; or

(c) Members of families of deceased employees of such public utility.

(2) The Public Utility Commission may require any public utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a public utility under the provisions of this section.

(3) The Public Utility Commission may authorize a natural gas public utility, upon application of the utility, to include in rates for residential customers of the utility amounts for the purpose of generating funds to be used for bill payment assistance to low-income residential customers of the utility. [Amended by 1971 c.655 §79; 2001 c.856 §1]

757.320 Reducing rates for persons furnishing part of necessary facilities. (1) No public utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any public utility from renting any customer's facilities incident to providing its services and for paying a reasonable rental therefor.

(3) This section does not require a public utility to furnish any part of such appliances which are situated in and upon the premises of any customer, except meters and appliances for measurements of any service, unless otherwise ordered by the Public Utility Commission. [Amended by 1971 c.655 §80]

757.325 Undue preferences and prejudices. (1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.

757.330 Soliciting or accepting special privileges from utilities. No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter. [Amended by 1971 c.655 §81]

757.335 [Amended by 1971 c.655 §25; renumbered 756.185]

757.340 [Amended by 1971 c.655 §22; renumbered 756.125]

757.345 [Repealed by 1971 c.655 §250]

757.350 [Repealed by 1971 c.655 §250]

757.355 Costs of property not presently providing utility service excluded from rate base; exception. (1) Except as provided in subsection (2) of this section, a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

(2) The Public Utility Commission may allow rates for a water utility that include the costs of a specific capital improvement if the water utility is required to use the additional revenues solely for the purpose of completing the capital improvement. [1979 c.3 §2; 2003 c.202 §2]

TRANSPORTATION

(Transportation Electrification)

757.357 Legislative findings; programs to accelerate transportation electrification; tariff schedules and rates; long-term stranded costs. (1) As used in this section:

(a) "Electric company" has the meaning given that term in ORS 757.600.

(b)(A) "Infrastructure measures" includes, but is not limited to, investments in, expenses related to or rebates for:

(i) Distribution system infrastructure that supports transportation electrification;

(ii) Communication and control technologies that support transportation electrification; and

(iii) Behind-the-meter infrastructure that supports transportation electrification and is owned by an electric company or by a customer.

(B) "Infrastructure measures" does not include investments in or expenses related to education and outreach activities related to transportation electrification, or other transportation electrification-related activities determined by the Public Utility Commission to be separate and distinct from the development of infrastructure.

(c) "Retail electricity consumer" has the meaning given that term in ORS 757.600.

(d) "Transportation electrification" means:

(A) The use of electricity from external sources to provide power to all or part of a vehicle;

(B) Programs related to developing the use of electricity for the purpose described in subparagraph (A) of this paragraph;

(C) Infrastructure measures related to developing the use of electricity for the purpose described in subparagraph (A) of this paragraph; and

(D) Programs related to supporting the adoption and service of vehicles powered as described in subparagraph (A) of this paragraph.

(e) "Vehicle" means a vehicle, vessel, train, boat or any other equipment that is mobile.

(2) The Legislative Assembly finds and declares that:

(a) Transportation electrification is necessary to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, meet this state's greenhouse gas emissions reduction goals described in ORS 468A.205 and improve the public health and safety;

(b) Widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel;

(c) Widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel in low and moderate income communities;

(d) Widespread transportation electrification should stimulate innovation and competition, provide consumers with increased options in the use of charging equipment and in procuring services from suppliers of electricity, attract private capital investments and create high quality jobs in this state;

(e) Transportation electrification and the purchase and use of electric vehicles should assist in managing the electrical grid, integrating generation from renewable energy resources and improving electric system efficiency and operational flexibility, including the ability of an electric company to integrate variable generating resources;

(f) Deploying transportation electrification and electric vehicles creates the opportunity for an electric company to propose, to the commission, that a net benefit for the customers of the electric company is attainable; and

(g) Charging electric vehicles in a manner that provides benefits to electrical grid management affords fuel cost savings for vehicle drivers.

(3)(a) The commission shall direct each electric company to file:

(A) Applications for programs to support transportation electrification; and

(B) A plan, for acceptance by the commission, that integrates the electric company's transportation electrification actions.

(b) The applications and plan must be filed in a form and manner prescribed by the commission.

(c) A program proposed by an electric company may include prudent investments in or customer rebates for electric vehicle charging and related infrastructure.

(4) The commission may allow an electric company to recover costs from retail electricity consumers for prudent infrastructure measures to support transportation electrification if the infrastructure measures are consistent with and meet the requirements of subsection (5) of this section.

(5) If undertaken by an electric company, an infrastructure measure to support transportation electrification is a utility service and a benefit to utility customers if the infrastructure measure can be reasonably anticipated to:

(a) Support reductions of transportation sector greenhouse gas emissions over time; and

(b) Benefit the electric company's customers in ways that may include, but need not be limited to:

(A) Distribution or transmission management benefits;

(B) Revenues to utilities from electric vehicle charging to offset utilities' fixed costs that may otherwise be charged to customers;

(C) System efficiencies or other economic values inuring to the benefit of customers over the long term; or

(D) Increased customer choice through greater transportation electrification infrastructure deployment to increase the availability of and access to public and private electric vehicle charging stations.

(6) When considering a transportation electrification program and determining cost recovery for investments and other expenditures that are not infrastructure measures and that are related to a program proposed by an electric company under subsection (3) of this section, the commission shall consider whether the investments and other expenditures:

(a) Are within the service territory of the electric company;

(b) Are prudent as determined by the commission;

(c) Are reasonably expected to be used and useful as determined by the commission;

(d) Are reasonably expected to enable the electric company to support the electric company's electrical system;

(e) Are reasonably expected to improve the electric company's electrical system efficiency and operational flexibility, including the ability of the electric company to integrate variable generating resources; and

(f) Are reasonably expected to stimulate innovation, competition and customer choice in electric vehicle charging and related infrastructure and services.

(7) In undertaking infrastructure measures that involve the installation of one or more electric vehicle charging stations, an electric company must allow for customer choice in the selection of the type of electric vehicle charging station to be installed, subject to equipment eligibility as determined by the electric company. An electric company may prequalify multiple types of eligible electric vehicle charging stations based on criteria determined by the electric company.

(8) Nothing in this section restricts or prohibits a corporation, company, partnership, individual or association of individuals exempt from regulation under ORS 757.005 (1)(b)(G) from furnishing electricity to any number of customers for use in motor vehicles.

(9)(a) Tariff schedules and rates allowed pursuant to subsections (3) to (6) of this section:

(A) May allow a return of and a return on an investment made by an electric company under subsections (3) to (6) of this section; and

(B) Shall be recovered from the retail electricity consumers of an electric company in a manner determined by the commission.

(b) A return on investment allowed under this subsection may be earned for a period of time that does not exceed the depreciation schedule of the investment approved by the commission. When an electric company's investment is fully depreciated, the commission may authorize the electric company to donate the electric vehicle charging infrastructure to the owner of the property on which the infrastructure is located.

(10) For purposes of ORS 757.355, electric vehicle charging infrastructure provides utility service to the customers of an electric company.

(11) In authorizing programs described in subsection (3) of this section, the commission shall review data concerning current and future adoption of electric vehicles and utilization of electric vehicle charging infrastructure. If market barriers unrelated to the investment or expenditures made by

an electric company prevent electric vehicles from adequately utilizing available electric vehicle charging infrastructure, the commission may not permit additional investments in or expenditures related to supporting transportation electrification without a reasonable showing that the investments or expenditures would not result in long-term stranded costs recoverable from the retail electricity consumers of electric companies. [2016 c.28 §20; 2021 c.23 §4; 2021 c.95 §4; 2021 c.630 §21]

Note: Sections 1 to 3, chapter 95, Oregon Laws 2021, provide:

Sec. 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 757. [2021 c.95 §1]

Sec. 2. Collection of funds to support transportation electrification. (1) As used in this section:

(a) "Distribution" has the meaning given that term in ORS 757.600.

(b) "Electric company" has the meaning given that term in ORS 757.600.

(c) "Retail electricity consumer" has the meaning given that term in ORS 757.600.

(d) "Transportation electrification" has the meaning given that term in ORS 757.357.

(2) An electric company that makes sales of electricity to 25,000 or more retail electricity consumers in this state shall collect, through monthly meter charges, an amount from each retail electricity consumer served through the distribution system owned and operated by the electric company, regardless of whether the retail electricity consumer purchases the electricity from the electric company. The total amounts collected under this section must be set to one quarter of one percent of the total revenues collected by the electric company from all retail electricity consumers.

(3) Funds collected under subsection (2) of this section must be expended by the electric company to support and integrate transportation electrification and must be consistent with a budget approved by the Public Utility Commission for use of funds collected under this section. Expenditures made by an electric company pursuant to this subsection must be made on elements contained within the electric company's transportation electrification plan accepted by the commission pursuant to ORS 757.357.

(4) An electric company shall account separately for all revenues and expenditures related to funds described in this section and shall report the revenues and expenditures on a schedule and in the manner prescribed by the commission.

(5) Funds collected and expended pursuant to this section shall be a minimum investment in transportation electrification and may not limit the amounts that may otherwise be collected by an electric company in rates to recover the costs of prudently incurred investments that support transportation electrification.

(6) An electric company shall make reasonable efforts to expend not less than one-half of the amount collected under subsection (2) of this section each year to support transportation electrification in underserved communities through approaches that may include but are not limited to programs, infrastructure, rebates or expenses that support:

(a) The use of electric vehicles by residents of rental or multifamily housing;

(b) The use of electric vehicles by communities of color, communities experiencing lower incomes, tribal communities, rural communities, frontier communities, coastal communities and other communities adversely harmed by environmental and health hazards;

(c) The use of electric vehicles by communities described in paragraph (b) of this subsection in areas with a low density of public charging stations; or

(d) The deployment of electric school and transit buses in a manner that benefits communities described in paragraph (a) or (b) of this subsection. [2021 c.95 §2]

Sec. 3. Section 2 of this 2021 Act is repealed on January 2, 2031. [2021 c.95 §3]

(Alternative Forms of Vehicles)

757.359 Infrastructure for vehicles powered by renewable natural gas or hydrogen. (1) As used in this section, "natural gas utility" means a natural gas utility regulated by the Public Utility Commission under this chapter.

(2) The commission may allow a natural gas utility to recover costs from all retail natural gas customers for prudent investments in or expenses related to infrastructure measures that support the adoption and service of alternative forms of transportation vehicles if the investments or expenses are consistent with and meet the requirements of subsection (3) of this section. An investment or expense by a natural gas utility may include an investment in or an expense related to infrastructure behind the customer meter.

(3) An investment in or expense related to infrastructure measures that support the adoption and service of alternative forms of transportation vehicles is a utility service and a benefit to retail natural gas customers if the investment or expense can be reasonably anticipated to:

(a) Support the adoption of alternative vehicles that are powered by renewable natural gas or hydrogen;

(b) Support reductions of transportation sector greenhouse gas emissions over time; and

(c) Benefit the natural gas utility system. Benefits may include, but need not be limited to:

(A) Distribution or transmission management benefits;

(B) System efficiencies or other economic values inuring to the benefit of retail natural gas customers over the long term; or

(C) Revenues to natural gas utilities from fueling alternative forms of transportation vehicles to offset utilities' fixed costs that may otherwise be charged to retail natural gas customers. [2021 c.630 §23]

SOLAR ENERGY

757.360 Definitions for ORS 757.360 to 757.380. As used in ORS 757.360 to 757.380:

(1) "Electric company" has the meaning given that term in ORS 757.600.

(2) "Nameplate capacity" means the maximum rated output of a generator or other electric power production equipment under specific conditions designated by the manufacturer.

(3) "Qualifying system" means:

(a) An alternative energy system used for emergency backup power by a state agency or facility that is at least 30 percent more efficient than existing agency or facility sources, including fuel cells; or

(b) A solar photovoltaic energy system that:

(A) Directly connects to an electric company's electrical system within this state or indirectly connects through the system of an electric company's retail electricity consumer or the electric system of a third party that is not an electric company's retail electricity consumer but whose system is located within this state;

(B) Has meters or other devices in place to monitor and measure the quantity of energy generated by the solar photovoltaic energy system; and

(C) Meets any other siting, design, interconnection, installation and electric output standards and codes required by the laws of this state.

(4) "Residential qualifying system" means a qualifying system with a nameplate capacity of 10 kilowatts or less.

(5) "Resource value" means the estimated value to an electric company of the electricity delivered from a solar photovoltaic energy system associated with:

(a) The avoided cost of energy, including avoided fuel price volatility, minus the costs of firming and shaping the electricity generated from the facility; and

(b) Avoided distribution and transmission cost.

(6) "Retail electricity consumer" means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon and is served by an electric company.

(7) "Small commercial qualifying system" means a qualifying system with a nameplate capacity greater than 10 kilowatts and less than or equal to 100 kilowatts.

(8) "Solar photovoltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect. [2009 c.748 §1; 2010 c.78 §1]

Note: 757.360 to 757.385 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.365 Pilot program for small solar energy systems; rules; limits to program; report to Legislative Assembly. (1) The Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity or for the nonenergy attributes of electricity, or both, from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers and that first become operational after the program begins. The cumulative nameplate capacity of the qualifying systems enrolled in all of the pilot programs may not exceed 27.5 megawatts of alternating current. Qualifying systems enrolled in the pilot program may not have nameplate generating capacity greater than 500 kilowatts.

(2) The commission by rule shall adopt requirements for the pilot programs described in subsection (1) of this section. Each electric company shall file for commission approval tariff schedules for the pilot programs that conform to the requirements.

(3) The commission may establish incentive rates for the pilot programs to enable the development of the most efficient solar photovoltaic energy systems.

(4) A retail electricity consumer participating in a pilot program may receive payments based on electricity generated from solar photovoltaic energy system output for 15 years from the consumer's date of enrollment in the program, at rates or through a rate formula in a tariff schedule established at the time of enrollment, or at rates otherwise established at the time of enrollment. The consumer thereafter may receive payments based upon electricity generated from the qualifying system at a rate equal to the resource value.

(5) The commission may adjust the tariff schedule as needed for new pilot program participants for the purpose of meeting the goal established in subsection (1) of this section. Once a retail electricity consumer is enrolled in a program, the rates or rate formula for determining payments to the consumer may not be modified.

(6) The commission may adopt and adjust a percentage goal for capacity deployed by residential and small commercial qualifying systems based upon the costs of the energy generated, the feasibility of attaining the goal and other factors. For purposes of attaining the goal described in this subsection, the commission shall require 2.5 megawatts of alternating current from the cumulative nameplate capacity of qualifying systems to be generated by individual systems with a nameplate generating capacity between five and 100 kilowatts.

(7) The commission may establish total generator nameplate capacity limits for an electric company so that the rate impact of the pilot program for any customer class does not exceed 0.25 percent of the electric company's revenue requirement for the class in any year.

(8) Ownership of renewable energy certificates established under ORS 469A.130 that are associated with renewable energy generation under the pilot programs must be transferred to the electric company and may be used to comply with the renewable portfolio standard described in ORS 469A.052 or 469A.055.

(9) To the extent that rates paid under a pilot program exceed the resource value, qualifying systems participating in the pilot programs are not eligible for expenditures under ORS 757.612 (3)(b)(B) (2019 Edition) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169.

(10) All prudently incurred costs associated with compliance with this section are recoverable in the rates of an electric company.

(11) The commission shall advise and assist the owners and operators of qualifying systems in identifying and using grants, incentive moneys, federal funding and other sources of noninvestment financial support for the construction and operation of qualifying systems.

(12) The pilot programs described in subsection (1) of this section close to new participants on the earlier of:

(a) March 31, 2016; or

(b) The date the cumulative nameplate capacity of solar photovoltaic energy systems that have been permanently installed by retail electricity consumers under the pilot programs equals 27.5 megawatts of alternating current.

(13) The commission shall submit a report to the Legislative Assembly by January 1 of each odd-numbered year. The report must evaluate the effectiveness of the pilot programs described in subsection (1) of this section compared to the effectiveness of expenditures under ORS 757.612 (3)(b)(B) (2019 Edition) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169 for promoting the use of solar photovoltaic energy systems and reducing system costs. The report must also estimate the cost of the program to retail electricity consumers and the resource value of solar energy. [2009 c.748 §2; 2010 c.78 §2; 2013 c.244 §§1,3; 2021 c.547 §22]

Note: See note under 757.360.

757.370 [2009 c.748 §3; 2010 c.79 §2; repealed by 2016 c.28 §23]

757.375 Credit toward compliance with renewable portfolio standard; limits. (1) Any electricity produced from a solar photovoltaic energy system that is physically located in this state may be used by an electric company to comply with the renewable portfolio standard established under ORS 469A.005 to 469A.210.

(2) For each kilowatt-hour of electricity produced from a qualifying system that first becomes operational before January 1, 2016, and has a nameplate capacity of between 500 kilowatts and five megawatts of alternating current, the Public Utility Commission shall credit the electric company with two kilowatt-hours of qualifying electricity toward the electric company's compliance with the renewable portfolio standard under ORS 469A.005 to 469A.210, up to a maximum of 20 megawatts of capacity. [2009 c.748 §4; 2016 c.28 §24]

Note: See note under 757.360.

757.380 Applicability of ORS 757.360 to 757.380. ORS 757.360 to 757.380 apply only to qualifying systems that are solar photovoltaic energy systems. [2009 c.748 §5]

Note: See note under 757.360.

757.385 Allowance of fair and reasonable rates. Nothing in ORS 276.910 and 757.360 to 757.380 affects the authority of the Public Utility Commission to set fair and reasonable rates as authorized under ORS 756.040 (1). [2009 c.748 §8]

Note: See note under 757.360.

757.386 Program for procurement of electricity from community solar projects; rules. (1) For purposes of this section:

(a) "Community solar project" means one or more solar photovoltaic energy systems that provide owners and subscribers the opportunity to share the costs and benefits associated with the generation of electricity by the solar photovoltaic energy systems.

(b) "Electric company" has the meaning given that term in ORS 757.600.

(c) "Owner" means a customer of an electric company who has proportionate ownership of part of a community solar project, such as direct ownership of one or more solar panels or shared ownership of the infrastructure of the community solar project.

(d) "Project manager" means the entity identified as having responsibility for managing the operation of a community solar project and, if applicable, for maintaining contact with the electric company that procures electricity from the community solar project. A project manager may be:

(A) An electric company; or

(B) An independent third party.

(e) "Solar photovoltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.

(f) "Subscriber" means a customer of an electric company who proportionately leases part of a community solar project for a minimum of 10 years.

(2)(a) The Public Utility Commission shall establish by rule a program for the procurement of electricity from community solar projects. As part of the program, the commission shall:

(A) Adopt rules prescribing what qualifies a community solar project to participate in the program;

(B) Certify qualified community solar projects for participation in the program;

(C) Prescribe the form and manner by which project managers may apply for certification under the program; and

(D) Require, by rule or order, electric companies to enter into a 20-year power purchase agreement with a certified community solar project.

(b) The commission shall adopt rules under paragraph (a)(A) of this subsection that, at a minimum:

(A) Incentivize consumers of electricity to be owners or subscribers;

(B) Minimize the shifting of costs from the program to ratepayers who do not own or subscribe to a community solar project;

(C) Where an electric company is the project manager, protect owners and subscribers from undue financial hardship; and

(D) Protect the public interest.

(c) The commission may suspend the program adopted under this subsection if the commission has good cause to suspend the program.

(3) A community solar project:

(a) Must have at least one solar photovoltaic energy system with a minimum generating capacity of 25 kilowatts;

(b) Must be located in this state; and

(c) May be located anywhere in this state.

(4) A project manager may offer ownership in or subscriptions to a community solar project only to consumers of electricity that are located:

(a) In this state; and

(b) In the service territory of an electric company.

(5)(a) A project manager may offer proportional ownership in or proportional subscriptions to a community solar project in any amount that does not exceed a potential owner's or potential subscriber's average annual consumption of electricity.

(b) Any value associated with the generation of electricity in excess of an offer to own or subscribe to a community solar project as limited by paragraph (a) of this subsection must be used by the electric company procuring electricity from the community solar project in support of low-income residential customers of the electric company.

(6)(a) Except as provided in paragraph (b) of this subsection, an electric company shall credit an owner's or subscriber's electric bill for the amount of electricity generated by a community solar project for the owner or subscriber in a manner that reflects the resource value of solar energy. For purposes of this paragraph, the commission shall determine the resource value of solar energy.

(b) The commission may adopt a rate for an electric company to use in crediting an owner's or subscriber's electric bill other than the rate described in paragraph (a) of this subsection if the commission has good cause to adopt the different rate.

(7)(a) Except as otherwise provided in this section, owners and subscribers shall bear the costs and benefits of constructing and operating a community solar project.

(b) Costs incurred by an electric company under the terms of a power purchase agreement entered into pursuant to subsection (2)(a)(D) of this section are recoverable in the rates of the electric company. Moneys collected pursuant to imposing those rates, under the terms of a power purchase agreement entered into pursuant to subsection (2)(a)(D) of this section, may be transferred to a project manager for the purpose of operating a community solar project.

(c) All start-up costs prudently incurred during the development or modification of the program established under this section are recoverable in the rates of an electric company.

(d) Owners and subscribers shall bear all ongoing costs incurred during the continued administration of the program established under this section.

(8) Owners and subscribers own all renewable energy certificates established under ORS 469A.130 that are associated with the generation of electricity by a community solar project, in proportion to the owner's proportional ownership in or the subscriber's proportional subscription to the community solar project.

(9) As part of the program established under this section, the commission shall:

(a) Determine a methodology by which 10 percent of the total generating capacity of the community solar projects operated under the program will be made available for use by low-income residential customers of electricity; and

(b) Periodically review and adjust the percentage described in paragraph (a) of this subsection.

(10) A subscription described in this section shall be considered a lease for purposes of ORS 307.092 and 307.112. [2016 c.28 §22; 2022 c.79 §3]

Note: 757.386 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

RENEWABLE NATURAL GAS

757.390 Legislative findings and declarations. (1) The Legislative Assembly finds and declares that:

(a) Renewable natural gas provides benefits to natural gas utility customers and to the public; and

(b) The development of renewable natural gas resources should be encouraged to support a smooth transition to a low carbon energy economy in Oregon.

(2) The Legislative Assembly therefore declares that:

(a) Natural gas utilities can reduce emissions from the direct use of natural gas by procuring renewable natural gas and investing in renewable natural gas infrastructure;

(b) Regulatory guidelines for the procurement of renewable natural gas and investments in renewable natural gas infrastructure should enable the procurements and investments while also protecting Oregon consumers; and

(c) Renewable natural gas should be included in the broader set of low carbon resources that may leverage the natural gas system to reduce greenhouse gas emissions. [2019 c.541 §2]

757.392 Definitions. As used in ORS 757.390 to 757.398:

(1) "Biogas" means a mixture of carbon dioxide and hydrocarbons, primarily methane gas, released from the biological decomposition of organic materials.

(2) "Biomass" has the meaning given that term in ORS 315.141.

(3) "Large natural gas utility" means a natural gas utility with 200,000 or more customer accounts in Oregon.

(4) "Natural gas utility" means a public utility providing natural gas service to customers.

(5)(a) "Qualified investment" means any capital investment in renewable natural gas infrastructure incurred by a natural gas utility for the purpose of providing natural gas service under a renewable natural gas program described in ORS 757.396 or 757.398.

(b) "Qualified investment" does not mean an investment in a biogas production project by:

(A) A single livestock operation that produces more than 250 standard cubic feet of biogas per minute; or

(B) A single biogas source that produces more than 1,000 standard cubic feet of biogas per minute.

(6) "Renewable energy sources" means hydroelectric, geothermal, solar photovoltaic, wind, tidal, wave, biomass or biogas energy sources.

(7) "Renewable natural gas" means any of the following products processed to meet pipeline quality standards or transportation fuel grade requirements:

(a) Biogas that is upgraded to meet natural gas pipeline quality standards such that it may blend with, or substitute for, geologic natural gas;

(b) Hydrogen gas derived from renewable energy sources; or

(c) Methane gas derived from any combination of:

(A) Biogas;

(B) Hydrogen gas or carbon oxides derived from renewable energy sources; or

(C) Waste carbon dioxide.

(8) "Renewable natural gas infrastructure" means all equipment and facilities for the production, processing, pipeline interconnection and distribution of renewable natural gas to be furnished to Oregon customers.

(9) "Small natural gas utility" means a natural gas utility with fewer than 200,000 customer accounts in Oregon. [2019 c.541 §3]

757.394 Renewable natural gas programs; rules; requirements. (1) The Public Utility Commission shall adopt by rule a large renewable natural gas program for large natural gas utilities pursuant to the provisions of ORS 757.396.

(2) The commission shall adopt by rule a small renewable natural gas program for small natural gas utilities pursuant to ORS 757.398.

(3) Rules adopted by the commission under this section shall include:

(a) Rules for reporting requirements under the large renewable natural gas program

and the small renewable natural gas program; and

(b) Rules for establishing a process for natural gas utilities to fully recover prudently incurred costs associated with the large renewable natural gas program and the small renewable natural gas program.

(4) Rules adopted by the commission under this section may not prohibit an affiliated interest of a small natural gas utility or of a large natural gas utility from making a capital investment in a biogas production project if the affiliated interest, as defined in ORS 757.015, is not a public utility. [2019 c.541 §4]

757.396 Participating large natural gas utilities; portfolio targets; ratemaking mechanisms; qualified investments. (1) A large natural gas utility that participates in the large renewable natural gas program adopted by rule by the Public Utility Commission under ORS 757.394 (1) may make qualified investments and procure renewable natural gas from third parties to meet the following portfolio targets for the percentage of gas purchased by the large natural gas utility for distribution to retail natural gas customers in Oregon that is renewable natural gas:

(a) In each of the calendar years 2020 through 2024, five percent may be renewable natural gas;

(b) In each of the calendar years 2025 through 2029, 10 percent may be renewable natural gas;

(c) In each of the calendar years 2030 through 2034, 15 percent may be renewable natural gas;

(d) In each of the calendar years 2035 through 2039, 20 percent may be renewable natural gas;

(e) In each of the calendar years 2040 through 2044, 25 percent may be renewable natural gas; and

(f) In each of the calendar years 2045 through 2050, 30 percent may be renewable natural gas.

(2) The commission shall adopt ratemaking mechanisms that ensure the recovery of all prudently incurred costs that contribute to the large natural gas utility's meeting the targets set forth in subsection (1) of this section. Pursuant to the ratemaking mechanisms adopted under this subsection:

(a) Qualified investments and operating costs associated with qualified investments that contribute to the large natural gas utility meeting the targets set forth in subsection (1) of this section may be recovered by means of an automatic adjustment clause, as defined in ORS 757.210.

(b) Costs of procurement of renewable natural gas from third parties that contribute to the large natural gas utility meeting the targets set forth in subsection (1) of this section may be recovered by means of an automatic adjustment clause, as defined in ORS 757.210, or another recovery mechanism authorized by rule.

(3) When a large natural gas utility makes a qualified investment in the production of renewable natural gas, the costs associated with the qualified investment shall include the cost of capital established by the commission in the large natural gas utility's most recent general rate case.

(4) Before making a qualified investment in biogas production that is upstream of conditioning equipment, pipeline interconnection or gas cleaning, a large natural gas utility shall engage in a competitive bidding process.

(5) If the large natural gas utility's total incremental annual cost to meet the targets of the large renewable natural gas program exceeds five percent of the large natural gas utility's total revenue requirement for an individual year, the large natural gas utility may no longer be authorized to make additional qualified investments under the large renewable natural gas program for that year without approval from the commission.

(6) The total incremental annual cost to meet the targets of the large renewable natural gas program must account for:

(a) Any value received by a large natural gas utility upon any resale of renewable natural gas, including any environmental credits that the renewable natural gas producer chooses to include with the sale of the renewable natural gas to the large natural gas utility; and

(b) Any savings achieved through avoidance of conventional gas purchases or development, such as avoided pipeline costs or carbon costs. [2019 c.541 §5]

757.398 Small natural gas utilities; filing to participate; rate cap; cost recovery; qualified investments. (1) Upon a filing by a small natural gas utility to participate in the small renewable natural gas program adopted by rule by the Public Utility Commission under ORS 757.394 (2), the commission shall establish a rate cap limiting the small natural gas utility's costs of procuring renewable natural gas from third parties and qualified investments in renewable natural gas infrastructure. The rate cap must be expressed as a percentage of the small natural gas utility's total revenue requirement as approved by the commission in the public utility's most recent general rate case. For the purposes of es-

tablishing a rate cap under this subsection, the commission shall account for:

(a) Any value received by the small natural gas utility upon any resale of renewable natural gas, including any environmental credits that the renewable natural gas producer chooses to include with the sale of renewable natural gas to the small natural gas utility; and

(b) Any savings achieved through avoidance of conventional gas purchases or development, such as avoided pipeline costs or carbon costs.

(2)(a) A filing by a small natural gas utility under subsection (1) of this section must include, but need not be limited to:

(A) A proposal to procure a total volume of renewable natural gas over a specific period; and

(B) Identification of the qualified investments that the small natural gas utility may make in renewable natural gas infrastructure.

(b) A small natural gas utility may from time to time revise the filing submitted to the commission under this section.

(3) Any prudently incurred costs incurred by a small natural gas utility pursuant to a filing submitted under this section may be recovered by means of an automatic adjustment clause, as defined in ORS 757.210.

(4) When a small natural gas utility makes a qualified investment in the production of renewable natural gas, the costs associated with that qualified investment shall include the cost of capital established by the commission in the small natural gas utility's most recent general rate case. [2019 c.541 §6]

ISSUANCE OF SECURITIES

(Utility Securities Generally)

757.400 "Stocks" defined for ORS 757.400 to 757.463. As used in ORS 757.400 to 757.463, "stocks" means stocks, stock certificates or other evidence of interest or ownership.

757.405 Power to regulate issuance of utility securities. The power of public utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the Public Utility Commission may prescribe.

757.410 When issuance of securities is void. All stocks and bonds, notes or other evidences of indebtedness, and any security of a public utility shall be void when issued:

(1) Without an order of the Public Utility Commission authorizing the same then in effect except as provided in ORS 757.412 or 757.415 (3).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with the terms or conditions of the order of authorization of the commission and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of indebtedness, or security issued pursuant to and in substantial conformity with an order of the commission, except as to a person taking the same otherwise than in good faith and for value and without actual notice. [Amended by 1997 c.261 §1]

757.412 Exemption from securities regulation. Subject to such terms and conditions as the Public Utility Commission may prescribe, the commission, by rule or order, may exempt the following from any or all of the provisions of ORS 757.400 to 757.480, if the commission finds that application of the law is not required by the public interest:

(1) Any stocks and bonds, notes or other evidences of indebtedness and any other security or guarantee or class of securities or guarantees for which commission authorization would otherwise be required prior to the issuance, incurrence or assumption thereof.

(2) Any public utility or class of public utilities. [1997 c.261 §3]

Note: 757.412 was added to and made a part of ORS chapter 757 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.415 Purposes for which securities and notes may be issued; order required. (1) Except as otherwise permitted by subsection (4) of this section, a public utility may issue stocks and bonds, notes and other evidences of indebtedness, certificates of beneficial interests in a trust and securities for the following purposes and no others:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission of Oregon to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(f) The finance or refinance of bondable rate recovery expenditures as described in ORS 757.461. Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership, issued for this purpose are rate recovery bonds for the purposes of ORS 757.463.

(2) Before issuing such securities a public utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, costs and expenses, property or labor to be procured, paid for or refinanced by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 757.400 to 757.463 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) Rate recovery bonds authorized pursuant to subsection (1)(f) of this section may be issued directly by a public utility or through a finance subsidiary. For purposes of this subsection, "finance subsidiary" means any corporation, limited liability company, company, association, trust or other entity:

(a)(A) That is beneficially owned, directly or indirectly, by a public utility; or

(B) In the case of a trust, for which a public utility or subsidiary thereof is the grantor; or

(b) That is unaffiliated with a public utility and acquires bondable rate recovery assets directly or indirectly from a public utility in a transaction approved by the commission. [Amended by 1961 c.319 §1; 1995 c.539 §4; 2005 c.22 §504; 2023 c.529 §8]

757.417 Limitation on application of ORS 757.415. ORS 757.415 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of $75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the public utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the public utility. [1971 c.655 §88]

757.419 Limitation on application of ORS 757.480. ORS 757.480 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 757.415. [1971 c.655 §89]

757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility. (1) To enable the Public Utility Commission to determine whether the com-

mission will issue an order under ORS 757.415, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as the commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the public utility.

(2) The commission may, upon application of the public utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 757.415. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, the commission of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a public utility owning or operating a public utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commission.

757.425 State not obligated following approval of issuance. No provision of ORS 757.405 to 757.450 or ORS 757.457, 757.459, 757.461 and 757.463, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon or any agency of state government, as defined in ORS 174.111, to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 757.405 to 757.450 or ORS 757.457, 757.459, 757.461 and 757.463. [Amended by 2023 c.529 §9]

757.430 Conditional approval of issuance authorized. The Public Utility Commission may by order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of the permission such condition or conditions as the commission deems reasonable and necessary.

757.435 Disposal of proceeds from issuance of securities; rules. (1) No public utility shall, without the consent of the Public Utility Commission, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.

(2) The commission has power to require public utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as the commission deems advisable, and to establish such rules and regulations as the commission deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order.

757.440 Approval required before utility may guarantee another's indebtedness. No public utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the Public Utility Commission an order authorizing it so to do. Every assumption made other than in accordance with such an order is void.

757.445 Wrongful issues or use of proceeds by utility. A public utility may not, directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 757.400 to 757.463, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount in the order authorized for such purpose. [Amended by 2023 c.529 §11]

757.450 Wrongful acts relating to issuance of securities. A person may not:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or

executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 757.400 to 757.463 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 757.400 to 757.463, negotiate, or cause the same to be negotiated. [Amended by 2023 c.529 §12]

757.455 [1995 c.539 §3; repealed by 2023 c.529 §2 (757.459 and 757.461 enacted in lieu of 757.455)]

(Financing of Rate Recovery Expenditures by Public Utilities)

757.457 Definitions for ORS 757.457, 757.459, 757.461 and 757.463. As used in this section and ORS 757.459, 757.461 and 757.463:

(1) "Assignee" means a person, and any subsequent assignee, to which a public utility assigns, sells or transfers all or part of the public utility's interest in or right to rate recovery assets, except as security.

(2) "Bond" includes bonds, notes, certificates of beneficial interests in a trust or other evidence of indebtedness.

(3) "Bondholder" means a holder or owner of a rate recovery bond.

(4) "Finance subsidiary" means an assignee at the time rate recovery bonds are issued:

(a)(A) That is beneficially owned, directly or indirectly, by a public utility; or

(B) In the case of a trust, for which a public utility or subsidiary of the public utility is the grantor; or

(b) That is unaffiliated with a public utility and acquires bondable rate recovery assets from a public utility in a transaction or under an agreement that is approved by the Public Utility Commission.

(5) "Financing costs" includes the following costs related to rate recovery bonds, whether incurred and paid upon issuance or over the life of rate recovery bonds:

(a) The costs of issuing, serving, managing, repaying or refinancing rate recovery bonds, including any fees, expenses or charges incurred and the costs of any activities performed in connection with the rate recovery bonds, including:

(A) Information technology programming;

(B) Obtaining a financing order;

(C) Serving, accounting or auditing;

(D) Services related to trustees;

(E) Legal services;

(F) Consulting;

(G) Services related to financial and structuring advisors;

(H) Administration;

(I) Placement and underwriting;

(J) Services related to independent directors and managers;

(K) Services related to rating agencies;

(L) Stock exchange listing and compliance;

(M) Securities registration and filing; and

(N) Services necessary to ensure a timely payment of rate recovery bonds or other amounts or charges payable in connection with rate recovery bonds;

(b) Principal, interest and acquisition, defeasance and redemption premiums payable on rate recovery bonds;

(c) Payments required under an ancillary agreement and any amounts required to fund or replenish a reserve or account established under the terms of an indenture, ancillary agreement or financing document related to rate recovery bonds;

(d) Applicable federal, state and local taxes, franchise fees, license fees, gross receipts or other taxes or charges, whether paid, payable or accrued; and

(e) The Public Utility Commission's costs in performing the commission's duties related to rate recovery bonds that are recoverable by the commission under ORS 756.310.

(6) "Financing order" means an order issued by the Public Utility Commission that authorizes one or more the following:

(a) The recovery of rate recovery expenditures and financing costs;

(b) The creation of rate recovery assets;

(c) The issuance of rate recovery bonds;

(d) The imposition, collection and periodic adjustment of rate recovery charges; or

(e) The sale, assignment or transfer of rate recovery assets to an assignee.

(7) "Financing party" includes:

(a) Bondholders, trustees, agents and secured parties related to rate recovery bonds;

(b) A person acting for the benefit of bondholders, trustees, agents or secured parties; and

(c) A party to rate recovery bond documents or an ancillary agreement.

(8) "Public utility customer" means:

(a) For an electric utility, a retail electricity consumer, as defined in ORS 757.600.

(b) For a natural gas utility, the end use consumer served by the natural gas utility, including those served by the natural gas utility under ORS 757.516, regardless of whether the end use consumer purchases natural gas from the natural gas utility.

(9) "Rate recovery asset" means a right to recover from customers rate recovery expenditures and associated costs and expenses approved in a financing order, including the right to:

(a) Impose, charge, bill, collect, receive, hold and apply rate recovery charges authorized under a financing order or obtain, to the extent authorized, periodic adjustments of rate recovery charges; and

(b) All claims, accounts, revenues, payments, collections, moneys or proceeds arising from the rights and interest specified in a financing order, regardless of whether the claims, accounts, revenues, payments, collections, moneys or proceeds arising from the rights and interest specified in the financing order are commingled with other claims, accounts, revenues, payments, collections, moneys or proceeds.

(10) "Rate recovery charge" means charges to public utility customers authorized by the Public Utility Commission to recover rate recovery expenditures and financing costs and to be used to pay, repay or refinance rate recovery bonds.

(11) "Rate recovery expenditures" means costs and expenses incurred or to be incurred through the date of issuance of a financing order by a public utility associated with:

(a) An event that is the subject of a federal or state declaration of a state of emergency, such as severe weather, catastrophic wildfire, pandemic or other event that causes or threatens to cause widespread loss of life, injury to person or property, human suffering or financial loss, except those costs and expenses that are or are associated with criminal or civil fines or penalties or judgments from a civil action based on negligence related to the event.

(b) An energy conservation program that provides loans and cash payments to public utility customers for the installation of energy conservation measures funded by the public utility including, but not limited to, the costs or expenditures for specific acquisition program development, promotion and labor costs and associated general supervision, rents, leases and overheads.

(12) "Secured party" means a financing party that has been granted a security interest in rate recovery assets. [2023 c.529 §1]

757.459 State policy to encourage financing of certain costs and expenses by public utilities; pledge and agreement related to rate recovery assets, bonds and charges. (1) It is the policy of the State of Oregon to encourage the financing of certain costs and expenses by public utilities at the lowest, reasonable and prudent cost to public utility customers, including, but not limited to, rate recovery expenditures.

(2) To carry out the policy described in subsection (1) of this section, the State of Oregon and all public bodies, as defined in ORS 174.109:

(a) Acknowledge that owners of rate recovery assets, bondholders and financing parties require certainty with respect to the owners', bondholders' and financing parties' rights to enter into financing transactions that offer the lowest reasonable and prudent cost; and

(b) Pledge and agree with public utilities, assignees, bondholders and financing parties not to reduce, alter or impair, in a manner that is adverse to the public utilities, assignees, bondholders or financing parties:

(A) Rate recovery assets;

(B) Rate recovery bonds or the security for rate recovery bonds; or

(C) Rate recovery charges or the collection of rate recovery charges.

(3) The pledge and agreement described under subsection (2)(b) of this section includes the pledge and agreement not to reduce, alter or impair rate recovery assets, rate recovery bonds or the security for rate recovery bonds, or rate recovery charges or

the collection of rate recovery charges by taking any of the following actions:

(a) Altering the provisions of this section or ORS 757.457, 757.461 or 757.463 to the extent that those provisions authorize the Public Utility Commission to issue financing orders that:

(A) Create rate recovery assets;

(B) Establish rate recovery charges that may not be avoided by public utility customers, as described under ORS 757.461 (4); or

(C) Provide rights and remedies to public utilities, assignees, bondholders and financing parties;

(b) Impairing the rights or remedies of public utilities, assignees, bondholders or financing parties that are created under this section and ORS 757.457, 757.461 and 757.463 or by a financing order, including reducing the amount of or impairing the collection of rate recovery charges until all principal, interest, premium and other amounts due on the rate recovery bonds and financing costs have been paid in full and except as provided under ORS 757.461; or

(c) Taking any action listed under ORS 757.461 (5)(b).

(4) A public utility or financing subsidiary that issues rate recovery bonds may include the pledge and provisions of this section in the bonds and related documentation. [2023 c.529 §3 (enacted in lieu of 757.455)]

757.460 [1995 c.539 §2; repealed by 2023 c.529 §5 (757.463 enacted in lieu of 757.460)]

757.461 Financing of rate recovery expenditures through rate recovery bonds; application and hearing process; financing order; collection of rate recovery charges. (1)(a) A public utility may apply to the Public Utility Commission for a financing order designating all or part of rate recovery expenditures as bondable rate recovery expenditures, for the purpose of financing or refinancing the designated expenditures under ORS 757.415 (1)(f).

(b) After notice and an opportunity for a hearing, the commission may approve an application if the commission finds that:

(A) The rate recovery expenditures included in the application are reasonable and prudent;

(B) Financing or refinancing the rate recovery expenditures through the issuance of rate recovery bonds is likely to be more favorable to public utility customers for the recovery of rate recovery expenditures as compared to other methods; and

(C) Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership issued pursuant to the approval are reasonably likely to receive a determination of, at a minimum, investment grade by credit rating agencies.

(c) The commission shall issue an order within 180 days of an application approving or denying the application. If the commission approves the application, the commission shall issue a financing order.

(2)(a) A financing order issued under this section shall specify the highest amount of rate recovery expenditures that qualify as bondable rate recovery expenditures.

(b) In specifying the amount for rate recovery expenditures associated with an event described in ORS 757.457 (11)(a), net of appropriate adjustments as determined by the commission to be reasonable, the commission may include, but is not limited to including, the following rate recovery expenditures:

(A) Capital and operating costs incurred or to be incurred as a result of the event;

(B) Lost revenue associated with the event;

(C) Costs and expenses that may be recovered at a later time from third parties or insurers and returned to public utility customers through a separate rate proceeding consistent with cost causation and rate design principles and statutory or regulatory requirements; and

(D) Carrying costs or charges.

(3) A financing order issued under this section must include the following provisions:

(a) Confirmation of the existence of recoverable rate recovery expenditures and authorization to recover rate recovery expenditures and associated financing costs, including the maximum principal amount of bondable rate recovery expenditures and financing costs that may be recovered through securitization;

(b) Authorization for the creation of rate recovery assets and imposition of rate recovery charges that allow for the recovery of rate recovery expenditures, as determined by the commission, and associated financing costs;

(c) A requirement that the rate recovery charges authorized by the financing order are ongoing and may not be avoided by a public utility customer, as described under subsection (4) of this section, until all principal, interest, premium and other amounts due on the rate recovery bonds and financing costs have been paid in full;

(d) A methodology for:

(A) Allocating rate recovery charges between the different classes of public utility customers, which may include not allocating rate recovery charges to one or more classes

of public utility customers, that is consistent with cost causation and rate design principles and statutory or regulatory requirements; and

(B) Adjusting rate recovery charges as necessary to ensure timely payment on, and payment in full of, the rate recovery bonds and associated financing costs or in response to changes to applicable customers, service territories or collection rates;

(e) Authorization for the public utility to issue one or more series of rate recovery bonds with flexibility for the public utility to establish the terms and conditions of the rate recovery bonds, including repayment schedules, initial interest rates and initial financing costs;

(f) Authorization to assign rate recovery assets to a financing subsidiary and grant security interests in the rate recovery assets to secured parties without limiting the rights of subsequent assignees;

(g) Authorization for the bond documentation and ancillary documents related to the rate recovery bonds, including servicing arrangements for the rate recovery charges, without requiring the authorization to be on the final forms of the documents;

(h) Authorization for the public utility to earn a return, at the cost of capital authorized in the public utility's most recent general rate case prior to the date of the financing order, on any moneys advanced by the public utility to fund advances, reserves or capital accounts established under the terms of any indenture, ancillary agreement or financing documents related to the rate recovery bonds;

(i) A finding that the proposed issuance of rate recovery bonds and the imposition of rate recovery charges is expected to provide the lowest possible reasonable and prudent cost on a net present value basis to public utility customers for recovery of the rate recovery expenditures as compared to other methods of financing and recovery;

(j) A date, not earlier than one year from the date that the financing order becomes final, on which the authority to issue rate recovery bonds granted in the financing order expires;

(k) A requirement that the public utility notify the commission if the public utility recovers costs and expenses from a third party or insurer; and

(L) Any other conditions that the commission finds appropriate and that are consistent with this section.

(4) Rate recovery charges authorized by a financing order shall be collected through the rates or charges paid by, and may not be avoided by, the public utility customers located within the public utility's allocated service territory, as the territory existed on the date of the financing order or, if the financing order provides, as such service territory may be expanded, even if:

(a) The public utility customer receives electricity or natural gas, electricity or natural gas services or ancillary services from a successor or assignee of the public utility;

(b) The public utility customer elects to receive electricity or natural gas, electricity or natural gas services or ancillary services from another public utility, utility provider or service provider in the service territory; or

(c) After the date of issuance of the financing order, the public utility customer changes customer class.

(5)(a) Rate recovery assets, including rate recovery charges, and the rights of public utilities, assignees, bondholders and financing parties, established by a financing order issued under this section, are irrevocable and unchangeable, except as provided in the financing order, until all principal, interest, premium, interest and amounts due on the rate recovery bonds and financing costs are paid in full.

(b) Until all principal, interest, premium, interest and amounts due on the rate recovery bonds and financing costs are paid in full, the commission, except as provided in the financing order, the State of Oregon and a public body, as defined in ORS 174.109, may not:

(A) Revalue the rate recovery expenditures or financing costs for ratemaking purposes;

(B) Determine that the rates or revenues authorized under the financing order are unjust or unreasonable;

(C) Reduce, alter or impair the rate recovery assets, rate recovery charges or the collection of the rate recovery charges, or rate recovery bonds or the security for the rate recovery bonds;

(D) Rescind, suspend, amend or impair the financing order; or

(E) When setting other rates or charges for the public utility or taking other actions pursuant to the commission's authority, consider the rate recovery bonds as debt of the public utility, the rate recovery assets to be revenue for the public utility or the rate recovery expenditures to be costs of the public utility.

(6) The commission may not require a public utility to:

(a) Apply to the commission for a financing order designating all or part of rate re-

covery expenditures as bondable rate recovery expenditures; or

(b) Finance or refinance rate recovery expenditures that the commission has designated as bondable rate recovery expenditures.

(7) Jurisdiction for review of a financing order issued under this section shall be as provided for orders in contested cases pursuant to ORS 183.482, except that a petition for rehearing or reconsideration is not allowed. If a petition is not filed with the Court of Appeals within 60 days following the date of issuance of a financing order, the order becomes a final and irrevocable action of the commission and the State of Oregon and is not subject to administrative or judicial challenge. [2023 c.529 §4 (enacted in lieu of 757.455)]

757.463 Security interest as collateral in rate recovery assets; requirements for attachment and perfection; transfers; enforcement rights and remedies. (1)(a) A public utility, finance subsidiary or assignee may grant a security interest in rate recovery assets as collateral for rate recovery bonds. A security interest in rate recovery assets is valid and enforceable against the debtor and third parties, subject only to the rights of any third parties holding security interests in the rate recovery assets attached and perfected in the manner described under this subsection.

(b) A security interest in rate recovery assets attaches if:

(A) The secured party, or a financing party that the secured party represents, has given value; and

(B) The debtor has signed a security agreement granting the secured party a security interest in the rate recovery assets.

(c) A valid and enforceable security interest in rate recovery assets is perfected if:

(A) The security interest has attached in the manner described in paragraph (b) of this subsection; and

(B) A financing statement has been filed in accordance with the requirements of ORS chapter 79 that identifies the debtor as "debtor," the secured party as "secured party" and the rate recovery assets granted as security as the "collateral," and contains a description in the financing statement that refers to the Public Utility Commission's financing order creating the rate recovery assets. The financing statement shall be deemed sufficient under ORS chapter 79 and all other relevant law for identifying the rate recovery assets granted as security.

(d) A perfected security interest in rate recovery assets is a continuously perfected security interest, whether or not the related revenues have accrued or the related rate recovery charges have been charged, billed or collected. Rate recovery assets constitute a presently existing, fully vested property right for the purposes of contracts securing the rate recovery bonds, whether or not the related revenues have accrued or the related rate recovery charges have been charged, billed or collected. Multiple security interests in the same rate recovery assets shall rank according to priority in time of perfection.

(e) Subject to the terms of the security agreement covering the rate recovery assets, the relative priority of a security interest created or perfected under this section is not adversely affected by:

(A) Any later modification of the financing order or rate recovery assets; or

(B) The commingling of proceeds of rate recovery assets with other moneys.

(2)(a) A transfer of rate recovery assets to an assignee is perfected against all third parties if a notice of the transfer, by means of a financial statement:

(A) Is filed in accordance with the requirements of ORS chapter 79;

(B) Specifies that the notice of transfer is filed to provide notice of the transfer of the rate recovery assets from the transferor to the assignee;

(C) Identifies the transferor as "debtor," the assignee as "secured party" and the rate recovery asset as "collateral"; and

(D) Contains a description that refers to the commission's financing order that created the rate recovery assets.

(b) A notice of transfer that is filed in accordance with the requirements under paragraph (a) of this subsection shall be deemed sufficient under ORS chapter 79 and all other relevant laws for identifying the rate recovery assets and for providing notice that the rate recovery assets have been transferred to the assignee.

(c) A transfer is perfected against third parties on the date a notice of transfer is filed.

(d) A transfer of rate recovery assets to a financing subsidiary that is perfected under this subsection is free and clear of all claims, security interests, liens and encumbrances of the transferring public utility, except for any prior security interest perfected under subsection (1) of this section.

(e) The priority of a transfer that is perfected under this subsection is not adversely affected by:

(A) Any later modification of the financing order or rate recovery assets; or

(B) The commingling of proceeds of rate recovery assets.

(3)(a) When proceeds of rate recovery assets are transferred to a segregated account for an assignee or secured party, any lien or security interest that may apply to those proceeds, other than a security interest perfected under subsection (1) of this section, is automatically terminated, without the need for further notice, act or evidence.

(b) Proceeds from rate recovery assets shall be held in trust for an assignee or secured party until the proceeds have been transferred to the assignee or secured party.

(c) Any adjustment in rate recovery charges does not affect the validity, perfection or priority of a security interest in or the transfer of rate recovery assets.

(4)(a) The rights and remedies of a secured party in enforcing a secured interest in rate recovery assets do not include and are without recourse to any public utility asset except for the rate recovery assets, even if the rate recovery assets are commingled with other assets.

(b) If a public utility or finance subsidiary defaults on a required payment with respect to rate recovery bonds, a secured party or secured party's representatives may apply to the commission for relief. Upon application by a secured party or secured party's representatives, the commission shall order, without limiting other remedies of the secured party or secured party's representatives, the sequestration and payment to the secured party or secured party's representatives of the proceeds of the rate recovery assets.

(c) The interest of an assignee or financing party in rate recovery assets is not subject to setoff, counterclaim, surcharge or defense by the public utility or any other person in connection with a bankruptcy, reorganization or insolvency proceeding. However, any surplus in excess of amounts necessary to pay principal, interest, premium, if any, and other amounts due with respect to the rate recovery bonds and associated financing costs, including enforcement costs, with respect to the security agreement shall be remitted to the debtor or transferor.

(d) Notwithstanding any bankruptcy, reorganization or other insolvency proceeding with respect to a public utility, debtor or transferor with respect to rate recovery assets, the commission's financing order shall remain in full force and effect.

(5) A transfer of rate recovery assets by a public utility to a finance subsidiary or other assignee that the parties have expressly stated in the governing documentation to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as a true sale and not as a pledge or other financing of the rate recovery assets. According the holders of rate recovery bonds a preferred right to revenues of the public utility or the provision by the public utility of other credit enhancement with respect to rate recovery bonds does not impair or negate the characterization of a transfer as a true sale.

(6) Any successor to a public utility pursuant to any bankruptcy, reorganization or other insolvency proceeding shall perform and satisfy all obligations of the public utility under an approved contract governing rate recovery bonds in the same manner and to the same extent as was required of the public utility before the proceeding, including, without limitation, billing, collecting and paying to the holders of the rate recovery bonds or their representatives revenues arising with respect to the rate recovery assets pledged to secure the rate recovery bonds.

(7) The granting, perfection and enforcement of security interests in rate recovery assets to secure rate recovery bonds are subject to ORS chapter 79, except that when a provision in ORS chapter 79 comes in conflict with a provision in this section, the provision in this section shall control.

(8) Except for enforcement permitted under the laws of another state, the laws of this state shall govern the creation, validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the creation or transfer of a security interest in a rate recovery asset. [2023 c.529 §6 (enacted in lieu of 757.460)]

757.465 Rate recovery bond not security for certain purposes. A rate recovery bond, as described under ORS 757.457, 757.459, 757.461 and 757.463, that is exempt under ORS 59.025 from ORS 59.049 and 59.055 is not a security for purposes of ORS 59.115, 59.135 or 59.137. [2023 c.529 §7]

Note: 757.465 and 757.467 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.467 Validity of actions taken in good faith pursuant to financing order. If any provision of ORS 757.457, 757.459, 757.461 and 757.463 or the amendments to ORS 59.025, 757.415, 757.425, 757.445 and 757.450 by sections 8 to 12, chapter 529, Oregon Laws 2023, is determined to be invalid, or is invalidated, superseded, replaced, repealed or expired, such determination or occurrence does not affect the validity of any action allowed under ORS 757.457, 757.459, 757.461 and 757.463 or the amendments to ORS 59.025, 757.415, 757.425, 757.445 and

757.450 by sections 8 to 12, chapter 529, Oregon Laws 2023, and taken in good faith and pursuant to a financing order issued prior to such determination or occurrence. [2023 c.529 §14]

Note: See note under 757.465.

TRANSACTIONS INVOLVING UTILITIES

757.480 Approval needed prior to disposal, mortgage or encumbrance of certain operative utility property or consolidation with another public utility; exceptions. (1) A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

(a) Except as provided in subsection (6) of this section, sell, lease, assign or otherwise dispose of the whole of the property of the public utility necessary or useful in the performance of the public utility's duties to the public or any part thereof of a value of $1 million or more, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate the public utility or public utility property, or perform any service as a public utility;

(b) Mortgage or otherwise encumber the whole or any part of the property of the public utility necessary or useful in the performance of the public utility's duties to the public, including any franchise, permit or right to maintain and operate the public utility or public utility property, or perform any service as a public utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of the public utility's lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any public utility property, or perform any service as a public utility, or any part thereof, with any other public utility.

(2) A public utility doing business in Oregon shall annually file with the commission a report that includes a summary of each transaction in excess of $25,000 but less than $1 million that the public utility made during the previous calendar year that involved the sale, lease, assignment or other disposition of the whole of the property of the public utility necessary or useful in the performance of the public utility's duties to the public or any part thereof.

(3) Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation subject to subsection (1) of this section made other than in accordance with the order of the commission authorizing the same is void.

(4) For purposes of complying with subsections (1)(a) and (2) of this section, a public utility shall include in the calculation of the value of the property to be sold, leased, assigned or otherwise disposed of only the portion of the value of the property that has been recognized as the basis of an operating expense or capital expenditure in an Oregon rate valuation or other hearing or proceeding.

(5) This section does not prohibit or invalidate the sale, lease or other disposition by any public utility of property that is not necessary or useful in the performance of the public utility's duties to the public.

(6) A water utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of a transaction, sell, lease, assign or otherwise dispose of the whole of the property of the water utility necessary or useful in the performance of the water utility's duties to the public or any part thereof of a value in excess of $10,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate the water utility or water utility property, or perform any service as a water utility. [Formerly 757.155; 1999 c.530 §1; 2019 c.252 §1]

757.482 Approval to sell or convey real property below market price for development of affordable housing. (1) As used in this section, "affordable housing" means affordable housing as defined in ORS 197A.445 or publicly supported housing as defined in ORS 456.250.

(2)(a) To facilitate the development of affordable housing in this state, the Public Utility Commission may allow a public utility to sell, or to convey at below market price or as a gift, the public utility's interest in real property for the purpose of the real property being used for the development of affordable housing.

(b) The instrument that conveys, or contracts to convey, the public utility's interest in the real property must include an affordable housing covenant as provided in ORS 456.270 to 456.295.

(3) A public utility may not recover costs from customers for selling, or conveying at below market price or as a gift, the public utility's interest in real property under this section. [2023 c.223 §29]

Note: 757.482 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.483 Condemnation or acquisition of service territory or property of electric company by electric utility; stranded costs obligation. (1) For purposes of this section:

(a) "Electric company" has the meaning given that term in ORS 757.600.

(b) "Electric utility" has the meaning given that term in ORS 757.600.

(c) "Retail electricity consumer" has the meaning given that term in ORS 757.600.

(2) Upon the request of an electric company, the Public Utility Commission shall establish a stranded costs obligation payable by an electric utility to an electric company in association with a condemnation or transaction described in subsection (3) of this section.

(3)(a) An electric utility that condemns the service territory or property of an electric company, or acquires property pursuant to a transaction described in ORS 757.480, must pay the stranded costs obligation established by the commission under subsection (2) of this section.

(b) The purpose of the stranded costs obligation is to prevent shifting the costs associated with the loss of service territory or property of an electric company from the retail electricity consumers of the electric utility to the retail electricity consumers of the electric company.

(4) The commission may determine the stranded costs obligation in accordance with the Federal Energy Regulatory Commission's current methodology for determining stranded costs under the same or similar circumstances.

(5) This section does not interfere with or supersede the jurisdiction of the Federal Energy Regulatory Commission. [2016 c.28 §18]

757.485 Purchase of property or stocks of one utility by another. (1) No public utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes and having a value in excess of $10,000 of any other public utility unless authorized so to do by the Public Utility Commission.

(2) Every contract by any public utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other public utility by or through any person, partnership or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose. [Formerly 757.160]

757.490 Approval needed for certain contracts. (1) When any public utility doing business in this state enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of said public utility in Oregon, or the use of the property of the other contracting party, or any part thereof, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges in respect of any such property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for the investigation and approval when the public utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any such proposed contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 757.495 (3) and (6).

(3) In making such investigation the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the public utility as well as of the corporation with which it is proposing to contract, which the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that such contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect, which has the same force and effect as any other determination or order of the commission. [Formerly 757.165; 1989 c.956 §6]

757.495 Contracts involving utilities and persons with affiliated interests. (1) When any public utility doing business in this state enters into any contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the Public Utility Commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the

parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(2) When any public utility doing business in this state enters into any contract, oral or written, with any person or corporation having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of such public utility in Oregon, or the purchase of property, materials or supplies, which shall be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any such contract has been submitted to the commission, the commission promptly shall examine and investigate the contract. If, after such investigation, the commission determines that the contract is fair and reasonable and not contrary to the public interest, the commission shall enter findings and an order to this effect and serve a copy thereof upon the public utility, whereupon any expenses and capital expenditures incurred by the public utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after such investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and an order accordingly and serve a copy thereof upon the public utility, and, except as provided in subsection (4) of this section, it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) When any such contract has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (3) of this section, the commission may not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that such contract has not been approved under subsection (3) of this section.

(5) No public utility shall issue notes or lend its funds or give credit on its books or otherwise to any person or corporation having an affiliated interest, either directly or indirectly, without the approval of the commission.

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission shall be by findings and an order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission with respect to any of such matters shall be and remain in full force and effect, unless and until set aside, modified or remanded in a proceeding for judicial review of an order in the manner provided by ORS 756.610. [Formerly 757.170; 1989 c.956 §7; 2005 c.22 §505; 2005 c.638 §9; 2017 c.312 §5]

757.500 Contracts between certain public utilities. When any public utility is primarily engaged in another enterprise and is only indirectly engaged in the production, transmission, delivery or furnishing of heat, light, water or power to or for the public by reason of a contract or agreement, express or implied, between itself and another public utility which is directly engaged in such business, the jurisdiction of the Public Utility Commission over such public utility extends only to the right to modify, control, rescind, alter or amend any such existing contract or agreement where the interest of the customers of such public utility directly engaged in such business demands. No such contract or agreement is valid or enforceable until it has been approved by the commission as being in the public interest. [Formerly 757.175]

757.505 [Repealed by 1971 c.655 §250]

757.506 Findings and policy regarding exercise of influence over utility by person not engaged in utility business. (1) The Legislative Assembly finds and declares that:

(a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental statewide concern;

(b) Existing legislation requires the Public Utility Commission's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commission's approval of such acquisitions by persons not engaged in the public utility business in Oregon; and

(c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.

(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in

Oregon of the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757.511 in order to prevent unnecessary and unwarranted harm to such utilities' customers. [1985 c.632 §2]

757.510 [Repealed by 1971 c.655 §250]

757.511 Application for authority to exercise influence over utility; contents of application; issuance of order; dissemination of information about acquisition. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (1), (2) or (3).

(2) Notice must be given to the commission of an application under this section at least 60 days before the application is filed with the commission. The notice must indicate whether the transaction is a transaction described in ORS 757.814 (1). If the transaction is a transaction as described in ORS 757.814 (1), the commission shall give notice to cities and counties as required by ORS 757.814 (1).

(3) The application required by subsection (1) of this section shall set forth detailed information regarding:

(a) The applicant's identity and financial ability;

(b) The background of the key personnel associated with the applicant;

(c) The source and amounts of funds or other consideration to be used in the acquisition;

(d) The applicant's compliance with federal law in carrying out the acquisition;

(e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities;

(f) All documents relating to the transaction giving rise to the application;

(g) The applicant's experience in operating public utilities providing heat, light or power;

(h) The applicant's plan for operating the public utility;

(i) How the acquisition will serve the public utility's customers in the public interest; and

(j) Such other information as the commission may require by rule.

(4)(a) The commission shall examine and investigate each application received pursuant to this section. The commission shall issue an order disposing of the application within 11 months of the date the application is filed, unless extended by agreement between the commission and applicant. If the commission determines that approval of the application will serve the public utility's customers and is in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

(b) In reviewing an application received pursuant to this section for an electricity or natural gas utility, the Public Utility Commission must consider the effect of the acquisition or merger on the amount of income taxes paid by the utility or its affiliated group and make any necessary adjustments to the rates of the utility, including the establishment of a balancing account to track income tax expense, to ensure that the acquisition or merger serves the utility's customers and is in the public interest.

(5) Nothing in this section shall prohibit dissemination by any party of information concerning the acquisition so long as such dissemination is not otherwise in conflict with state or federal law. [1985 c.632 §3; 2007 c.807 §2a; 2011 c.137 §4; 2023 c.53 §2]

757.515 [Amended by 1971 c.655 §39; renumbered 756.515]

757.516 Contracts between natural gas utilities and customers for commodity and services; determination by commission of reasonableness of contract and utility activities. (1) Following a Public Utility Commission determination that such services are subject to competition, a natural gas utility may enter into a contract with any customer for the provision of natural gas commodity, rights to pipeline capacity and natural gas transportation services when such services are provided in advance of the point of interconnection between the facility of the natural gas utility and the facility of an interstate pipeline.

(2) Contracts for services described under subsection (1) of this section are not schedules of rates, tolls or charges within the meaning of ORS 757.205 and are not subject to the requirements of ORS 757.205, 757.230 and 757.310.

(3) A contract for services described under subsection (1) of this section may include services provided after the point of interconnection between a natural gas utility's facility and the interstate pipeline's facility. Services provided after the point of interconnection are subject to the requirements of ORS 757.205, 757.230 and 757.310 and shall be separately priced in accordance with the utility's filed tariffs.

(4) A natural gas utility entering contracts for services described under subsection (1) of this section shall make available to the commission any information necessary for review of such contracts for ratemaking purposes. Notwithstanding ORS 192.311 to 192.478, the commission shall not release the terms of any contract or portion of a contract for services described in subsection (1) of this section without the consent of the customer and the natural gas utility except for contracts entered into between a natural gas utility and an affiliated interest of that natural gas utility. Notwithstanding any other provision of this section, a contract for services described in subsection (1) of this section between a natural gas utility and another public utility may be released by the commission pursuant to a hearing held under ORS 757.210.

(5) Nothing in this section shall restrict the commission from subsequent investigation of the reasonableness of contracts entered into under subsection (1) of this section for ratemaking purposes. The commission's review of such contracts for ratemaking purposes shall not in any way affect the obligations or rights of the parties under the contracts.

(6) In accordance with ORS 756.515, the commission may investigate the activities of a natural gas utility related to contracts described under subsection (1) of this section. Notwithstanding any other provision of this section, if the commission finds that the activities of a natural gas utility have not generally been in the public interest, the commission, by order, may require the natural gas utility to file all future contracts described under subsection (1) of this section as provided under ORS 757.205 or 757.240. Any such finding by the commission shall not affect the obligations or rights of the parties under any existing contracts.

(7) Nothing in this section, nor any action taken by the commission pursuant to this section, shall be deemed state action for the purpose of exempting a natural gas utility from liability for anticompetitive conduct or other unlawful practices.

(8) As used in this section, "natural gas utility" means a public utility providing natural gas service to customers. [1993 c.485 §2]

ELIMINATION OF COAL FROM ELECTRICITY SUPPLY

757.518 Elimination of coal-fired resources from allocations of electricity; depreciation; exception; useful life of coal-fired resources; rates. (1) As used in this section:

(a) "Allocation of electricity" means, for the purpose of setting electricity rates, the costs and benefits associated with the resources used to provide electricity to an electric company's retail electricity consumers that are located in this state.

(b)(A) "Coal-fired resource" means a facility that uses coal-fired generating units, or that uses units fired in whole or in part by coal as feedstock, to generate electricity.

(B) "Coal-fired resource" does not include a facility generating electricity that is included as part of a limited duration wholesale power purchase made by an electric company for immediate delivery to retail electricity consumers that are located in this state for which the source of the power is not known.

(c) "Electric company" has the meaning given that term in ORS 757.600.

(d) "Retail electricity consumer" has the meaning given that term in ORS 757.600.

(2) On or before January 1, 2030, an electric company shall eliminate coal-fired resources from its allocation of electricity.

(3)(a) The Public Utility Commission shall adjust any schedule of depreciation approved by the commission for an electric company's coal-fired resource if:

(A) The electric company holds a minority ownership share in only one coal-fired resource, with no more than four generating units; and

(B) The electric company serves at least 800,000 retail electricity consumers and only retail electricity consumers that are located in this state.

(b) The adjusted depreciation schedule described in paragraph (a) of this subsection must require the coal-fired resource described in paragraph (a)(A) of this subsection to be fully depreciated on or before December 31, 2030.

(4) Notwithstanding subsections (2) and (3) of this section, for the number of years requested by the electric company, not to exceed five years after the coal-fired resource is fully depreciated, the commission shall authorize an electric company described in subsection (3) of this section to include in the company's allocation of electricity the costs and benefits associated with the coal-fired resource described in subsection (3)(a)(A) of this section if:

(a) The electric company requests the commission to authorize the allocation of electricity; or

(b) The owners of the coal-fired resource agree to close the coal-fired resource on or before the date that is five years after the date the coal-fired resource is fully depreciated.

(5) For purposes of evaluating the prudence of an investment decision regarding a coal-fired resource made after March 8, 2016, or an investment related to the continued operation of a coal-fired resource made after March 8, 2016, the useful life of the coal-fired resource may not be considered to be any later than January 1, 2030, unless the commission determines otherwise.

(6) Notwithstanding ORS 757.355, this section does not prevent the full recovery of prudently incurred costs related to the decommissioning or remediation of a coal-fired resource or the closure of a coal-fired resource, at the time those costs are incurred. [2016 c.28 §1]

Note: 757.518 and 757.519 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.519 Consideration of net gain or net loss upon sale of coal-fired resource for allocation to certain retail electricity consumers. The Public Utility Commission may consider the net gain or net loss upon the sale of any coal-fired resource, as defined in ORS 757.518, for allocation to the retail electricity consumers, as defined in ORS 757.600, of an electric company that makes sales of electricity to 25,000 or more retail electricity consumers in this state. [2016 c.28 §2]

Note: See note under 757.518.

757.520 [Repealed by 1971 c.655 §250]

GREENHOUSE GAS EMISSIONS STANDARDS

757.522 Definitions for ORS 757.522 to 757.536. As used in ORS 757.522 to 757.536:

(1) "Additional interest" means:

(a) The acquisition, by the holder of an interest in a generating facility located in Oregon, of a separate interest in that generating facility that is producing energy and is in service for tax purposes, commercially operable or in rates on July 1, 2010; and

(b) The renewal of an existing contract of five or more years that includes the acquisition of baseload electricity for an additional term of five or more years where the expected greenhouse gas emissions profile of the contract renewal is substantially similar to that of the previous contract.

(2) "Annual plant capacity factor" means the ratio of the electricity produced by a generating facility during one year, measured in kilowatt-hours, to the electricity the generating facility could have produced if it had been operated at its rated capacity throughout the same year, expressed in kilowatt-hours.

(3)(a) "Baseload electricity" means electricity produced by a generating facility that is designed and intended, at the time a site certificate is issued to the owner of the facility or a permit authorizing the construction and operation of the facility is issued to the owner of the facility by another state or country, to provide electricity on a continuous basis at an annual plant capacity factor of at least 60 percent.

(b) "Baseload electricity" does not include electricity from:

(A) A qualifying facility under the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 to 2645;

(B) A generating source that uses natural gas or petroleum distillates as a fuel source and that is primarily used to serve either peak demand or to integrate energy from a renewable energy source described in ORS 469A.025; or

(C) A generating facility that:

(i) Previously used coal as the facility's primary fuel source;

(ii) Is owned in whole or in part by an electric company; and

(iii) Currently uses natural gas or another resource as the facility's primary fuel source.

(4) "Construction" has the meaning given that term in ORS 469.300.

(5) "Consumer-owned utility" has the meaning given that term in ORS 757.600.

(6) "Electric company" has the meaning given that term in ORS 757.600.

(7) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(8) "Generating facility" includes one or more jointly operated electricity generators that use the same fuel type, have the same in-service date and operate at the same location as described in ORS 469.300.

(9) "Governing board" means the legislative authority of a consumer-owned utility.

(10)(a) "Long-term financial commitment" means an investment in or upgrade of a generating facility that produces baseload electricity, or a contract with a term of more than five years, beginning on the date on which the contract is executed, that includes acquisition of baseload electricity.

(b) "Long-term financial commitment" does not include:

(A) Routine or necessary maintenance;

(B) Installation of emission control equipment;

(C) Installation, replacement or modification of equipment that improves the heat rate of the facility or reduces a generating facility's pounds of greenhouse gases per megawatt-hour of electricity;

(D) Installation, replacement or modification of equipment where the primary purpose is to maintain reliable generation output capability and not to extend the life of the generating facility, and that does not increase the heat input or fuel usage as specified in existing generation air quality permits, but that may result in incidental increases in generation capacity;

(E) Repairs necessitated by sudden and unexpected equipment failure; or

(F) An acquisition of an additional interest.

(11) "Output-based methodology" means a greenhouse gas emissions standard that is expressed in pounds of greenhouse gases emitted per megawatt-hour, factoring in the useful thermal energy employed for purposes other than the generation of electricity.

(12) "Site certificate" has the meaning given that term in ORS 469.300.

(13) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload facility. [2009 c.751 §1; 2013 c.172 §1]

Note: 757.522 to 757.538 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.524 Greenhouse gas emissions standard applicable to electric companies and electricity service suppliers. (1) The greenhouse gas emissions standard that applies to electric companies and electricity service suppliers is 1,100 pounds of greenhouse gases per megawatt-hour for a generating facility.

(2) The greenhouse gas emissions standard applies only to carbon dioxide emissions.

(3) For purposes of applying the emissions standard to cogeneration facilities, the Public Utility Commission shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for cogeneration facilities recognizes the total usable energy output of the process and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. [2009 c.751 §2; 2013 c.172 §2]

Note: See note under 757.522.

757.525 [Repealed by 1971 c.655 §250]

757.526 Petition by electric companies and electricity service suppliers to study greenhouse gas emissions standard; report to Legislative Assembly. No sooner than 90 days after the enactment of a federal law, state law, regulation or rule regulating the emission of greenhouse gases from generating facilities, an electric company, electricity service supplier or the customer of an electric company or electricity service supplier may petition the Public Utility Commission to study the greenhouse gas emissions standard established under ORS 757.524. If the commission undertakes the study, the commission shall determine whether the standard is still necessary to reduce greenhouse gases emitted by electric companies and electricity service suppliers and whether the standard should be repealed or maintained in whole or in part. In making the determination, the commission shall consider whether the enacted federal law, state law, regulation or rule is inconsistent with the standard or renders the standard redundant. The commission shall report the results of the study, and shall include recommendations for legislation, to the Legislative Assembly in the manner described in ORS 192.245 no later than 12 months after receiving the petition. [2013 c.172 §4]

Note: See note under 757.522.

757.528 Greenhouse gas emissions standard applicable to consumer-owned utilities; modification; rules. (1) Unless modified by rule by the State Department of Energy as provided in this section, the greenhouse gas emissions standard that applies to consumer-owned utilities is 1,100 pounds of greenhouse gases per megawatt-hour for a generating facility.

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

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

(4) The department shall review the greenhouse gas emissions standard established under this section no more than once every three years. After public notice and hearing, and consultation with the Public Utility Commission, the department may:

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

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

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

(B) Has a heat rate at high elevation within the boundaries of the Western Electricity Coordinating Council; and

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

(5) In modifying the greenhouse gas emissions standard, the department shall:

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

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

(6) If upon a review conducted pursuant to subsection (4) of this section, the department determines that a mandatory greenhouse gas emissions limit has been established pursuant to state or federal law, the department shall issue a report to the appropriate legislative committees of the Legislative Assembly stating which portions, if any, of the greenhouse gas emissions standard are no longer necessary as a matter of state law. [2009 c.751 §3]

Note: See note under 757.522.

757.530 [Repealed by 1971 c.655 §250]

757.531 Emissions standard-based restrictions on long-term financial commitments by electric companies or electricity service suppliers; rules. (1)(a) An electric company or electricity service supplier may not enter into a long-term financial commitment unless the baseload electricity acquired under the commitment is produced by a generating facility that complies with a greenhouse gas emissions standard established under ORS 757.524.

(b) A generating facility complies with the greenhouse gas emissions standard established under ORS 757.524 if the rate of emissions of the facility does not exceed the emissions standard.

(c) In determining whether a generating facility complies with the emissions standard, the total emissions associated with producing baseload electricity at the generating facility are included in determining the rate of emissions of greenhouse gases. The total emissions associated with producing electricity at the generating facility do not include emissions associated with transportation, fuel extraction or other life-cycle emissions associated with obtaining the fuel for the facility.

(2) Notwithstanding subsection (1) of this section, the emissions standard does not apply to greenhouse gas emissions produced by a generating facility owned by an electric company or electricity service supplier or contracted through a long-term financial commitment if the emissions:

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

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

(c) Come from a generating facility that has in place a plan, as determined by the Public Utility Commission, to be a low-carbon emissions resource, pursuant to sufficient technical documentation, within seven years of commencing plant operations.

(3) Notwithstanding ORS 757.524 and subsection (1) of this section, the commission may exempt a long-term financial commitment by an electric company or an electricity service supplier from the greenhouse gas emissions standard if the commission finds that the commitment is a necessary and prudent response to:

(a) Unanticipated electricity system reliability needs; or

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

(4) Notwithstanding subsection (1) of this section, an electric company may enter into a long-term financial commitment that does not meet the emissions standard established under ORS 757.524 if the electric company does not seek recovery of the costs in retail sales in this state.

(5) The commission by rule shall establish:

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

(b) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard established under ORS 757.524. [2009 c.751 §4]

Note: See note under 757.522.

757.533 Emissions standard-based restrictions on long-term financial commitments by consumer-owned utilities; rules. (1)(a) A governing board of a consumer-owned utility may not enter into a long-term financial commitment unless the baseload electricity acquired under the commitment is produced by a generating facility that complies with a greenhouse gas emissions standard established under ORS 757.528.

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

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

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

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

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

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

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

(a) Unanticipated electricity system reliability needs;

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

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

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

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

(6) The department by rule shall establish:

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

(b) Emissions to be attributed to such contracts for purposes of determining compliance with the emissions standard established under ORS 757.528. [2009 c.751 §5]

Note: See note under 757.522.

757.535 [Repealed by 1971 c.655 §250]

757.536 Public Utility Commission review of plans and rates to ensure compliance with greenhouse gas emissions standard; rules. (1)(a) The Public Utility Commission may not acknowledge in an integrated resource plan, or allow in customer rates, the costs of a long-term financial commitment by an electric company or by an electricity service supplier unless the baseload electricity proposed to be acquired under the commitment is produced by a generating facility that complies with the greenhouse gas emissions standard established under ORS 757.524.

(b) The commission shall revoke the certification under ORS 757.649 of an electricity service supplier entering into a long-term financial commitment to serve customers in this state if baseload electricity acquired under the commitment is produced by a generating facility that does not comply with the

greenhouse gas emissions performance standard established under ORS 757.524.

(2) Pursuant to ORS 756.040, the commission shall adopt rules for the implementation of this section.

(3) Within 90 days of application by an electric company or electricity service supplier, the commission shall determine whether the electric company's or electricity service supplier's proposal to enter into a long-term financial commitment complies with the greenhouse gas emissions standard established under ORS 757.524. The commission may not decide in a proceeding under this subsection issues involving the actual costs to construct and operate the selected resource, cost recovery or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs. [2009 c.751 §6]

Note: See note under 757.522.

757.538 Rules. The Public Utility Commission and the State Department of Energy shall adopt rules as necessary to implement ORS 757.522 to 757.536. [2009 c.751 §8]

Note: See note under 757.522.

VOLUNTARY EMISSION REDUCTION PROGRAM

757.539 Eligibility criteria; contents of application; project proposal processes; recovery of costs; rate cap; report to Legislative Assembly. (1) As used in this section, "emission" means any anthropogenic gas, such as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

(2) The Public Utility Commission shall establish a voluntary emission reduction program for the purposes of incentivizing public utilities that furnish natural gas to invest in projects that reduce emissions and providing benefits to customers of public utilities that furnish natural gas.

(3) As part of the emission reduction program, the commission shall establish eligibility criteria for projects. The eligibility criteria must include:

(a) That the public utility requesting the project be a public utility that furnishes natural gas and that the project involve the provision of natural gas;

(b) That the project directly or indirectly reduce emissions;

(c) That the project benefit customers of the public utility as identified by the commission by rule or order;

(d) That the public utility, without the emission reduction program, would not invest in the project in the ordinary course of business;

(e) That the public utility, prior to filing an application under subsection (4) of this section, involve stakeholders as required by the commission by rule or order; and

(f) That the rate impact of the aggregate of all projects undertaken by a public utility under this section not exceed an amount established by the commission by rule or order.

(4) For each project that a public utility proposes under this section, the public utility must file with the commission an application. An application filed under this subsection must include:

(a) A description of the project;

(b) The projected amount of capital and operating costs necessary to complete and operate the project;

(c) The projected amount of reduced emissions created by the project;

(d) The potential of the project to reduce emissions not identified in paragraph (c) of this subsection;

(e) The projected date on which the project will become operational;

(f) A requested method, as described in subsection (8) of this section, for recovery of costs incurred and investments made and for the receipt of additional incentives;

(g) An explanation of why the public utility, without the emission reduction program, would not invest in the project in the ordinary course of business;

(h) Proof of stakeholder involvement;

(i) The projected rate impact of the project;

(j) The projected aggregate rate impact of all projects proposed by the public utility under this section and approved by the commission for the public utility under this section;

(k) An explanation of how the public utility will provide the commission with progress updates during the life of the project, including updates on costs and reduced emissions associated with the project; and

(L) Any other information required by the commission by rule or order.

(5)(a) The commission shall establish a two-tiered process for submitting a project proposal under the emission reduction program. For the purpose of establishing the tiers, the commission shall:

(A) Establish a threshold for overall project cost; and

(B) Establish a threshold for overall project cost per metric ton of reduced emissions.

(b) If a proposed project meets both the threshold described in paragraph (a)(A) of this subsection and the threshold described in paragraph (a)(B) of this subsection, the project is a tier one project subject to the requirements of subsection (6) of this section. If a proposed project does not meet the threshold described in paragraph (a)(A) of this subsection or the threshold described in paragraph (a)(B) of this subsection, the project is a tier two project subject to the requirements of subsection (7) of this section.

(6) For tier one projects, the commission shall:

(a) Provide interested parties with an opportunity to submit written comment in response to the proposed project;

(b) Hold a public hearing to address all submitted written comments; and

(c) Issue a final order on the proposed project within 90 days of receiving the application for the project, or at a later time as authorized by the public utility.

(7) For tier two projects, the commission shall:

(a) By rule or order, provide interested parties with an opportunity to submit testimony in response to the proposed project and be heard; and

(b) Issue a final order on the proposed project within 180 days of receiving the application for the project, or at a later time as authorized by the public utility.

(8) If a final order issued under subsection (6)(c) or (7)(b) of this section authorizes a project, the order shall specify:

(a) The type of ratepayer from whom the public utility that submitted the project proposal may recover costs incurred and investments made and receive any allowed additional incentives. A public utility may recover costs incurred and investments made and receive any allowed additional incentives from a type of ratepayer under this paragraph only if the commission makes a finding that the type of ratepayer receives a benefit from the project. If the commission makes a finding that more than one type of ratepayer receives a benefit from the project, the commission shall allow recovery of costs incurred and investments made and receipt of any allowed additional incentives from each type of ratepayer in an amount that is proportionate to the proportion of the benefit received, as determined by the commission, by the type of ratepayer.

(b) The method by which the public utility that submitted the project proposal may recover costs incurred and investments made and receive any allowed additional incentives, and the amount that the public utility may recover and receive. Methods of recovery and receipt include:

(A) Payment per unit of reduced emissions;

(B) Preapproval for inclusion in the public utility's rates of costs prudently incurred and of investments prudently made;

(C) Return of investment and return on investment; and

(D) Any other method approved by the commission by rule or order.

(9) For purposes related to the emission reduction program established under this section, the commission may consider the amount of reduced emissions created by a project or the value of reduced emissions created by a project.

(10) The commission shall establish a rate cap for each public utility for which a project is authorized under this section. The rate cap must limit the cost of all of the public utility's projects authorized under this section to an amount that does not exceed a percentage of the public utility's revenue requirement as identified by the commission by rule or order.

(11) The commission shall biennially conduct a study on whether federal law or regulation or other state laws or rules provide adequate incentives for public utilities that furnish natural gas to invest in projects that reduce emissions in the ordinary course of business. The commission shall report the results of a study conducted under this subsection, and may make recommendations for legislation, to the Legislative Assembly in the manner described in ORS 192.245 not later than February 1 of each odd-numbered year. [2013 c.607 §2; 2015 c.24 §1]

757.540 [Amended by 1971 c.655 §53; renumbered 756.568]

757.541 [1987 c.599 §1; repealed by 1995 c.691 §8]

OREGON UTILITY NOTIFICATION CENTER

757.542 Definitions for ORS 757.542 to 757.562. As used in ORS 757.542 to 757.562 and 757.993:

(1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal or state legal holiday.

(2) "Damage" means harm to or destruction of underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support; the penetration, impairment or destruction of any coating, housing or other protective device; and the denting of, penetration into or severance of underground facilities.

(3) "Excavation" means any operation in which earth, rock or other material on or

below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities.

(4) "Excavator" means any person who engages in excavation.

(5) "Operator" means any person, public utility, municipal corporation, political subdivision of the state or other person with control over underground facilities.

(6) "Underground facilities" means items partially or entirely below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors that are underground.

(7) "Unlocatable underground facilities" means underground facilities that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires. [1995 c.691 §1]

Note: 757.542 to 757.562 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.545 [Repealed by 1971 c.655 §250]

757.546 [1987 c.599 §2; repealed by 1995 c.691 §8]

757.547 Oregon Utility Notification Center; board; member qualifications; terms; meetings; rules. (1)(a) The Oregon Utility Notification Center is created as an independent not-for-profit public corporation. The corporation shall be governed by a board of directors consisting of one member appointed to represent each of the following:

(A) Cities with a population of 25,000 or more;

(B) Cities with a population under 25,000;

(C) Counties;

(D) Natural gas utilities regulated by the Public Utility Commission under ORS chapter 757;

(E) Electric utilities regulated by the Public Utility Commission under ORS chapter 757;

(F) Water districts, special districts, sanitary districts or water and sanitary authorities;

(G) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(H) Telecommunications utilities serving 50,000 access lines or more and regulated by the Public Utility Commission under ORS chapter 759;

(I) Telecommunications cooperatives;

(J) Electric cooperatives;

(K) People's utility districts;

(L) Contractors;

(M) Excavators;

(N) Railroads;

(O) Cable system operators; and

(P) Municipal electric utilities.

(b) To facilitate appointment of members of the first board of directors, the Public Utility Commission shall, by order, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by the commission's order, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(c) After appointment of the first board of directors, to facilitate appointment of new members to the board, the board shall, by rule, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by rule, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(d) If the board of directors determines that a group not listed in paragraph (a) of this subsection should be represented on the board, the board may select an organization that is most representative of the group and may ask that organization to nominate a member. Upon receipt of the nomination, the board may request that the Governor appoint the nominee.

(e) The Governor shall also appoint to the board of directors one employee of the commission and one employee of the Department of Transportation.

(2) The term of office of a member is four years. A member is eligible for reappointment. Before the expiration of the term of a member, the board of directors shall solicit

a nomination as provided in subsection (1) of this section and the Governor shall appoint a successor. If there is a vacancy for any cause, the board shall solicit a nomination as provided in subsection (1) of this section and the Governor shall make an appointment to become immediately effective for the unexpired term. A member may continue to serve until a successor is appointed. Nothing in this subsection or subsection (1) of this section shall restrict the authority of the Governor to appoint a person other than one of the persons nominated according to this subsection or subsection (1) of this section.

(3) The board of directors shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers as the board considers necessary for the performance of the functions of those offices. A minimum of seven of the members of the board constitutes a quorum for the transaction of business.

(4) The board of directors shall meet at least once every three months at a time and place determined by the board. The board shall meet at such other times and places specified by the call of the chairperson or of a majority of the members of the board. [1995 c.691 §2; 1999 c.451 §2]

Note: See note under 757.542.

757.550 [Repealed by 1971 c.655 §250]

757.551 [1987 c.599 §3; repealed by 1995 c.691 §8]

757.552 Duties of center; fees for services; rules; exemption from certain financial administration laws. (1) It is the function of the board of directors to operate the Oregon Utility Notification Center, through which a person shall notify operators of underground facilities of proposed excavations and request that the underground facilities be marked.

(2) The board of directors shall:

(a) Utilize a competitive process to contract with any qualified person to provide the notification required under subsection (1) of this section.

(b) Subject to subsection (3) of this section, establish rates, on a per call basis, under which subscribers shall pay to fund all of the activities of the Oregon Utility Notification Center.

(c) Adopt rules according to ORS chapter 183 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.

(3) The Oregon Utility Notification Center shall have all of the powers of a state agency. Except as provided in subsection (2) of this section, the provisions of ORS 279.835 to 279.855 and 283.085 to 283.092 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to the Oregon Utility Notification Center.

(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than $500 for any of the following subscribers:

(a) Cities with a population under 15,000;

(b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(c) Cable system operators serving fewer than 15,000 customers;

(d) Utilities, special districts, people's utility districts or authorities providing electricity, water or sanitary sewer service to fewer than 15,000 residential customers; and

(e) Telecommunications cooperatives. [1995 c.691 §3; 1999 c.451 §3; 2001 c.104 §293; 2003 c.794 §329; 2012 c.107 §69]

Note: See note under 757.542.

757.555 [Amended by 1971 c.655 §49; renumbered 756.555]

757.556 [1987 c.599 §5; repealed by 1995 c.691 §8]

757.557 Underground utility facility operators required to subscribe to center; liability for damage from excavation for nonsubscribers; exemption. (1) Every operator of underground facilities shall subscribe to the Oregon Utility Notification Center.

(2) Any person intending to excavate shall notify the Oregon Utility Notification Center at least two but not more than 10 business days before commencing an excavation. The board of directors shall, by rule, provide an exception to the requirement of advance notice for excavators in cases that involve an immediate danger to life or property, or a customer service outage. The board may adopt additional exceptions as the board, in its discretion, determines necessary.

(3) Nonsubscribing operators of underground facilities shall be responsible to all injured parties for all costs associated with damages to such facilities, loss of product or service or damages that occur as a result of excavation where the facilities damaged are under the control of the nonsubscribing operator and proper notice was given to the Oregon Utility Notification Center.

(4) The provisions of this section shall not apply to operators of underground facilities that are located entirely on private

property and that provide services exclusively for the use of residents or owners of the property. [1995 c.691 §4; 2001 c.104 §294]

Note: See note under 757.542.

757.560 [Repealed by 1971 c.655 §250]

757.561 [1987 c.599 §4; repealed by 1995 c.691 §8]

757.562 Report to Legislative Assembly of center activities; contracts to carry out duties. (1) The board of directors shall file with the Legislative Assembly and the Governor, not later than April 15 of each year, a report covering the activities and operations of the Oregon Utility Notification Center for the preceding calendar year according to the provisions of ORS 192.230 to 192.250.

(2) In carrying out the duties, functions and powers imposed by law on the Oregon Utility Notification Center, the board of directors may contract with any state agency or private party for the performance of such duties, functions and powers as the board considers appropriate. [1995 c.691 §5]

Note: See note under 757.542.

757.565 [Repealed by 1971 c.655 §250]

757.566 [1987 c.599 §6; repealed by 1995 c.691 §8]

757.570 [Repealed by 1971 c.655 §250]

757.571 [1987 c.599 §§7,8; repealed by 1995 c.691 §8]

757.575 [Repealed by 1971 c.655 §250]

757.580 [Repealed by 1971 c.655 §250]

757.585 [Repealed by 1971 c.655 §250]

757.590 [Amended by 1971 c.655 §48; renumbered 756.552]

757.595 [Repealed by 1971 c.655 §250]

DIRECT ACCESS REGULATION

757.600 Definitions for ORS 757.600 to 757.687. As used in ORS 757.600 to 757.687, unless the context requires otherwise:

(1) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services.

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(15) "Electricity services" means electricity distribution, transmission, generation or generation-related services.

(16) "Electricity service supplier" means a person or entity that offers to sell elec-

tricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory.

(17) "Governing body" means the board of directors or the commissioners of an electric cooperative or people's utility district, or the council or board of a city with respect to a municipal electric utility.

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

(19) "Low-income weatherization" means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

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

(21) "New renewable energy resource" means a renewable energy resource project, or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that is not in operation on July 23, 1999. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

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

(23) "People's utility district" has the meaning given that term in ORS 261.010.

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

(25) "Power generation company" means a company engaged in the production and sale of electricity to wholesale customers, including but not limited to independent power producers, affiliated generation companies, municipal and state authorities, provided the company is not regulated by the commission.

(26) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years, and expenditures for the above-market costs of new renewable energy resources, provided that the State Department of Energy by rule may establish a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(27) "Renewable energy resources" means:

(a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues.

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

(c) Landfill gas and digester gas.

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

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

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

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

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

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

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

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

(35) "Uneconomic utility investment" means all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties as authorized by state or federal law. [1999 c.865 §1; 2001 c.134 §8; 2003 c.186 §75]

757.601 Implementation dates for direct access and portfolio of rate options; exemption for certain small electric companies. (1) All retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access beginning on March 1, 2002. Retail electricity consumers shall not be allowed direct access before that date.

(2) Residential electricity consumers shall be allowed to purchase electricity from among a portfolio of rate options as described in ORS 757.603 not later than March 1, 2002.

(3) ORS 757.600 to 757.691 do not apply to an electric company providing electricity services to fewer than 25,000 consumers in this state unless the electric company offers direct access to any of its retail electricity consumers in this state or offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric utility. [1999 c.865 §2; 2001 c.819 §1; 2003 c.14 §454]

Note: 757.601 was added to and made a part of ORS chapter 757 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.603 Electric company required to provide cost-of-service rate option to all retail electricity consumers; waiver; portfolio of rate options for residential consumers. (1) Except as provided in this section, an electric company shall provide all retail electricity consumers that are connected to the electric company's distribution system with a regulated, cost-of-service rate option.

(2)(a) The Public Utility Commission by order may waive the requirement in subsection (1) of this section for any retail electricity consumer other than residential electricity consumers and small commercial electricity consumers.

(b) Prior to ordering a waiver under this subsection, the commission may conduct such studies as the commission deems necessary and shall provide notice and opportunity for public comment and hearings regarding the proposed waiver.

(c) The commission may order a waiver under this subsection if the commission finds, based on the evidentiary record developed through the conducted studies, public comment and hearings, that a market exists in which retail electricity consumers subject to the waiver are able to:

(A) Purchase supplies of electricity adequate to meet the needs of the retail electricity consumers;

(B) Obtain multiple offers for electricity supplies within a reasonable period of time;

(C) Obtain reliable supplies of electricity; and

(D) Purchase electricity at prices that are not unduly volatile and that are just and reasonable.

(3) Each electric company shall provide each retail electricity consumer that is connected to its distribution system and whose electricity demand at any point of delivery is less than 30 kilowatts a portfolio of rate options. The portfolio of rate options shall include at least the following options:

(a) A rate that reflects significant new renewable energy resources;

(b) A market-based rate; and

(c) If the commission finds, through public comment and hearing or through market research conducted by the electric company, that demand is sufficient to justify the rate, a rate option for electricity associated with a specific renewable energy resource, including solar photovoltaic energy.

(4) The commission shall regulate the cost-of-service rate option under subsection (1) of this section and the portfolio of rate options under this section. The commission:

(a) Shall reasonably ensure that the costs, risks and benefits of serving each option are reflected in the rates for each option, and such rates may include a monthly flat rate or charge in addition to usage.

(b) May prohibit or otherwise limit the use of a cost-of-service rate by retail electricity consumers who have been served through direct access.

(c) May limit switching among the portfolio of rate options and the cost-of-service rate.

(5)(a) As used in this subsection, "government" means a city, county, irrigation district, ditch improvement district, water control district, or government of a federally recognized Indian tribe in Oregon.

(b) An electric company may file, as part of a portfolio of rate options required under this section and if agreed to in coordination with one or more governments to meet adopted renewable and nonemitting energy goals, a program of rates or charges that reflect the cost of an electric company program to serve retail electricity consumers within the boundaries of those governments with electricity:

(A) Derived from new or existing renewable energy resources or nonemitting energy resources, including supply and demand-side resources; or

(B) Paired with unbundled renewable energy certificates, as defined in ORS 469A.005, from new or existing renewable energy resources.

(c) The commission may approve a rate or charge under this subsection if:

(A) The government attests that the coordination required under paragraph (b) of this subsection occurred and the electric company includes the attestation in the filing for a program of rates or charges;

(B) The government enacts or adopts an ordinance, charter provision, resolution or other regulation requiring that retail electricity consumers within the boundaries of the government must, as determined during the coordination required by paragraph (b) of this subsection and conducted in accordance with this paragraph, be served with renewable energy resources or nonemitting energy resources, including at the option of the government, resources such as:

(i) Energy from community-based resources, including solar photovoltaic, storage, microgrids, irrigation district-owned projects, in-pipe hydroelectric, or micro-hydroelectric, that provide community cobenefits, such as:

(I) Community stability;

(II) Community reinvestment;

(III) Ownership by a nonprofit organization or renewable energy cooperative that represents an environmental justice community;

(IV) Ownership by the government;

(V) Disaster resiliency;

(VI) Water savings;

(VII) Species protection;

(VIII) Direct cost savings to customers; or

(IX) Local economic development and jobs; and

(ii) Renewable and nonemitting energy resources acquired through government specified procurement criteria which may include goals for local or diverse ownership;

(C) The ordinance, charter provision, resolution or other regulation specifies that:

(i) All eligible retail electricity consumers served within the boundaries of the government are placed on the rate schedule by the electric company, upon commission approval, but have an opportunity to decline to be served by the rate option; and

(ii) Retail electricity consumers within the boundaries of the government that are connected to the distribution system and whose electricity demand at any point of delivery is greater than 30 kilowatts may choose to be placed on the rate schedule, if the electric company determines that electricity demand at the consumer's point of delivery is greater than 30 kilowatts because of additional demand resulting from electrification of transportation or other services, including electric vehicle charging stations, after September 25, 2021;

(D) The ordinance, charter provision, resolution or other regulation includes protections, such as subsidies or bill payment assistance, for low-income retail electricity consumers affected by the rates or charges and provides that these protections are paid for solely by retail electricity consumers within the boundaries of the government;

(E) The electric company has included in the program provisions to minimize the shifting of costs from retail electricity consumers to other customers who do not participate;

(F) The ordinance, charter provision, resolution or other regulation sets forth the duration of the program; and

(G) The electric company utilizes commission-approved procurement processes, to the extent those processes apply, and the procurement criteria agreed to with the government in subparagraph (B)(ii) of this paragraph.

(d) After the electric company receives approval to serve retail electricity consumers within the boundaries of the government according to the program of rates or charges adopted pursuant to this subsection, the electric company must:

(A) Prior to commencing the program, receive acknowledgement from the government to proceed with the program as approved by the commission and, if the government declines to proceed, shall file to suspend the rates and charges under the program;

(B) Include information on its monthly bills to participating retail electricity consumers identifying the program's cost;

(C) Provide notice to participating retail electricity consumers of any change in rate for participation in the program; and

(D) Provide an annual report to the commission and participating governments summarizing the program activities in the prior calendar year.

(e) The commission shall allow the electric company, for purposes of the new or existing renewable energy resources or nonemitting energy resources that serve the program of rates or charges adopted pursuant to this subsection:

(A) To own the facilities or use power purchase agreements.

(B) To recover part or all of the costs associated with the resources that serve the program, including costs associated with resources described in subparagraph (A) of this paragraph, from all retail electricity consumers not served by an electricity service supplier, if:

(i) The electric company can demonstrate that above-market or incremental costs of those resources have been paid for by program participants;

(ii) An integrated resource plan conducted by the electric company shows an energy or capacity need and the company demonstrates that such resources are capable of meeting that need, in whole or in part;

(iii) The electric company will use the resources to meet a renewable portfolio standard imposed by ORS 469A.052;

(iv) The resources help the electric company comply with ORS 469A.410; or

(v) All customers will otherwise benefit from inclusion of the costs in rates collected from all customers.

(C) To collect moneys from participating retail electricity consumers in excess of the cost of service and defer revenues or costs associated with the program for the purposes of making future investments in resources or renewable energy certificates to serve program participants and for the purposes of protecting nonparticipating retail electricity consumers should the government end its participation in the program.

(D) To recover the costs associated with the resources that serve the program, including costs associated with resources described in subparagraph (A) of this paragraph, from retail electricity consumers within the boundaries of the government other than those served by electricity service suppliers, if the government ends its participation in the program and the costs are not otherwise recoverable under subparagraph (B) of this paragraph.

(6) Nothing in subsection (3) of this section prohibits an electric company from providing retail electricity consumers that are connected to its distribution system and whose electricity demand at any point of delivery is greater than 30 kilowatts a portfolio of rate options.

(7) Notwithstanding the exemption to ORS 757.600 to 757.691 provided by ORS 757.601 (3), an electric company serving fewer than 25,000 customers in this state may propose a program for approval by the commission if the program meets the criteria specified in this section. [1999 c.865 §4; 2001 c.819 §2; 2015 c.556 §1; 2021 c.508 §20]

757.605 [1961 c.691 §2; 1971 c.655 §97; renumbered 758.400]

757.606 [Formerly 758.040; renumbered 165.475]

757.607 Direct access conditions; cost recovery. The Public Utility Commission shall ensure that direct access programs offered by electric companies meet the following conditions:

(1) The provision of direct access to some retail electricity consumers must not cause the unwarranted shifting of costs to other retail electricity consumers of the electric company. The commission may, in establishing any rates and charges under ORS 757.600 to 757.667, consider and mitigate the rate impact on consumers from the reduction or elimination of subsidies in existing rate structures.

(2) The direct access, portfolio of rate options and cost-of-service rates may include transition charges or transition credits that reasonably balance the interests of retail electricity consumers and utility investors. The commission may determine that full or partial recovery of the costs of uneconomic utility investments, or full or partial pass-through of the benefits of economic utility investments to retail electricity consumers, is in the public interest.

(3) The commission shall allow recovery, through a transition charge, of any otherwise unrecoverable costs arising from or related to an electric company's contractual or other legal obligations to the Bonneville Power Administration under ORS 757.663, or arising from or related to a failure of the Bonneville Power Administration to meet its contractual or other legal obligations to the electric company, from those classes of consumers for which electric power was purchased from the Bonneville Power Administration.

(4) Notwithstanding ORS 757.355, the commission may allow a return on the unamortized balance of an uneconomic utility investment or an economic utility investment that is included in rates. [1999 c.865 §8]

757.609 Date for announcing prices for electricity in subsequent calendar year; estimated prices. (1) The Public Utility Commission shall set a date on which all electric companies must announce prices that will be charged for electricity by the companies in the subsequent calendar year. Retail electricity consumers who are eligible for direct access must be allowed at least three business days after the date set by the commission to elect whether to use direct access or to purchase electricity from an electric company.

(2) All electricity service suppliers and electric companies must announce estimated prices that will be charged for electricity by the suppliers and companies in the subsequent calendar year or contract period at least five days before the date set by the commission under subsection (1) of this section. [2003 c.478 §2]

Note: 757.609 was added to and made a part of 757.600 to 757.687 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.610 [1961 c.691 §18; renumbered 758.405]

757.611 [Formerly 758.050; renumbered 165.480]

757.612 Requirements for public purpose expenditures; rules. (1)(a) There is established an annual public purpose expenditure standard for electric companies and Oregon Community Power to fund:

(A) The above-market costs of new renewable energy resources and customer investments in distribution system-connected technologies that support reliability, resilience and the integration of renewable energy resources with the distribution systems of electric companies and Oregon Community Power;

(B) New low-income weatherization;

(C) New energy-related investments in schools; and

(D) Low-income housing.

(b) The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Until January 1, 2036, an electric company or Oregon Community Power shall collect a nonbypassable public purpose charge equal to 1.5 percent of the revenues described in paragraph (b) of this subsection, apportioned as further set forth in subsection (3)(b) of this section. The electric company or Oregon Community Power shall collect the public purpose charge from all of the retail electricity consumers located within the electric company's or Oregon Community Power's service territory, including retail electricity consumers served by electricity service suppliers.

(b) The percentages described in paragraph (a) of this subsection and subsection (3)(b) of this section shall be calculated as percentages of the total revenues collected by the electric company, Oregon Community Power or the electricity service supplier from retail electricity consumers for electricity services, distribution services, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

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

(b) The public purpose charge described in subsection (2)(a) of this section shall be the sum total of the following percentages of revenues described in subsection (2)(b) of this section, allocated for the following purposes:

(A) 0.3 percent of revenues for school districts that are located in the service territory of the electric company or Oregon Community Power, as further directed under paragraph (e) of this subsection.

(B) As further directed under paragraph (f) of this subsection, 0.51 percent of revenues for:

(i) The above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less; or

(ii) Customer investments in distribution system-connected technologies that support reliability, resilience and the integration of renewable energy resources with the distribution system of the electric company or Oregon Community Power.

(C) 0.55 percent of revenues for new low-income weatherization, as further directed under paragraph (g) of this subsection.

(D) 0.14 percent of revenues for deposit in the Housing and Community Services Department Electricity Public Purpose Charge Fund established by ORS 456.587 (1) for the purpose of providing grants as described in ORS 458.625 (2).

(c) The costs of administering subsections (1) to (5) of this section for an electric company or Oregon Community Power shall be paid out of the funds collected through public purpose charges. The commission may require an electric company or Oregon Community Power to direct funds collected through public purpose charges to state agencies responsible for implementing subsections (1) to (5) of this section in order to pay the costs of administering subsections (1) to (5) of this section.

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

(e)(A) Funds allocated under subsection (3)(b)(A) of this section shall be distributed to individual school districts according to the weighted average daily membership (ADMw) of each school district for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to school districts that are only partially located in the service territory of the electric company or Oregon Community Power.

(B) A school district that receives funds under this paragraph shall use the funds first to pay for energy audits for schools located within the school district or for a fleet audit for the school district. To the extent practicable, a school district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an audit, the school district may expend funds received under this paragraph to implement the audit.

(C) Once an energy audit has been conducted and completely implemented for each school within the school district, the school district may expend funds received under this paragraph for any of the following purposes:

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

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

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources.

(v) Investing in renewable energy resources.

(D) Once a fleet audit has been conducted for the school district, the school district may expend funds received under this paragraph for any of the following purposes:

(i) Purchasing or leasing zero-emission vehicles, as defined in ORS 283.398, including buses.

(ii) Purchasing or installing electric vehicle charging stations to provide electricity to zero-emission vehicles.

(f) Of the funds allocated under subsection (3)(b)(B) of this section, 25 percent must be used for activities, resources and technologies that serve low and moderate income customers, including for technologies that do not have above-market costs.

(g)(A) Funds collected by an electric company or Oregon Community Power, allocated for new low-income weatherization under subsection (3)(b)(C) of this section and directed to the Housing and Community Services Department shall be spent within the service territory of the electric company or Oregon Community Power from which the funds are collected.

(B) As further determined by the Housing and Community Services Department, a portion of the funds described in this paragraph may be used for manufactured housing replacements as a means to deliver energy efficiency, pursuant to a program dedicated to manufactured housing replacement.

(C) For purposes of this paragraph and as further determined by the Housing and Community Services Department, purposes related to new low-income weatherization includes providing funding for participants in programs by low-income weatherization service providers to change energy sources from bulk fuels to electricity service.

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

(4)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company or Oregon Community Power for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for the above-market costs of new renewable energy resources and investments in distribution system-connected technologies incurred by the retail electricity consumer, not to exceed 25.5 percent of the annual public purpose charges, less administration costs incurred under this paragraph and paragraphs (b) and (c) of this subsection. The credit may not exceed, on an annual basis, the lesser of:

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

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to the above-market costs of new renewable energy resources and investments in distribution system-connected technologies.

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

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

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

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

(7) For purposes of this section, funds collected by Oregon Community Power through public purpose charges are not considered moneys received from electric utility operations. [1999 c.865 §3; 2001 c.134 §9; 2001 c.819 §3; 2005 c.22 §506; 2007 c.217 §9; 2007 c.301 §27; 2007 c.807 §43a; 2007 c.837 §2a; 2009 c.813 §1; 2011 c.467 §10; 2011 c.566 §2; 2015 c.180 §50; 2017 c.200 §1; 2019 c.565 §7; 2021 c.536 §5; 2021 c.547 §1]

757.613 Whole building assessment; investment in energy efficiency. (1) If an electric company invests moneys collected under ORS 757.054 on new cost-effective local energy conservation, or if the nongovernmental entity described in ORS 757.746 invests moneys paid to the nongovernmental entity under ORS 757.054 on new cost-effective local energy conservation, and if the investment involves updating the energy efficiency of a residential or nonresidential building, the electric company, Oregon Community Power or the nongovernmental entity may make those investments by conducting a whole building assessment of the energy efficiency of the building and, in consideration of the whole building assessment, by maximizing the overall energy efficiency of the building. For purposes of this subsection, a "whole building assessment" means a single assessment of savings opportunities, as identified by the Public Utility Commission by rule or order.

(2) An investment described in subsection (1) of this section must be limited to an investment in a single project, as authorized by the commission by rule or order. [2013 c.383 §1; 2021 c.547 §5]

Note: 757.613 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.615 [1961 c.691 §§3,11; part renumbered 757.652; 1971 c.655 §98; renumbered 758.410]

757.616 [Formerly 758.060; renumbered 165.485]

757.617 Report to Legislative Assembly on public purpose expenditures; independent nongovernmental entity to prepare report; report on low-income bill assistance. (1) The Public Utility Commission and the State Department of Energy jointly shall select an independent nongovernmental entity to prepare a biennial report to the Legislative Assembly describing program spending and results for public purpose requirements undertaken pursuant to ORS 757.612.

(2) The Housing and Community Services Department shall prepare a biennial report to the Legislative Assembly describing program spending and needs for low-income bill assistance. [1999 c.865 §3a; 2021 c.547 §24]

757.620 [1961 c.691 §4; renumbered 758.415]

757.621 [Formerly 758.070; renumbered 165.490]

757.622 Commission to establish terms and conditions for default electricity service to nonresidential consumers. The Public Utility Commission shall establish the terms and conditions for providing default electricity service for nonresidential electricity consumers in an emergency. The commission also shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances when the consumer is receiving electricity services through direct access and elects instead to receive such services through the default service. The terms and conditions for default service established by the commission shall provide for

viable competition among electricity service suppliers. [1999 c.865 §4a]

757.625 [1961 c.691 §5; renumbered 758.420]

757.626 [Formerly 758.080; renumbered 165.495]

757.627 Retail electricity consumers eligible for direct access may aggregate electricity loads. (1) An electric company shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(2) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access. [1999 c.865 §9]

757.629 Reciprocal sales to nonresidential electricity consumers. An electric utility that sells electricity, either directly or through a related party, to a nonresidential electricity consumer of another electric utility in this state shall permit any other electricity service supplier to sell electricity to nonresidential electricity consumers of the electric utility. [1999 c.865 §11]

757.630 [1961 c.691 §6; renumbered 758.425]

757.631 [Formerly 758.090; renumbered 165.840]

757.632 Electricity service supplier's access to electric company's distribution facilities. Every electricity service supplier is authorized to use the distribution facilities of an electric company on a nondiscriminatory basis after the retail electricity consumers of the electricity service supplier are afforded direct access pursuant to ORS 757.601. [1999 c.865 §7]

757.635 [1961 c.691 §7; renumbered 758.430]

757.636 [Formerly 758.100; renumbered 165.845]

757.637 Comparable access to transmission and distribution facilities. To the extent permissible under federal law, the Public Utility Commission shall ensure that an electric company that offers direct access:

(1) Provides electricity service suppliers and retail electricity consumers access to its transmission facilities and distribution system comparable to that provided for its own use; and

(2) Provides electricity service suppliers and retail electricity consumers timely access to information about its transmission facilities and distribution system, metering and loads comparable to that provided to its own nondistribution divisions, affiliates and related parties. [1999 c.865 §10]

757.640 [1961 c.691 §8; renumbered 758.435]

757.641 [Formerly 758.110; renumbered 165.850]

757.642 Unbundling electricity assets; records. (1) Not later than March 1, 2002, an electric company shall unbundle the costs of electricity services into power generation, transmission, distribution and retail services.

(2) Every electric company shall maintain separate accounting records for each component of electricity service provided by the electric company to retail electricity consumers. Accounts shall be maintained according to regulations issued by the Federal Energy Regulatory Commission.

(3) Unless required to provide a different accounting under federal requirements, each electric company shall, to a reasonable level of detail, separately identify and account for its costs of:

(a) Generation;

(b) Transmission services;

(c) Distribution services;

(d) Ancillary services;

(e) Consumer service charges levied on retail electricity consumers, including but not limited to metering and billing;

(f) Investment in public purposes; and

(g) State and local taxes paid by retail electricity consumers.

(4) An electric company shall separately identify and account for the costs of any additional components as the Public Utility Commission may require. [1999 c.865 §5; 2001 c.819 §4]

757.645 [1961 c.691 §9; renumbered 758.440]

757.646 Policies to eliminate barriers to competitive retail market; code of conduct for electric companies; rules. (1) The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market between electricity service suppliers and electric companies. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies and prohibit preferential treatment, or the appearance of such treatment, by the incumbent electric companies toward generation or market affiliates. The commission may require an electric company acting as an electricity service supplier do so through an affiliate.

(2) The commission shall establish by rule a code of conduct for electric companies and their affiliates to protect against market abuses and anticompetitive practices. The code shall, at a minimum:

(a) Require an electric company and any affiliate that shares the same name and logo to disclose to all consumers the relationship between the company and affiliate and to clarify that the affiliate is not the same as the electric company and that in order to receive service from the company a con-

sumer does not have to purchase the services of the affiliate;

(b) Prohibit preferential access by an electric company affiliate to confidential consumer information;

(c) Minimize cross-subsidization between competitive operations and regulated operations, including the use of electric company personnel and other resources;

(d) Prohibit joint marketing activities and exclusive referral arrangements between an electric company and its affiliates;

(e) Provide the commission with all necessary access to books and records;

(f) Require electric companies to make regular compliance filings; and

(g) Require fair treatment of all competitors by a distribution utility.

(3) An electric company shall provide the commission access to all books and records necessary for the commission to monitor the electric company and its affiliate relationships. The commission shall require an electric company biannually to file a report detailing compliance with this subsection.

(4) Notwithstanding subsection (1) of this section, the commission shall ensure that policies developed to mitigate the vertical and horizontal market power of incumbent electric companies do not limit or delay electric companies from offering programs or services or making prudent investments in furtherance of the clean energy targets established by ORS 469A.410 or a program established under ORS 757.603 (5), or that otherwise aid in reducing statewide emissions of greenhouse gases consistent with state policies, including ORS 283.398 and 468A.205. [1999 c.865 §6; 2001 c.683 §18; 2021 c.508 §23]

757.649 Certification of electricity service suppliers; safety standards for distribution systems; billing requirements; rules. (1)(a) A person or other entity shall not act as an electricity service supplier unless the person or entity is certified by the Public Utility Commission. The commission, by rule, shall establish standards for certification of persons or other entities as electricity service suppliers in this state. The rules shall, at a minimum, address:

(A) The ability of the person or entity to meet the person's or entity's obligation to provide electricity services pursuant to direct access; and

(B) The ability of the person or entity to comply with applicable consumer protection laws.

(b) The commission may require an electricity service supplier to provide a bond or other security.

(c) The commission may establish a fee, not to exceed $500, for initial certification and annual recertification of electricity service suppliers.

(d) The commission, at any time, may revoke an electricity service supplier's certification for failure to comply with applicable statutes and rules.

(e) The commission may require an electricity service supplier to provide information necessary to ensure compliance with ORS 757.612. The commission shall ensure the privacy of all information and the protection of any proprietary information provided.

(f) The commission shall require an electricity service supplier to publicly disclose a summary of the aggregated energy supply mix and associated emissions of the power sources that serve the direct access retail electricity consumers of the electricity service supplier, or such other aggregated information comparable to information provided by electric companies to retail electricity consumers as the commission may require.

(2) Every electric utility shall maintain the integrity of its transmission facilities and distribution system and provide safe, reliable service to all retail electricity consumers. Nothing in ORS 757.600 to 757.667 or 757.669 to 757.687 shall reduce or diminish the statutory or contractual obligations of electric utilities to maintain the safety and reliability of their transmission facilities and distribution system and other infrastructure and equipment used to deliver electricity.

(3) The commission for electric companies, or the governing body for other electric utilities, shall adopt rules, ordinances, policies and service quality standards designed to maintain a reliable, safe and efficient distribution system. The commission shall regulate electrical safety regarding generation, transmission, substation and distribution facilities for electric utilities and other electrical system owners and operators as provided under ORS 757.035.

(4) Every bill to a direct access retail electricity consumer from an electricity service supplier shall contain at least:

(a) The rate and amount due for each service or product that the retail electricity consumer is purchasing and other price information necessary to facilitate direct access, as determined by the commission;

(b) The rates and amounts of state and local taxes or fees, if any, imposed on the retail electricity consumer;

(c) The amount of any public purpose charge or credit;

(d) The amount of any transition charge or transition credit; and

(e) Power source and environmental impact information necessary to ensure that all consumers have useful, reliable and necessary information to exercise informed choice, as determined by the commission.

(5)(a) A retail electricity consumer of an electric company shall receive, upon request, a separate bill from every individual electricity service supplier that provides products or services to the retail electricity consumer. If a retail electricity consumer of an electric company does not request separate bills, or a consolidated bill from an electricity service supplier as provided in paragraph (c) of this subsection, the electric company shall consolidate the bills for all electricity services into a single statement, and electricity service suppliers shall provide to the electric company the information necessary to prepare a consolidated statement.

(b) The requirement for bill consolidation by an electric company shall continue through December 31, 2001, after which time the commission may waive the requirement if the waiver results in effective billing procedures for retail electricity consumers.

(c) Upon the request of a retail electricity consumer of an electric company, an electricity service supplier shall consolidate the bills for all electricity services into a single statement, and electric utilities and other electricity service suppliers shall provide to the billing electricity service supplier any information necessary to prepare a consolidated statement.

(d) For retail electricity consumers of an electric company, the commission shall adopt by rule provisions relating to the failure of a consumer to make full payment on a consolidated bill. The rules shall address collection of payments, service disconnection and reconnection, and the allocation of costs associated with collection, disconnection and reconnection. A distribution utility shall be solely responsible for actual disconnection and reconnection. [1999 c.865 §14; 2021 c.508 §25]

757.650 [1961 c.691 §10; renumbered 758.445]

757.652 [Formerly part of 757.615; 1965 c.242 §1; renumbered 758.450]

757.654 Commission authority to investigate allegations of undue market influence. Upon receiving a complaint, or on its own motion, the Public Utility Commission is authorized to investigate, as provided under ORS 756.515, whether any electric company that is an electricity service supplier has exercised undue market power with respect to the sale or distribution of electricity services. The commission may take such action as authorized by law to mitigate an exercise of undue market power. [1999 c.865 §12]

757.655 [1961 c.691 §13; renumbered 758.455]

757.656 Failure to comply with ORS 757.600 to 757.667; cause of action. Any claim that an electric company has failed to comply with ORS 757.600 to 757.667 shall be filed as a complaint with the Public Utility Commission pursuant to ORS 756.500. After reasonable notice to the electric company and exhausting all available remedies before the commission, any person injured by an electric company's failure to comply with any provision of ORS 757.600 to 757.667 may file an action in the circuit court for the county where the electric company has its principal business office in this state for an order requiring compliance with ORS 757.600 to 757.667. [1999 c.865 §13]

757.659 Commission rules; contents. According to the applicable provisions of ORS 756.060 and ORS chapter 183, the Public Utility Commission shall adopt such rules as are necessary to implement ORS 757.600 to 757.667. Rules adopted by the commission shall address at least the following:

(1) Requirements and methodologies for each electric company to provide unbundled rates and services pursuant to ORS 757.642.

(2) Requirements for each electric company allowing aggregation of electricity loads pursuant to ORS 757.627, which may include aggregation of demand for other services available under direct access.

(3) Requirements for consumer protection. Consumer protection rules adopted by the commission that relate to electricity service suppliers shall be applicable throughout this state and shall, at a minimum, contain provisions for the disclosure of price, power source and environmental impact in contract offers and marketing information.

(4) Market valuation methodologies for determining the amount and recovery of the costs of uneconomic utility investment and the amount of and credit for economic utility investment.

(5) Requirements for each electric company to offer a portfolio of rate options under ORS 757.603.

(6) The method of determining a default supplier for those consumers who are not eligible to participate in a portfolio program under ORS 757.603 in a manner that provides for viable competition among electricity service suppliers and among power generation companies. The commission may condition the use of a default service option by requiring reasonable notice and commitment from a consumer who intends to use the default service option in nonemergency situations.

(7) Requirements for market structure described in ORS 757.646.

(8) Requirements for public purpose charges and credits under ORS 757.612.

(9) Requirements for meters, metering services, billing and collection services, and customer response functions. [1999 c.865 §15; 2001 c.683 §19]

757.660 Use of arbitration to resolve disputes relating to valuation of electric company investments; rules. (1) In adopting market valuation methodologies under ORS 757.659 (4), the Public Utility Commission may provide for use of arbitration to resolve disputes relating to valuation of electric company investments.

(2) The commission shall adopt rules for the following purposes:

(a) Establishing the process for selecting an arbitrator under this section.

(b) Establishing the type, scope and subject matter of arbitrations under this section, and the procedure for conducting those arbitrations.

(c) Establishing standards for the decision of an arbitrator under this section.

(d) Governing who may be a party to an arbitration under this section.

(3)(a) An arbitrator selected under rules adopted pursuant to subsection (2) of this section must be experienced in valuing generating resources and may not have any material conflict of interest in the result of the arbitration.

(b) Any party to the arbitration may challenge the selection of an arbitrator by direct petition to the commission. The commission's review of the selection shall be limited to allegations of bias and lack of qualifications. The commission shall hold a hearing within 10 days after the filing of a petition, and the commission shall issue a final decision within 10 days after the hearing. The commission may require selection of a different arbitrator.

(4) The arbitrator shall control the time, manner and place of the arbitration, subject to any limitations established by commission rule.

(5) An arbitrator acts on behalf of the commission in performing duties and powers under this section and under rules adopted by the commission pursuant to this section. Nothing in this section shall be construed to grant any rights or privileges to an arbitrator that are otherwise afforded to persons employed by the state.

(6) The commission shall enforce an arbitration decision made pursuant to this section, unless any party to the arbitration files written exceptions with the commission for any of the following causes:

(a) The decision was procured by corruption, fraud or undue means;

(b) There was evident partiality or corruption on the part of the arbitrator;

(c) The arbitrator exceeded the arbitrator's powers, or so imperfectly executed the arbitrator's powers that the rights of the party were substantially prejudiced;

(d) There was an evident material miscalculation of figures or an evident material mistake in the description of any thing or property referred to in the decision; or

(e) The decision was based on an erroneous interpretation of a statute, rule or other law.

(7) If, after a hearing on the exceptions filed as provided in subsection (6) of this section, it appears to the commission that the decision should be set aside or modified, the commission may by order refer the decision back to the arbitrator with proper instructions for correction or rehearing.

(8) A commission order or decision under this section may not be appealed until after the commission issues a final order adopting the arbitration decision. [2001 c.134 §1a; 2005 c.22 §507; 2005 c.638 §10]

Note: 757.660 was added to and made a part of 757.600 to 757.687 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.661 Commission authority to require filing. The Public Utility Commission may require an electric company to make any filings under this chapter that the commission determines necessary to implement ORS 757.600 to 757.667. [1999 c.865 §20]

757.663 Commission authority to require electric company to enter into contracts with Bonneville Power Administration. In order to preserve the benefits of federal low-cost power for residential and small-farm consumers of electric utilities, the Public Utility Commission may require an electric company to enter into contracts with the Bonneville Power Administration for the purpose of securing such benefits. The contracts shall be subject to approval by the commission. In reviewing a contract, the commission, at a minimum, shall consider:

(1) The short-term expected cost of electric power from the Bonneville Power Administration compared to market-priced alternatives;

(2) The long-term benefit of retaining the rights to purchase electric power from the Bonneville Power Administration at cost, compared to market-priced alternatives; and

(3) Other factors deemed relevant by the commission. [1999 c.865 §19]

757.665 Limitation on installing, servicing electric meters. Electric meter installation, testing and maintenance shall be performed only by a distribution utility. [1999 c.865 §15a]

757.667 City authority over rights of way. Nothing in ORS 757.600 to 757.667 shall diminish, or authorize regulations that diminish, a city's authority to control the use of its rights of way and to collect license fees, privilege taxes, rent or other charges for the use of the city's rights of way. [1999 c.865 §17]

757.669 Policy regarding consumer-owned electric utilities. The Legislative Assembly declares that it is the policy of the State of Oregon regarding consumer-owned utilities to:

(1) Preserve and enhance the ability of community-based, consumer-owned utilities to provide reliable electric power to their consumers;

(2) Recognize that communities served by consumer-owned utilities located in various parts of the State of Oregon may differ in their needs and desires concerning the provision of electricity and related products and services;

(3) Preserve and enhance the ability of consumer-owned utilities and their elected governing bodies to respond to their consumers' needs and desires;

(4) Retain local control over consumer-owned utilities that provide or distribute electricity to retail electricity consumers;

(5) Preserve, clarify and, as provided herein, enhance the rights and authorities of consumer-owned utilities and their governing bodies; and

(6) Preserve the existing exclusive distribution rights of electric utilities as and to the extent such rights exist under current law. [1999 c.865 §22]

757.670 [1961 c.691 §14; renumbered 758.460]

757.672 Application of ORS 757.603 to 757.667 to consumer-owned electric utility; reciprocal electricity sales. (1) Nothing in ORS 757.603 to 757.667 is intended to limit or restrict the rights and authority of a consumer-owned utility, or to subject a consumer-owned utility to the regulatory authority of the Public Utility Commission not otherwise provided by law. ORS 757.603 to 757.667 shall not apply to a consumer-owned utility.

(2) Notwithstanding subsection (1) of this section, a consumer-owned utility that sells electricity, either directly or through a related party, to a nonresidential electricity consumer of another electric utility in this state, shall permit any other electricity service supplier to sell electricity to the consumer-owned utility's nonresidential electricity consumers whose electricity use, measured in average megawatts per year, is equal to or greater than the use of the nonresidential electricity consumer of the other electric utility. Such consumer-owned utility shall be subject to ORS 757.649 (1) to (4) and rules adopted thereunder. [1999 c.865 §23]

757.675 [1961 c.691 §12; 1971 c.655 §99; renumbered 758.465]

757.676 Consumer-owned utility authorized to offer direct, portfolio or other forms of access to electricity services. The governing body of a consumer-owned utility is authorized to determine whether and under what terms and conditions it will offer its retail electricity consumers direct access, portfolio access or other forms of access to electric service suppliers. In making such determination, the governing body of a consumer-owned utility shall consider such factors as it deems appropriate. A consumer-owned utility shall have sole authority to determine:

(1) The quality and nature of electric service, including but not limited to different product and pricing options, which shall be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates, tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) Notwithstanding ORS 757.600 (10) and (35), what constitutes an economic or uneconomic utility investment, the value of such investments and, in the case of uneconomic utility investments, the manner and means of mitigating such investments.

(5) Whether and on what basis a transition charge will be adopted, assessed and collected from a retail electricity consumer located within the utility's service territory, including but not limited to a nonbypassable distribution charge, the amount and period of recovery for the charges, the allocation of the charges among retail electricity consumers located within the utility's service territory and the method of collecting such charges including but not limited to whether to impose a nonbypassable distribution charge.

(6) The manner of collecting stranded distribution charges, systems benefit charges, franchise fees, taxes and payments made in lieu of taxes from retail electricity consum-

ers located within the utility's service territory for electric power transactions using transmission facilities, whether or not such transactions use distribution facilities. The governing body may assign charges on the basis of usage, demand or any combination or method it finds appropriate. Charges need not be assigned to specific facilities.

(7) The collection from retail electricity consumers located within the utility's service territory through rates, fees or charges, including the imposition of a nonbypassable distribution charge, in amounts sufficient to recover 100 percent of stranded costs imposed by, or incurred pursuant to the purchase of cost-based electric power from, the Bonneville Power Administration. Such stranded cost charges may include the difference in cost associated with purchasing electric power from the Bonneville Power Administration and the cost of purchasing a like and similar amount of electric power at market prices.

(8) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the utility's service territory and the consumer-owned utility in dealings with electric service suppliers.

(9) Access to or use of the utility's transmission facilities or distribution system by retail electricity consumers or electric service suppliers.

(10) The utility's qualification standards for energy service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service providers in a nondiscriminatory manner. [1999 c.865 §24; 2003 c.186 §80]

757.679 Net billing agreements. (1) Nothing in ORS 757.669 to 757.687 is intended to impair the rights or obligations of any party to net billing agreements. Notwithstanding any other provision of ORS 757.600 to 757.667, 757.676 and 757.687, and in the event a participating utility is required to make payments pursuant to a net billing agreement, the governing body of a participating utility may levy a rate, fee or charge, including a nonbypassable distribution system access charge against retail electricity consumers located within the utility's service territory, to meet its obligations.

(2) As used in this section:

(a) "EWEB" means the City of Eugene, Oregon, acting by and through the Eugene Water and Electric Board.

(b) "Net billing agreements" means those certain agreements that provide for the payment, through net billing of costs of certain nuclear power projects, including the payment of bonds, notes or other evidences of indebtedness issued by EWEB and by the supply system, respectively, to pay such project costs entered into prior to July 23, 1999:

(A) Between the administrator of the Bonneville Power Administration and EWEB;

(B) Among a participating utility, the administrator of the Bonneville Power Administration and EWEB; or

(C) Among a participating utility, the administrator of the Bonneville Power Administration and the supply system.

(c) "Participating utility" means a consumer-owned utility established by, or organized and existing under, the Oregon Constitution and laws of the State of Oregon, and that is a party to a net billing agreement.

(d) "Supply system" means the Washington Public Power Supply System, a municipal corporation or joint power agency organized and existing under and pursuant to the laws of the State of Washington. [1999 c.865 §25]

757.680 [1961 c.691 §15; renumbered 758.470]

757.683 Consumer-owned utility's distribution rights and control over distribution system. Notwithstanding the provisions of ORS 757.600 to 757.667, a consumer-owned utility shall have exclusive distribution rights, to the extent such rights are provided by law, and exclusive responsibility for the performance and oversight of its distribution system including the acquisition, construction, financing, operation and maintenance of distribution facilities and metering, billing, collection and consumer response functions relating to the distribution of electricity to retail electricity consumers located within the utility's service territory. Nothing in this section shall diminish or enlarge the rights of any person under ORS 758.400 to 758.475. [1999 c.865 §26]

757.685 [1961 c.691 §16; 1965 c.242 §2; 1971 c.655 §99a; renumbered 758.475]

757.687 Consumer-owned utility offering direct access; public purpose charge; bill assistance program. (1) Beginning on the date a consumer-owned utility provides direct access to any class of retail electric consumers, the consumer-owned utility shall collect from that consumer class a nonbypassable public purpose charge until January 1, 2026. Except as provided in subsection (8) of this section, the amount of the public purpose charge shall be sufficient to produce revenue of not less than three percent of the total revenue collected by the consumer-owned utility from its retail electricity consumers for electricity services,

distribution, ancillary services, metering and billing, transition charges and any other costs included in rates as of July 23, 1999, except that the consumer-owned utility may exclude from the calculation of such costs any cost related to the public purposes described in subsection (5) of this section. If a consumer-owned utility has fewer than 17 consumers per mile of distribution line, the amount of the public purpose charge shall be sufficient to produce revenue not less than three percent of the total revenue from the sale of electricity services in the utility's service area to the consumer class that is provided direct access, or the utility's consumer class percentage share of state total electricity sales multiplied by three percent of total statewide retail electric revenue, whichever is less.

(2) Except as provided in subsection (9) of this section, the governing body of a consumer-owned utility shall determine the manner of collecting and expending funds for public purposes required by law to be assessed against and paid by the retail electric consumers of the utility. A determination by the governing body shall include:

(a) The manner for collecting public purpose charges;

(b) Public purpose programs upon which revenue from the charges may be expended; and

(c) The allocation of expenditures for each program.

(3) Beginning on the same date two years after July 23, 1999, a consumer-owned utility shall report annually to the State Department of Energy created under ORS 469.030 on the public purpose charges paid to the utility by its retail electric consumers and the public purposes on which the revenue was expended.

(4) A consumer-owned utility may comply with the public purpose requirements of this section by participating in collaborative efforts with other consumer-owned utilities located in this state.

(5) Funds assessed and paid by, and credits or other financial assistance issued or extended to, retail electric consumers for purposes of this section may, in the discretion of the governing body of the consumer-owned utility, be expended to fund programs for energy conservation, renewable resources or low-income energy services otherwise required by the laws of this state, adopted by the governing body pursuant to the National Energy Conservation Policy Act (Public Law 95-619, as amended November 10, 1981), or conducted by the utility pursuant to agreement with the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501). All such funds expended, credits issued and incremental costs incurred in connection with the performance of a consumer-owned utility's obligations under this section shall be credited toward the utility's public purpose funding obligation under this section.

(6) A consumer-owned utility also may credit toward its funding obligations under this section any incremental costs incurred by the utility for capital expenditures made to reduce its distribution system energy losses, existing biomass gas and waste to energy systems, existing hydroelectric generation projects using fish attraction water, for new energy conservation and renewable resource funding costs included in its wholesale power supplier's charges and for electric power generated by renewable or cogeneration resources pursuant to requirements of the Public Utilities Regulatory Policy Act of 1978 (Public Law 95-617), to the extent that such costs exceed the average cost of the utility's other electric power resources.

(7) A consumer-owned utility also may credit toward its public purpose funding obligations under this section any costs incurred in complying with ORS 469.649 to 469.659.

(8) Beginning on March 1, 2002, a consumer-owned utility whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 megawatts of electricity use per year shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

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

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

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

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

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

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the department hire an independent auditor to assess the potential for conservation measures at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

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

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

(10) A retail electricity consumer with a load greater than one average megawatt shall not be required to pay a public purpose charge in excess of three percent of the consumer's total cost of electricity services unless the charge is established in an agreement between the consumer and the consumer-owned utility.

(11) Beginning on March 1, 2002, a consumer-owned utility shall have in operation a bill assistance program for households that qualify for federal low-income energy assistance in the consumer-owned utility's service area. A consumer-owned utility shall report annually to the Housing and Community Services Department detailing the utility's program and program expenditures.

(12) A consumer-owned utility may require an electricity service supplier to provide information necessary to ensure compliance with this section. The consumer-owned utility shall ensure the privacy and protection of any proprietary information provided. [1999 c.865 §27; 2001 c.819 §5; 2007 c.301 §29]

757.689 [2007 c.301 §46; repealed by 2021 c.547 §13]

757.690 [1961 c.691 §17; repealed by 1967 c.164 §4]

757.691 Applicability. Nothing in ORS 757.669 to 757.687 is intended to affect administration and enforcement of ORS 758.400 to 758.475 or to diminish or enlarge the rights of any person under ORS 758.400 to 758.475. [1999 c.865 §28]

ELECTRICITY BILL MITIGATION AND ASSISTANCE

757.695 Mitigation of energy burdens; costs collection. (1) In addition to comprehensive classifications, tariff schedules, rates and bill credits, the Public Utility Commission may address the mitigation of energy burdens through bill reduction measures or programs that may include, but need not be limited to, demand response or weatherization.

(2) The costs of tariff schedules, rates, bill credits or program discounts allowed pursuant to subsection (1) of this section must be collected in the rates of an electric company through charges paid by all retail electricity consumers, such that retail electricity consumers that purchase electricity from electricity service suppliers pay the same amount to address the mitigation of energy burdens as retail electricity consumers that are not served by electricity service suppliers. [2021 c.90 §7]

757.698 Low-income electric bill payment and crisis assistance. (1) An electric company, as defined in ORS 757.600, or Oregon Community Power shall collect funds for low-income electric bill payment and crisis assistance in an amount determined by the Public Utility Commission. The commission shall:

(a) Establish the amount to be collected and rates to be charged by each electric company from its customers, including customers receiving electricity from other sources, such that the forecasted collection

by all electric companies in a calendar year is at least $20 million.

(b) Adjust the rates if forecasted collections or actual collections are less than $20 million in any calendar year but shall not otherwise adjust the rates once set.

(c) Ensure that no customer pays more than $500 per month per customer site for low-income electric bill payment and crisis assistance.

(2) Funds collected by an electric company or Oregon Community Power under this section must be:

(a) Paid into the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2);

(b) Used by the Housing and Community Services Department solely for purposes related to low-income electric bill payment and crisis assistance and for the Housing and Community Services Department's cost of administering this section; and

(c) Expended in the service area of the electric company or Oregon Community Power from which the funds are collected.

(3) The Housing and Community Services Department shall determine the manner in which funds collected under this section are allocated by the department to energy assistance program providers for the purpose of providing low-income electric bill payment and crisis assistance. However, the department shall:

(a) In consultation with electric companies, investigate and may implement alternative delivery models to effectively reduce service disconnections and related costs to customers and electric companies; and

(b) Direct priority assistance to low-income customers who are in danger of having their electricity service disconnected.

(4) The department shall maintain records and provide those records upon request to an electric company, Oregon Community Power and the Citizens' Utility Board established under ORS chapter 774 on a quarterly basis. Records maintained must include the numbers of low-income customers served, the average amounts paid and the type of assistance provided. Electric companies and Oregon Community Power shall, if requested, provide the department with aggregate data relating to low-income customers served on a quarterly basis to support program development.

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

(6) Notwithstanding ORS 757.310, the commission may allow an electric company or Oregon Community Power to provide reduced rates or other bill payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999. [2021 c.536 §2 and 2021 c.547 §15 as amended by 2021 c.536 §2a]

EMERGENCY CURTAILMENT OF ELECTRICITY OR NATURAL OR MANUFACTURED GAS

757.710 Emergency curtailment plan required; credits for weatherization or alternate energy devices. (1) Any person, as defined in ORS 758.400, engaged in the sale or resale of electricity or natural or synthetic gas in this state shall present for approval by the Public Utility Commission a plan for curtailment of electrical or gas load in the event of any predictable circumstance that may jeopardize prolonged continuity of service. Utility plans shall be submitted in such form and within such time limits as the commission shall specify.

(2) Utility plans may provide for a credit against future curtailment for a customer who has already accomplished a reduction in demand for the utility's service by installing an alternative energy device or by weatherization or other installed conservation measures equivalent to the proposed level of curtailment. Where the level of curtailment exceeds the demand reduction produced, by the conservation measures or installed alternative energy device of the customer, the utility plan may provide for credit against the level of curtailment ordered to the extent of the demand reduction produced by the conservation measure or alternate energy device.

(3) The commission shall approve the feature of any plan concerning such credit against curtailment to the extent of the demand reduction produced and shall not penalize either the utility or the customer, in the event of a curtailment order, under ORS 757.720 for the amount of reduced demand. [1973 c.309 §2; 1975 c.606 §10; 1979 c.355 §1]

757.720 Factors to be considered in approving plan; authority to establish plan; consultation with State Department of Energy. (1) Approval of utility plans for the curtailment of load shall be based on the following factors:

(a) The consistency of the plan with the public health, safety and welfare;

(b) The technical feasibility of implementation of the plan;

(c) The effectiveness with which the plan minimizes the impact of any curtailment; and

(d) Consistency with Oregon energy policies formulated under ORS 469.010 to 469.155, 469.300 to 469.563 and 757.710 and this section.

(2) In the event of an emergency threatening the health, safety and welfare of the general public, the Public Utility Commission may on the commission's own motion and without hearing establish a plan for the curtailment of load by any person referred to in ORS 757.710. If an emergency is not present, the commission shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commission shall consult with the Director of the State Department of Energy before approving a plan. [1973 c.309 §3; 1975 c.606 §11; 2005 c.22 §508]

757.730 Liability when curtailment occurs. A utility shall not be liable for damages to persons or property resulting from a curtailment of service in accordance with a plan approved by the Public Utility Commission. [1973 c.309 §4]

KLAMATH RIVER DAMS

757.732 Definitions for ORS 757.732 to 757.744. As used in ORS 757.732 to 757.744:

(1) "Agreement in principle" means the agreement signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp.

(2) "Allocated share" means the portion of PacifiCorp's costs assigned to this state under the interjurisdictional cost allocation methodology used by the Public Utility Commission for the purpose of establishing rates for PacifiCorp.

(3) "Customers" means the Oregon retail electricity customers of PacifiCorp.

(4) "Final agreement" means a successor agreement to the agreement in principle.

(5) "Klamath River dam" means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in California. [2009 c.690 §2]

757.734 Recovery of investment in Klamath River dams. (1) Not more than six months after the execution of a final agreement, the Public Utility Commission shall determine a depreciation schedule under ORS 757.140 for each Klamath River dam based on the assumption that the dam will be removed in 2020. The commission may change a depreciation schedule determined under this section at any time if removal of a dam will occur during a year other than 2020.

(2) The commission shall use the depreciation schedules prepared under this section to establish rates and tariffs for the recovery of Oregon's allocated share of undepreciated amounts prudently invested by PacifiCorp in a Klamath River dam. Amounts recoverable under this section include, but are not limited to:

(a) Return of investment and return on investment;

(b) Capital improvements required by the United States or any state for continued operation of the dam until dam removal;

(c) Amounts spent by PacifiCorp in seeking relicensing of the dam before July 14, 2009;

(d) Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal of the dam; and

(e) Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of the dam's removal.

(3) If any amount specified under subsection (2) of this section has not been recovered by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery of that amount by PacifiCorp in PacifiCorp's rates and tariffs. The commission shall allow the recovery without an amortization schedule if the impact of the recovery does not exceed one-half of one percent of PacifiCorp's annual revenue requirement. If the impact exceeds one-half of one percent of PacifiCorp's annual revenue requirement, the commission may establish an amortization schedule that limits the annual impact to one-half of one percent of PacifiCorp's annual revenue requirement. [2009 c.690 §3]

757.736 Surcharges for funding costs of removing Klamath River dams; judicial review. (1) Not more than 30 days after the execution of a final agreement, PacifiCorp must file a copy of the final agreement with the Public Utility Commission along with full and complete copies of all analyses or studies that relate to the rate-related costs, benefits and risks for customers of removing or relicensing Klamath River dams and that were reviewed by PacifiCorp during the decision-making process that led to PacifiCorp's entering into the final agreement.

(2) PacifiCorp must include with the filing made under subsection (1) of this section tariffs for the collection of two nonbypassable surcharges from its customers

for the purpose of paying the costs of removing Klamath River dams as described in subsection (11) of this section. Notwithstanding the commission's findings and conclusions under subsection (4) of this section, the commission shall require PacifiCorp to begin collecting the surcharges on the date that the filing is made under subsection (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall continue to collect the surcharges pending a final decision on the commission's order under subsection (4) of this section. The surcharges imposed under this section shall be:

(a) A surcharge for the costs of removing the J.C. Boyle Dam; and

(b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the Iron Gate Dam.

(3) The surcharges imposed under this section may not exceed the amounts necessary to fund Oregon's share of the customer contribution of $200 million identified in the agreement in principle. In addition, the total amount collected in a calendar year under both surcharges may not exceed more than two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last case under ORS 757.210 decided by the commission before January 1, 2010.

(4) Not more than six months after a filing is made under subsection (1) of this section, the commission shall conduct a hearing under ORS 757.210 on the surcharges imposed under this section, and shall enter an order setting forth findings and conclusions as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable.

(5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking judicial review of the order must file a petition for review with the Supreme Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4) of this section. If a petition for review is filed, the surcharges imposed under the terms of the final agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A petition filed under this subsection must indicate on its face that the petition is filed pursuant to this subsection.

(6) The commission may not use any commercially sensitive information provided to the commission in a filing made under subsection (1) of this section for any purpose other than determining whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable. Notwithstanding ORS 192.311 to 192.478, the commission may not release commercially sensitive information provided to the commission under this section, and shall require any person participating in a proceeding relating to the surcharge to sign a protective order prepared by the commission before allowing the participant to obtain and use the information.

(7) The surcharges imposed under this section must be of a specified amount per kilowatt hour billed to retail customers, as determined by the commission. The amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of $200 million identified in the agreement in principle. To the extent practicable, the commission shall set the surcharges so that total annual collections of the surcharges remain approximately the same during the collection period, and, when setting the rate for the surcharges, the commission shall account for the actual and expected changes in energy usage over the collection period and account for the actual and expected changes in interest rates on the collected funds over the collection period. The commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.

(8) Except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under ORS 757.738.

(9) If the commission determines at any time that amounts have been collected under this section in excess of those needed, or in excess of those allowed, the commission must:

(a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers; or

(b) Adjust future surcharge amounts as necessary to offset the excess amounts.

(10) If one or more Klamath River dams will not be removed, the commission shall direct PacifiCorp to terminate collection of all or part of the surcharges imposed under this section. In addition, the commission shall direct the trustee of the appropriate trust account under ORS 757.738 to apply any excess balances in the accounts to Oregon's allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing require-

ments. If any excess amounts remain in the trust accounts after that application, the Public Utility Commission shall order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers in accordance with Public Utility Commission rules and policies.

(11) For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:

(a) Physical removal of the dams;

(b) Site remediation and restoration;

(c) Avoiding downstream impacts of dam removal;

(d) Downstream impacts of dam removal;

(e) Permits that are required for the removal;

(f) Removal and disposal of sediment, debris and other materials, if necessary; and

(g) Compliance with environmental laws. [2009 c.690 §4; 2011 c.394 §1]

757.738 Surcharge trust accounts related to removal of Klamath River dams. (1)(a) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish the trust accounts as interest-bearing accounts:

(A) With an agency of the United States identified in the final agreement;

(B) In a qualified depository under ORS 295.001 to 295.108; or

(C) With the State Treasurer, to be invested as provided in ORS 293.701 to 293.857.

(b) The commission may establish each of the two trust accounts with a different trustee among those listed in paragraph (a) of this subsection.

(c) The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.

(2) If an agreement is entered into under ORS 757.742 (2), the parties to the agreement may agree that a portion of the amounts collected under one surcharge may be deposited in the trust account established for amounts collected under the other surcharge.

(3) Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

(4) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing the Klamath River dams as described in ORS 757.736 (11), the commission shall direct the trustee of the account to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers. [2009 c.690 §5; 2011 c.394 §2; 2019 c.587 §50]

757.740 Recovery of other costs incurred as result of changes in operation to or removal of Klamath River dams. Pursuant to ORS 757.210, the Public Utility Commission shall allow PacifiCorp to include in its rates and tariffs this state's allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Klamath River dams before removal of the dams, or that are prudently incurred for replacement power after the dams are removed, that are not otherwise recovered under ORS 757.734 and 757.736. [2009 c.690 §6]

757.742 Public Utility Commission authorization to enter agreement with California related to cost apportionment and trust fund. (1) The State of Oregon may enter into an agreement with representatives of the State of California, either as part of a final agreement or by separate agreement, that establishes each state's share of the customer contribution of $200 million identified in the agreement in principle.

(2) The Public Utility Commission may enter into an agreement with representatives of the State of California to establish and administer the trust accounts authorized under ORS 757.738 and to ensure that trust account moneys are disbursed for dam removal costs that are necessary and appropriate. [2009 c.690 §7]

757.744 Disclaimers. (1) ORS 757.732 to 757.744 do not authorize the expenditure of any public moneys for removal of Klamath River dams.

(2) ORS 757.732 to 757.744 do not create a cause of action against the State of Oregon or against any of the officers, employees or agents of the state and may not be used as the basis for an assertion of liability on the part of the State of Oregon or of any officers, employees or agents of the state. [2009 c.690 §8]

NONGOVERNMENTAL ENTITIES

757.746 Requirements for nongovernmental entities receiving funds. (1) If the Public Utility Commission requires funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 to be paid to a nongovernmental entity, the entity shall:

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

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

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

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

(e) With public utilities, jointly develop public utility-specific budgets, action plans and agreements that detail the entity's public utility-specific planned activities, resources and technologies pursuant to ORS 757.054 and 757.612 (3)(b)(B), including coordinated activities that require joint investment and deployment. Each action plan must reflect stakeholder feedback gathered through a public process managed by the entity and the relevant public utility as overseen by the commission.

(f) File with the commission the entity's budget, action plan and quarterly and annual reports for public review. The entity's budget and action plan must include the budget and action plans jointly developed with public utilities under paragraph (e) of this subsection.

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

(2) The commission may remove from the board of directors of a nongovernmental entity an officer or director who fails to provide an annual disclosure of economic interest, or who fails to declare an actual or potential conflict of interest, as described in this section, if the failure is connected to the allocation or expenditure of funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 and paid to the entity. [2021 c.547 §9]

757.747 Environmental justice; commission to establish equity metrics. (1) As used in this section, "environmental justice" means the equal treatment, protection from environmental and health hazards, and meaningful involvement of environmental justice communities in the development, implementation and enforcement of regulations and policies that affect the environment in which people live, work, learn, practice spirituality and play.

(2) The Public Utility Commission shall establish, and update no less than once every four years, equity metrics for the purpose of assessing, addressing and creating accountability for environmental justice in the expenditure and investment of funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 and paid to a nongovernmental entity. The equity metrics and each update required by this section must reflect feedback gathered through a public process that is managed by the commission and that, at a minimum, includes representatives of environmental justice communities.

(3) Each nongovernmental entity that is paid funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 shall, as part of the entity's filings required under ORS 757.746 (1)(f), report on the entity's progress in achieving the equity metrics established pursuant to this section. [2021 c.547 §11]

HEALTH ENDANGERING TERMINATION OF RESIDENTIAL UTILITY SERVICE

757.750 Legislative findings. The Legislative Assembly finds that the termination of residential electric and natural gas utility service can lead to the serious impairment of human health and possibly to loss of life; therefore, the Legislative Assembly has enacted ORS 757.750 to 757.760. [1979 c.868 §2; 1983 c.326 §1]

757.755 Termination of residential electric or natural gas service prohibited; rules of commission. (1) The Public Utility Commission of Oregon shall establish rules to prohibit the termination of residential electric or natural gas service when such termination would significantly endanger the physical health of the residential consumer.

(2) The commission shall provide by rule a method for determining when the termi-

nation of residential electric or natural gas service would significantly endanger the physical health of the residential consumer. [1979 c.868 §3; 1983 c.326 §2]

757.760 Requirements for notice of termination of service; payment schedules; rules. The Public Utility Commission shall establish rules to require each electric and natural gas utility to:

(1) Give written or personal notice of a proposed termination of residential service in a manner reasonably calculated to reach the residential consumer within a reasonable period of time before the proposed date of termination;

(2) Accept reasonable partial payment on the outstanding account and to establish a reasonable payment schedule for any indebtedness, including a deposit, that the utility claims the residential consumer owes for service at any residential address in lieu of termination of or refusal to provide service, and to inform the residential consumer of the provisions of this subsection;

(3) Inform those residential consumers who cannot afford to pay their bills or deposits of the names and telephone numbers of the appropriate unit within the Department of Human Services or other appropriate social service agencies that can help the consumer investigate what federal, state or private aid might be available to that consumer; and

(4) Provide that a transfer of service from one premises to another within the utility's service area shall not be considered a discontinuation of service. [1979 c.868 §4; 1983 c.326 §3]

OUTDOOR LIGHTING FIXTURES

757.765 Public utility provision of shielded outdoor lighting fixtures to customers. (1) As used in this section:

(a) "Outdoor lighting fixture" means an automatically controlled searchlight, spotlight, floodlight or other device used for architectural lighting, lighting streets or parking lots, landscape lighting, billboards or other artificial illumination or advertising purposes.

(b) "Public utility" has the meaning given that term in ORS 757.005.

(c) "Shielded" means that a light fixture is designed to ensure that direct or indirect light rays emitted from the fixture are projected below a horizontal plane running through the lowest light-emitting point of the fixture.

(2) A public utility supplying electricity that provides a customer with outdoor lighting fixtures shall make the option of using shielded outdoor lighting fixtures available to the customer. The utility shall notify a customer to whom the utility provides outdoor lighting fixtures that a shielded outdoor lighting fixture option is available through the utility. The utility shall file an application with the Public Utility Commission to establish rates and charges for providing the shielded outdoor lighting fixture option.

(3) Subsection (2) of this section does not require a utility to reimburse a customer for the cost of a shielded outdoor lighting fixture installed before the date the utility sends a notice to the customer under this section, or to provide an option for a customer to acquire:

(a) Incandescent outdoor lighting fixtures of not more than 150 watts;

(b) Light sources of not more than 70 watts that are not incandescent lighting fixtures;

(c) Outdoor lighting fixtures on advertising signs on interstate or federal primary highways;

(d) Navigational lighting systems at airports or other lighting necessary for aircraft safety; or

(e) Outdoor lighting fixtures necessary for worker safety at farms, ranches, dairies or feedlots or at industrial, mining, oil or gas facilities. [2009 c.588 §1]

Note: 757.765 and 757.770 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.770 Deadline for public utility filing of outdoor lighting fixture rate and charge application; required notification to customers. (1) A public utility that is subject to ORS 757.765 shall file an initial rate and charge application as required by ORS 757.765 (2) on or before January 1, 2010.

(2) A utility that is subject to ORS 757.765 shall give a customer notice of the shielded outdoor lighting fixture option on or before the later of the date the utility first begins providing outdoor lighting fixtures to the customer or 60 days after the rate or charge takes effect. [2009 c.588 §2]

Note: See note under 757.765.

HIGH VOLTAGE POWER LINE REGULATION

757.800 Definitions for ORS 757.800 and 757.805. As used in this section and ORS 757.805, unless the context requires otherwise:

(1) "Authorized person" means:

(a) An employee of a utility which produces, transmits or delivers electricity.

(b) An employee of a utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a utility.

(c) An employee or agent of an industrial plant whose work relates to the electric system of the industrial plant.

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owners of the poles to make cable television or communication services attachments.

(e) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electric lines or circuit construction or conductors on poles or structures of any type.

(f) An employee of a transmission company as defined in ORS 758.015.

(2) "High voltage" means voltage in excess of 600 volts measured between conductors or between a conductor and the ground.

(3) "Overhead line" means all bare or insulated electric conductors installed above ground.

(4) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises.

(5) "Utility" means any electric or communication utility described by ORS 757.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to customers.

(6) "Proximity" means within 10 feet or such greater distance as may be prescribed by rule adopted pursuant to ORS chapter 654. [1989 c.672 §2; 2001 c.913 §5]

757.805 Accident prevention required for work near high voltage lines; effect of failure to comply; applicability; other remedies unaffected. (1) Any person or business entity responsible for performing any function, activity, work or operation in proximity to a high voltage overhead line shall guard effectively against accidents involving such high voltage overhead line, as required by rules adopted pursuant to ORS chapter 654.

(2) If any violation of subsection (1) of this section or rules adopted pursuant to ORS chapter 654 results in, or is a contributing cause of, a physical or electrical accident involving any high voltage overhead line, the person or business entity violating subsection (1) of this section or rules adopted pursuant to ORS chapter 654 is liable to the utility operating the high voltage overhead lines for all damages to its facilities and all costs and expenses, including damages to any third persons, incurred by the utility as a result of the accident. However, any person or business entity that has given advance notice of the function, activity or work to the utility operating the high voltage overhead line, and has otherwise substantially complied with rules adopted pursuant to ORS chapter 654, shall only be liable for such damages in proportion to that person or business entity's comparative fault in causing or contributing to the accident.

(3) This section and ORS 757.800 do not apply to:

(a) Construction, reconstruction, operation or maintenance by an authorized person of overhead electric or communication circuits or conductors and their supporting structures or electric generation, transmission or distribution systems or communication systems.

(b) Fire, police or other emergency service workers acting under authority of a state agency or other public body while engaged in emergency operations.

(4) The provisions of this section and ORS 757.800 are not intended to displace any other remedies which may be available to the utility by statute or common law. [1989 c.672 §§3,4,5,6]

757.810 [1985 c.550 §5; renumbered 759.015 in 1989]

STATE POLICY POSITION ON REGIONAL TRANSMISSION PLANNING PROCESS

757.811 Requirement to consider electricity from ocean renewable energy. The Legislative Assembly finds and declares that, consistent with the transmission planning requirements provided for by the Federal Energy Regulatory Commission, it shall be the policy position of the State of Oregon that any regional transmission planning processes conducted for the transmission planning regions that wholly or partly encompass any areas of this state shall adequately consider the transmission of electricity from ocean renewable energy generated within Oregon's territorial sea, as defined in ORS 196.405, or within adjacent federal waters. [2015 c.311 §1]

Note: 757.811 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OREGON COMMUNITY POWER

(Definitions)

757.812 Definitions for ORS 757.812 to 757.950. As used in ORS 757.812 to 757.950:

(1) "Board" means the board of directors of Oregon Community Power.

(2) "Incumbent utility" means an investor-owned utility that is the subject of a transaction described in ORS 757.814.

(3) "Investor-owned utility" means a utility that sells electricity and that is operated by a corporation with shareholders.

(4) "Rate" has the meaning given that term in ORS 756.010.

(5) "Service" has the meaning given that term in ORS 756.010.

(6) "Service territory" means the geographic area within which a utility provides electricity to customers. [2007 c.807 §1]

Note: 757.812 to 757.954 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Acquisition Review Committee)

757.814 Creation of acquisition review committee. (1)(a) Except as provided in subsection (9) of this section, the Public Utility Commission shall give notice to the cities and counties specified in paragraph (b) of this subsection whenever the commission receives notice of a proposed transaction under ORS 757.511 (2):

(A) Relating to an investor-owned utility for which approval of the Public Utility Commission is required under ORS chapter 757; and

(B) Involving the sale of 50 percent or more of the voting shares of the utility to a person that is not an affiliated interest with the utility as defined in ORS 757.015.

(b) Notice under subsection (1) of this section shall be given to a city or county if the investor-owned utility that is the subject of the proposed transaction has service territory within the boundaries of the city or county.

(2) Upon receiving notice under subsection (1) of this section, each city or county may appoint a member to an acquisition review committee formed to represent the affected cities and counties. An acquisition review committee must be formed not more than 60 days after notice is given by the commission under subsection (1) of this section. If an acquisition review committee is not formed within 60 days after notice is given by the commission under subsection (1) of this section, the commission shall proceed with any application made under ORS 757.511 for approval of the transaction.

(3) An acquisition review committee formed under this section shall consider a proposed transaction described in subsection (1) of this section for the purpose of determining whether:

(a) Acquisition of the investor-owned utility by Oregon Community Power would be in the best interests of the customers served by the investor-owned utility; and

(b) Acquisition of the utility can be accomplished in a manner that is consistent with the policy described in ORS 757.910.

(4) An acquisition review committee created under this section may decide to enter into negotiations for the acquisition of an investor-owned utility that is the subject of a proposed transaction described in subsection (1) of this section only by the affirmative vote of members of the committee representing counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility, and the affirmative vote of members of the committee representing cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility. If an acquisition review committee determines that negotiations should commence, the committee shall:

(a) Enter into negotiations with the incumbent utility or persons that have authority to negotiate the disposition of the incumbent utility or the electric utility assets of the incumbent utility; and

(b) If the negotiations result in an agreement between the committee and the incumbent utility or persons described in paragraph (a) of this subsection, the committee shall immediately give notice to the commission and file an application with the commission under ORS 757.511 for approval of the transaction.

(5) An acquisition review committee created under this section may decide to acquire an investor-owned utility under subsection (4) of this section only by the affirmative vote of members of the committee representing counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility, and the affirmative vote of members of the committee representing cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility. An acquisition review committee may vote to acquire an incumbent utility under this subsection only after public notice and consultation with

groups representing customers of the incumbent utility.

(6) An acquisition review committee must complete negotiations and vote to enter into an agreement not more than 150 days after notice is given to cities and counties under subsection (1) of this section. If the incumbent utility agrees in writing, the committee may request that the time limitation imposed by this section be extended by 90 days.

(7) If the commission approves acquisition of the incumbent utility by Oregon Community Power, the commission shall inform the Governor and the Governor shall activate Oregon Community Power by convening an initial Oregon Community Power Board Nominating Committee under section 7, chapter 807, Oregon Laws 2007. As soon as the first board of directors of Oregon Community Power is appointed under ORS 757.834, the board shall implement the agreement and acquire the incumbent utility or the electric utility assets of the incumbent utility in the name of Oregon Community Power.

(8) An acquisition review committee shall give notice to the commission immediately if the committee proposes to dissolve or decides not to enter into negotiations under subsection (4) of this section or if negotiations do not result in an agreement.

(9) The commission may not give notice to cities and counties under subsection (1) of this section if a person providing notice of a proposed transaction under ORS 757.511 (2) also provides to the commission written consent forms signed by persons with authority to act on behalf of counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility and on behalf of cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility.

(10) An acquisition review committee may enter into an agreement for the acquisition of an incumbent utility or the electric utility assets of the incumbent utility only if the committee obtains approval for the acquisition from the appropriate state agencies in all states in which the incumbent utility serves retail electricity consumers.

(11) Notwithstanding any other provision of law, Oregon Community Power is responsible for and shall pay all costs relating to the acquisition of an incumbent utility, including but not limited to:

(a) The costs of acquiring the electric utility assets of the incumbent utility;

(b) The costs of acquiring any necessary generating capacity and transmission capacity dedicated to serving the customers in the service area that will be acquired, including but not limited to electricity generating assets and alternate energy generating assets under construction but not yet in service;

(c) Depreciation;

(d) Loss of revenue to the incumbent utility; and

(e) All electric utility assets necessary to reintegrate the system of the incumbent utility after detaching the portion of the utility acquired by Oregon Community Power. [2007 c.807 §2]

Note: See note under 757.812.

757.815 [1985 c.550 §6; 1987 c.447 §72; renumbered 759.020 in 1989]

(Oregon Community Power Created)

757.818 Oregon Community Power created. (1) Oregon Community Power is created as a public corporation. Oregon Community Power shall exercise and carry out all powers, rights and privileges that are conferred upon Oregon Community Power under ORS 757.812 to 757.950.

(2) Oregon Community Power is created as a public corporation in order to carry out public services in sectors of the economy in which activities or services are also provided by private enterprise. Oregon Community Power is granted all needed operating flexibility under ORS 757.812 to 757.950 in order to ensure the success of Oregon Community Power while retaining principles of public accountability and oversight.

(3) The primary mission of Oregon Community Power is to provide reliable, low-cost electricity to electricity consumers in the service territory in which Oregon Community Power undertakes to provide electricity service. [2007 c.807 §3]

Note: See note under 757.812.

757.820 [1985 c.550 §6a; 1987 c.302 §1; renumbered 759.025 in 1989]

757.822 Laws applicable to Oregon Community Power. (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters 35, other than ORS 35.550 to 35.575, 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.809, other than 243.696, 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply to any other subdivision of state government.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286A, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575, 183.710 to 183.730, 183.745, 183.750, 184.305 to 184.345, 190.430,

190.480, 190.490, 192.105, 200.035, 243.105 to 243.585, 243.696, 243.853 to 243.855, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010 to 282.150, 283.085 to 283.092, 287A.140, 287A.150, 287A.472 and 656.017 (2) do not apply to Oregon Community Power.

(3) Oregon Community Power is not a participating public employer in the Public Employees Retirement System.

(4) Any funds held by or under the control of Oregon Community Power are not public funds, as defined in ORS 295.001. [2007 c.807 §4; 2009 c.11 §96; 2009 c.538 §13; 2012 c.107 §70]

Note: See note under 757.812.

757.824 Regulatory authority of Public Utility Commission over Oregon Community Power. (1) Solely for purposes of determining the authority of the Public Utility Commission to regulate Oregon Community Power and the activities and operations of Oregon Community Power, Oregon Community Power shall be considered a consumer-owned utility, as defined in ORS 757.270, and the commission shall regulate Oregon Community Power as a consumer-owned utility.

(2) In addition to having the authority granted the commission under subsection (1) of this section, the commission has the authority to:

(a) Regulate electricity service suppliers that conduct business with or use the facilities of Oregon Community Power;

(b) Determine a claim by an electricity service supplier that Oregon Community Power has acted in an anticompetitive manner; and

(c) Take action against Oregon Community Power to enforce consumer protection rules adopted under ORS 757.659 (3) and applicable to direct access consumers.

(3) Oregon Community Power may not be required to obtain the approval of the Public Utility Commission to make an acquisition described in ORS 757.812 to 757.950.

(4) As used in this section, "direct access" and "electricity service supplier" have the meanings given those terms in ORS 757.915. [2007 c.807 §5]

Note: See note under 757.812.

757.825 [1985 c.550 §7; 1987 c.447 §73; 1987 c.613 §2; 1989 c.5 §§9,23; 1989 c.378 §1; 1989 c.543 §1; renumbered 759.030 in 1989]

(Board of Directors)

757.830 Nominating committee. (1) There is established the Oregon Community Power Board Nominating Committee. The purpose of the nominating committee is to assist the Governor in appointing members to the board of directors of Oregon Community Power under ORS 757.834.

(2) The nominating committee shall consist of five members, as follows:

(a) One member shall be a delegate from the Citizens' Utility Board and shall represent the interests of residential electricity consumers.

(b) One member shall be a delegate from a qualified organization that represents the interests of primarily commercial electricity consumers.

(c) One member shall be a delegate from a qualified organization that represents the interests of primarily industrial electricity consumers.

(d) One member shall be a delegate from the League of Oregon Cities and shall represent the interests of municipalities and their residents.

(e) One member shall be a delegate from the Association of Oregon Counties and shall represent the interests of counties and their residents.

(3) Of the members described in subsection (2)(d) and (e) of this section, one shall be from a local government that is within the service territory of Oregon Community Power and one shall be from a local government that is outside of the service territory of Oregon Community Power.

(4)(a) In order for the nominating committee to convene, the board of directors of Oregon Community Power shall prepare a proposed direction to convene as soon as is practicable following the earlier of the date that a vacancy occurs on the board or the date that it becomes known that a vacancy on the board will occur within six months.

(b) The proposed direction to convene shall state the qualified organizations that are to provide the delegates described in subsection (2)(b) and (c) of this section. The board shall send copies of the proposed direction to the Public Utility Commission and to each organization that served as a qualified organization at a prior convening of the nominating committee.

(c) Within 15 days after receipt of the proposed direction to convene, the commission shall review the proposed direction. The commission shall afford the opportunity for a hearing if requested by any party. If the proposed direction lists organizations that meet the qualifications of subsection (2)(b) and (c) of this section, the commission shall approve the direction. If the proposed direction does not list organizations that are qualified organizations under subsection (2)(b) and (c) of this section, the commission may modify the direction prior to approval. A determination by the commission may be appealed as a contested case under ORS chapter 183.

(5) The nominating committee shall convene as soon as is practicable after receiving an approved direction to convene under subsection (4) of this section, and shall forward the first slate of nominees to the Governor for consideration under ORS 757.834 no later than 90 days after the date an approved direction to convene is issued.

(6) The nominating committee shall nominate three individuals for each position on the board to be filled.

(7) A nominating committee that has been convened shall remain convened until each vacant position on the board is filled. The nominating committee shall forward a second slate of nominees to the Governor if requested by the Governor under ORS 757.834 (2).

(8) In forwarding nominees to the Governor, the nominating committee shall strive to select individuals who:

(a) Meet the qualifications described in ORS 757.834 (6);

(b) If appointed, would result in a board of directors that represents the geographic diversity of Oregon Community Power's service territory; and

(c) Have the ability and experience to fulfill the principal duties of the board under ORS 757.880.

(9) As used in this section, "qualified organization" means a nonprofit organization that represents a broad class of commercial or industrial customers and that has a substantial record of representing the class before state agencies or the Legislative Assembly in matters related to public utility rates, terms and conditions and energy policy issues affecting the class. [2007 c.807 §6]

Note: See note under 757.812.

Note: Section 7, chapter 807, Oregon Laws 2007, provides:

Sec. 7. (1) Notwithstanding section 6 of this 2007 Act [757.830], the Governor shall convene the initial Oregon Community Power Board Nominating Committee for the first board of directors of Oregon Community Power on the date the Governor activates Oregon Community Power under section 2 of this 2007 Act [757.814].

(2) The nominating committee shall forward the first slate of nominees to the Governor for consideration under section 8 of this 2007 Act [757.834] within 30 days following the convening of the committee by the Governor.

(3) If necessary, the nominating committee shall forward a second slate of nominees to the Governor for consideration within 10 days after the Governor's request for a second slate of nominees under section 8 (2) of this 2007 Act.

(4) For purposes of section 6 (3) of this 2007 Act, the service territory of the incumbent utility is considered to be the service territory of Oregon Community Power. [2007 c.807 §7]

757.834 Board of directors. (1) Oregon Community Power shall be governed by a board of seven directors appointed by the Governor using the procedure set forth in this section.

(2)(a) Prior to making any appointment to the board, the Governor shall consider the nominations of the Oregon Community Power Board Nominating Committee.

(b) If the Governor reviews an initial slate of nominees made by the nominating committee and determines not to appoint a nominee, the Governor shall request that the nominating committee forward a second slate of nominees. If the Governor determines not to appoint a nominee from the second slate of nominees, the Governor may appoint any individual the Governor determines meets the qualifications of subsection (6) of this section.

(3) Notwithstanding the requirement that the Governor consider the nominations of the nominating committee prior to making an appointment, the Governor shall appoint an individual to be a board member within 120 days following the vacancy of a position on the board.

(4) Each appointment shall be subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(5) The term of office for each board member shall be four years. A board member may be nominated and appointed to successive terms, but within 150 days prior to the expiration of the term of the member, the board shall issue a proposed direction to convene the nominating committee under ORS 757.830 for the purpose of nominating individuals to fill the board position.

(6) A member of the board shall have significant experience or expertise in one or more of the following areas:

(a) Business operations;

(b) Utility management;

(c) Legal or financial affairs;

(d) Regional energy issues; or

(e) Developing public policy.

(7) The Governor may remove any member of the board for cause, after notice and public hearing. [2007 c.807 §8]

Note: See note under 757.812.

Note: Section 9, chapter 807, Oregon Laws 2007, provides:

Sec. 9. (1) Notwithstanding section 8 (5) of this 2007 Act [757.834 (5)], the term of office for the first board of directors of Oregon Community Power shall be as follows:

(a) Two members shall be appointed for a term that ends one year following the date the Governor convenes the board;

(b) Two members shall be appointed for a term that ends two years following the date the Governor convenes the board;

(c) Two members shall be appointed for a term that ends three years following the date the Governor convenes the board; and

(d) One member shall be appointed for a term that ends four years following the date the Governor convenes the board.

(2) Consistent with subsection (1) of this section, the Governor shall designate the duration of the term of office of each member of the first board of directors at the time the Governor convenes the board. [2007 c.807 §9]

757.835 [1985 c.389 §3; 1987 c.447 §74; renumbered 759.230 in 1989]

757.840 [1987 c.1 §§1,2,3; 1989 c.5 §10; renumbered 759.235 in 1989]

757.842 Board meetings and procedures. (1) The board of directors of Oregon Community Power shall meet at least once each month to conduct the business of the board.

(2) A majority of board members shall constitute a quorum.

(3) The board shall select one of its members as chairperson.

(4) The board shall adopt bylaws establishing rules of procedure for board meetings and decisions.

(5) A member of the board shall be compensated as provided in ORS 757.886 (12).

(6) The board, not later than April 15 of each year, shall file a report with the Governor and the Legislative Assembly. The report shall explain the activities and operations of Oregon Community Power for the preceding calendar year, including a summary of the audit described in ORS 757.902. [2007 c.807 §10]

Note: See note under 757.812.

757.850 [1987 c.613 §4; 1989 c.5 §11; 1989 c.378 §2; 1989 c.543 §2; renumbered 759.195 in 1989]

(Acquisition of Incumbent Utility)

757.852 Acquisition of incumbent utility; use of eminent domain. (1) As soon as practicable after being appointed, the board of directors of Oregon Community Power shall implement the agreement entered into by an acquisition review committee under ORS 757.814 (4)(b).

(2) Notwithstanding ORS 757.890 (1), Oregon Community Power may not use the power of eminent domain to accomplish all or a part of an acquisition described in subsection (1) of this section unless the incumbent utility or the persons that have the authority to negotiate the disposition of the incumbent utility or the electric utility assets of the incumbent utility consent to the use of eminent domain for acquisition purposes. [2007 c.807 §11]

Note: See note under 757.812.

757.855 Funding of preliminary activities and negotiations. (1) Following a request by an acquisition review committee under ORS 757.862, the Public Utility Commission shall transfer from the Public Utility Commission Account to the Oregon Community Power Utility Acquisition Fund established under ORS 757.857 all amounts necessary to fund any preliminary activities needed to determine:

(a) The appropriateness or desirability of an acquisition described in ORS 757.812 to 757.950;

(b) The requirements and terms of the acquisition; and

(c) Any due diligence activities related to the acquisition and the negotiations for the acquisition.

(2) Notwithstanding any other provision of law, the commission may increase the rates of an incumbent utility in order to recover the costs incurred in negotiating an acquisition by an acquisition review committee under ORS 757.814 (4).

(3) Notwithstanding any other provision of law, the commission may assess a fee on an incumbent utility in order to fund the transfer described in subsection (1) of this section. [2007 c.807 §12]

Note: See note under 757.812.

757.857 Oregon Community Power Utility Acquisition Fund. (1) The Oregon Community Power Utility Acquisition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Community Power Utility Acquisition Fund shall be credited to the Oregon Community Power Utility Acquisition Fund.

(2) Moneys in the Oregon Community Power Utility Acquisition Fund are continuously appropriated to the Public Utility Commission for the purpose of transferring moneys to an acquisition review committee as described in ORS 757.855. [2007 c.807 §13]

Note: See note under 757.812.

757.860 [1987 c.302 §3; 1989 c.5 §12; renumbered 759.225 in 1989]

757.862 Request to Public Utility Commission for transfer of funds. (1) An acquisition review committee created under ORS 757.814 may request that the Public Utility Commission transfer moneys appropriated under ORS 757.857 in order to fund any preliminary activities the committee undertakes to determine:

(a) The appropriateness or desirability of an acquisition described in ORS 757.812 to 757.950;

(b) The requirements and terms of the acquisition; and

(c) Any due diligence activities related to the acquisition and the negotiations for the acquisition.

(2) An acquisition review committee shall submit a budget and plan of operations with a request under subsection (1) of this section. The commission may approve the transfer only after notice and public hearing on the request. [2007 c.807 §14]

Note: See note under 757.812.

757.864 Conduct of business after acquisition. If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, all electric utility operations undertaken by Oregon Community Power after the acquisition shall be conducted under the name of Oregon Community Power. [2007 c.807 §15]

Note: See note under 757.812.

757.868 Oregon Community Power to be successor in interest to incumbent utility; rules. (1) If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, unless otherwise required by the Oregon Constitution, Oregon Community Power shall constitute the successor in interest to the incumbent utility as of the date of the acquisition for all purposes, including but not limited to:

(a) Allocation of territory and contracts allocating territory;

(b) City franchise fee agreements; and

(c) Contracts or obligations of any nature, to the extent the contracts or obligations apply to a successor in interest to the incumbent utility.

(2) Until the board of directors of Oregon Community Power establishes bylaws governing the procedures for conducting a ratemaking hearing and establishing rates under ORS 757.812 to 757.950 and under those procedures establishes one or more new rates or tariffs or establishes one or more changes in rates or tariffs, Oregon Community Power shall:

(a) Adopt all existing rate schedules in effect for the incumbent utility on the date of acquisition;

(b) Adopt the general rules and regulations of the incumbent utility's tariffs; and

(c) Maintain Oregon Community Power books and records in accordance with generally accepted accounting principles and with the uniform system of accounts established by the Federal Energy Regulatory Commission.

(3) If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, Oregon Community Power is subject to all privilege taxes imposed by municipalities that the incumbent utility was required to pay to municipalities immediately before the acquisition. [2007 c.807 §16]

Note: See note under 757.812.

757.870 [1987 c.388 §2; 1989 c.5 §13; 1989 c.574 §6; renumbered 759.040 in 1989]

757.872 Equity and assets of incumbent utility held in trust; disclaimer of state interest. (1) Any equity of the incumbent utility, any electric utility assets of the incumbent utility or any combination of equity and assets of the incumbent utility that Oregon Community Power acquires under ORS 757.812 to 757.950 shall be held in trust by Oregon Community Power, acting as a trustee, for the exclusive purpose of carrying out the powers, rights and privileges of Oregon Community Power under ORS 757.812 to 757.950 for the benefit of the retail electricity consumers of Oregon Community Power. Notwithstanding any other provision of law, retail electricity consumers of Oregon Community Power may not pursue any judicial remedy in any court of this state for any action of Oregon Community Power, except as provided in ORS 757.812 to 757.950.

(2) The State of Oregon declares that it has no proprietary interest in Oregon Community Power or in any tangible or intangible property of any form owned or acquired by Oregon Community Power. The state disclaims any right to reclaim any contributions made to Oregon Community Power under ORS 757.812 to 757.950.

(3) Except as provided in ORS 757.812 to 757.950, Oregon Community Power may not receive any moneys from the State of Oregon other than:

(a) Electric utility operational revenues;

(b) Public purpose charge revenues under ORS 757.612;

(c) Nonrecourse bond proceeds or proceeds from any other nonrecourse borrowing; or

(d) Loans, grants, payments or other assistance that any local government as defined in ORS 174.116 would be eligible to receive. [2007 c.807 §17]

Note: See note under 757.812.

(Duties and Powers of Oregon Community Power)

757.880 Board duties. The principal duties of the board of directors of Oregon Community Power are to:

(1) Establish policy and develop consistent positions on core utility issues that promote and implement the primary mission of

Oregon Community Power under ORS 757.818;

(2) Oversee the investments and operations of Oregon Community Power;

(3) Take all actions to ensure that revenues and income from electric utility operations are sufficient to satisfy all costs, including principal and interest payments on all outstanding bonds and other debt obligations issued by Oregon Community Power, and to maintain financial integrity in the operation of Oregon Community Power;

(4) Make decisions that are in the best interests of the consumers and communities within the service territory of Oregon Community Power and that are consistent with the primary mission of Oregon Community Power; and

(5) Consider the social, economic and environmental impacts of electricity generation, transmission and distribution in board decision-making. [2007 c.807 §18]

Note: See note under 757.812.

757.883 Payments in lieu of property taxes. (1) Oregon Community Power shall make payments in lieu of property taxes on all property that would otherwise be subject to assessment under ORS 308.505 to 308.674 if owned by a taxable owner. Oregon Community Power shall pay to each county in which property of Oregon Community Power is located an amount equal to the ad valorem property taxes that would have been charged by the county if Oregon Community Power property had been assessed to a taxable owner as of January 1 of the assessment year for which payment is being made.

(2) The Department of Revenue shall determine the assessed value of Oregon Community Power property as if the property were subject to assessment under ORS 308.505 to 308.674, and shall transmit the value information as provided in ORS 308.505 to 308.674 to the appropriate county assessor. Oregon Community Power shall comply with property reporting requirements under ORS 308.505 to 308.674 as if the property were subject to assessment under ORS 308.505 to 308.674.

(3) The amount of the in lieu payment to be made to each county under this section shall be determined and certified annually by the county assessor of the county. A notice of the determination and certification shall be mailed to Oregon Community Power not later than October 15. The notice shall contain a statement of the value of the property and a complete explanation of the method used in computing the amount of the in lieu payment due under this section. Not later than November 15, Oregon Community Power shall pay the amount due to each county under this section, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made to the county treasurer. The county treasurer shall distribute the payment to the taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390. [2007 c.807 §19]

Note: See note under 757.812.

757.886 Powers of Oregon Community Power. The board of directors of Oregon Community Power shall establish the policies of Oregon Community Power to be used in the exercise of the powers enumerated for Oregon Community Power or the board, and may thereafter modify those policies. The board may delegate the exercise of powers enumerated for Oregon Community Power to a president, chief executive officer or general manager of Oregon Community Power. Delegated powers shall be exercised by the delegatee in a manner that is consistent with the policies established by the board. The powers of Oregon Community Power, as exercisable by the board of directors or by a president, chief executive officer or general manager under policies adopted by the board, are as follows:

(1) To acquire and hold, including by lease-purchase agreement, real and other property necessary or incident to the business of Oregon Community Power, within or outside of, or partly within or partly outside of, the service territory of Oregon Community Power, and to sell or dispose of that property.

(2) To execute contracts to purchase, sell or lease assets, power, services or property.

(3) To execute contracts for the management or operation of any Oregon Community Power facilities.

(4) To issue bonds, notes or otherwise borrow moneys, incur indebtedness or issue, sell or assume evidence of indebtedness to the extent allowed under the Oregon Constitution.

(5) To sue and be sued.

(6) To refund and retire any indebtedness that may exist against or be assumed by Oregon Community Power or that may exist against the revenues of Oregon Community Power.

(7) To build, acquire, own, operate and maintain generation, transmission and distribution resources that are sufficient to maintain an adequate supply of electricity to the service territory.

(8) To enter into agreements with local governments or other state agencies or subdivisions of state government.

(9) To periodically develop least-cost plans at regular intervals. A least-cost plan may be developed only with public participation. A least-cost plan shall take into consideration economic and environmental risks of providing adequate and reliable energy for consumers, energy efficiency, renewable resources and cogeneration, in order to achieve adequate resources at the least overall cost.

(10) To oversee all aspects of Oregon Community Power operations.

(11) To hire and fire employees of Oregon Community Power.

(12) To make contracts, to set wages, to set salaries and provide compensation for services rendered by employees and by board members, to provide for life insurance, hospitalization, disability, health and welfare and retirement plans for employees and to do all things necessary and convenient for full exercise of the powers granted in this subsection. The provision of life insurance, hospitalization, disability, health and welfare and retirement plans for employees is in addition to any other right or power of Oregon Community Power to participate in those plans and does not repeal or modify any statutes except those that may be in conflict with the provision of life insurance, hospitalization, disability, health and welfare and retirement plans.

(13) To enter into contracts with the United States Government, with any other state, municipality or utility district or with any other person, for carrying out any provisions of ORS 757.812 to 757.950.

(14) To fix, maintain and collect electric energy rates as prescribed in ORS 757.812 to 757.950 and to establish and collect charges for any other commodity or service furnished, developed or sold by Oregon Community Power.

(15) To construct works across or along any street or public highway or over any lands that are the property of this state, or of any city or other subdivision of this state, subject to any franchise agreement, privilege tax or municipal regulation that would apply to the works, and to construct works across or along any stream of water or watercourse. Any works across or along any state highway shall be constructed only with the permission of the Department of Transportation. Any works across or along any county highway shall be constructed only with the permission of the county governing body. Any works across or along any city street shall be constructed only with the permission of the city governing body and upon compliance with applicable city regulations and payment of any fees called for under applicable franchise agreements, intergovernmental agreements under ORS chapter 190 or contracts providing for payment of these fees. Oregon Community Power shall restore any street or highway to its former state as near as may be practicable, and may not use the street or highway in a manner that impairs its usefulness unnecessarily.

(16) To enter into franchise agreements with cities and pay fees under negotiated franchise agreements, intergovernmental agreements under ORS chapter 190 and contracts providing for the payment of such fees, and to pay privilege taxes imposed under ORS 221.450 or other applicable privilege taxes.

(17) To exercise the power of eminent domain, as prescribed in ORS 757.852 or 757.890.

(18) To adopt bylaws as prescribed in ORS 757.905.

(19) To make payments in lieu of property taxes as prescribed in ORS 757.883.

(20) To acquire property, execute contracts or otherwise conduct business with or within the territory of any state or local government that is outside Oregon, any Indian tribe wherever located or Canada or any province of Canada.

(21) To execute any contract necessary to acquire, hedge or sell fuel or energy in any form, to manage electric utility operations, to construct, maintain or repair any energy generation or transmission facilities or equipment, to increase capacity for energy generation or transmission, to transfer any asset owned by Oregon Community Power or to acquire any asset for use in electric utility operations conducted by Oregon Community Power.

(22) To establish any funds or accounts at depository banks or other financial institutions that are determined to be necessary, useful or convenient for the conduct of business by Oregon Community Power.

(23) To take any other actions necessary or convenient for the proper exercise of the powers granted to Oregon Community Power by ORS 757.812 to 757.950. [2007 c.807 §20]

Note: See note under 757.812.

757.890 Eminent domain. (1) Oregon Community Power may exercise the power of eminent domain for the purpose of acquiring any property, within or outside the service territory of Oregon Community Power, necessary for carrying out the electric utility operations of Oregon Community Power. Oregon Community Power may use the power of eminent domain to acquire an incumbent utility pursuant to an agreement under ORS 757.814 only as provided by ORS 757.852.

(2) Notwithstanding subsection (1) of this section, eminent domain may not be used:

(a) To acquire service territory of another electric utility; or

(b) To acquire any property for a purpose that is unrelated to electric utility operations. [2007 c.807 §21]

Note: See note under 757.812.

(Rates)

757.895 Ratemaking. (1) The board of directors of Oregon Community Power shall establish rates for the provision of electricity within the service territory of Oregon Community Power using the procedure set forth under ORS 757.897.

(2) The board shall establish a rate structure under which rates that apply to a specific class of customers are designed to recover the costs of providing electricity and related services to that class of customers.

(3) The rates adopted by the board shall be sufficient to accomplish the following purposes:

(a) To properly maintain and operate all Oregon Community Power property and facilities;

(b) To recover the overall costs of the electric utility operations of Oregon Community Power;

(c) To reflect the income tax exempt status of Oregon Community Power so that the savings from tax exemption accrue to the benefit of the customers of Oregon Community Power;

(d) To pay all franchise fees, in lieu payments, privilege taxes and other charges and assessments that are properly imposed on Oregon Community Power or the property or facilities of Oregon Community Power;

(e) To pay principal and interest on all bonds, warrants or other obligations of any character in accordance with the terms and provisions of the obligations, including but not limited to bonds issued by Oregon Community Power for an acquisition described in ORS 757.812 to 757.950;

(f) To pay any other indebtedness or obligation for which Oregon Community Power may be obligated to pay;

(g) To pay any debt administration costs associated with bonds, warrants, obligations or other indebtedness described in paragraphs (e) and (f) of this subsection;

(h) To fund operating reserves in sufficient amounts to ensure the continued efficient operation of Oregon Community Power; and

(i) To establish and maintain any special funds that Oregon Community Power is obligated to create for the purpose of paying bond issues or other obligations. [2007 c.807 §22]

Note: See note under 757.812.

757.897 Notice of ratemaking; ratemaking hearings. (1) Whenever the board of directors of Oregon Community Power determines to seek a modification in any rate imposed by the board for electricity service, the board shall give notice of a ratemaking hearing, at least 30 days in advance, as follows:

(a) In newspapers of general circulation that are published in the service territory;

(b) As a separate insert accompanying billing statements sent to customers;

(c) To persons that have requested notice of ratemaking action by the board; and

(d) By publication on the Oregon Community Power website.

(2) The notice shall state:

(a) The date, time and location of the ratemaking hearing of the board;

(b) The new rates or modifications to existing rates being proposed by the board; and

(c) Any other information deemed relevant by the board.

(3) At the time that the board issues a notice of a ratemaking hearing, the board shall publish on the Oregon Community Power website or otherwise make available to the public the underlying utility information upon which the proposed rates are based. The board shall provide the specific information required by bylaws adopted under ORS 757.905 (1).

(4)(a) Pursuant to ORS 183.625, the board shall request, and the Office of Administrative Hearings shall assign, an administrative law judge to conduct the ratemaking hearing. The ratemaking hearing shall be conducted under ratemaking hearing procedures established by bylaws adopted under ORS 757.905 (2). The hearing shall be conducted in a manner that allows interested parties to present information and argument and to establish a record upon which the board may establish or modify rates pursuant to ORS 757.895.

(b) The administrative law judge shall ensure that the rates established at the ratemaking hearing are sufficient to accomplish all of the purposes described in ORS 757.895 (3).

(5) Notwithstanding ORS 757.822, a decision by the board to establish or modify rates may be appealed as a contested case under ORS chapter 183. [2007 c.807 §23]

Note: See note under 757.812.

(Participation by Citizens' Utility Board)

757.900 Intervention by Citizens' Utility Board in proceedings. (1) Whenever the Citizens' Utility Board of Governors determines that an Oregon Community Power proceeding may affect the interests of utility consumers, the Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.

(2) The Citizens' Utility Board shall have standing to obtain judicial or administrative review of any action of Oregon Community Power, and may intervene as of right as an interested party or otherwise participate in any proceeding that involves the review or enforcement of any action by Oregon Community Power, if the Citizens' Utility Board of Governors determines that the action may affect the interests of utility consumers. [2007 c.807 §24]

Note: See note under 757.812.

(Audits)

757.902 Annual audit of Oregon Community Power. The board of directors of Oregon Community Power shall cause an independent audit to be performed at least annually. The audit shall review and report on the financial affairs of Oregon Community Power and on any other aspects of Oregon Community Power as the board may direct. [2007 c.807 §25]

Note: See note under 757.812.

(Bylaws)

757.905 Adoption of bylaws. The board of directors of Oregon Community Power may adopt bylaws necessary to administer ORS 757.812 to 757.950, including but not limited to:

(1) Bylaws establishing the information the board must make available to the public prior to conducting a ratemaking hearing.

(2) Bylaws establishing procedures for conducting a ratemaking hearing that provide for substantially the same procedures as set forth in ORS 183.415, 183.425, 183.440 and 183.450.

(3) Bylaws to facilitate the implementation of the primary mission of Oregon Community Power under ORS 757.818. [2007 c.807 §26]

Note: See note under 757.812.

(Electricity From Bonneville Power Administration)

757.910 Policy. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to:

(a) Ensure that the formation and operation of Oregon Community Power does not directly or indirectly diminish the amount of federal electric power available for purchase by consumer-owned utilities to serve their retail electricity consumers;

(b) Ensure that the formation and operation of Oregon Community Power does not, directly or indirectly, increase the lowest cost-based rates charged by the Bonneville Power Administration to consumer-owned utilities for the purchase of federal electric power above the level that would most likely have been charged absent the formation and operation of Oregon Community Power;

(c) Preserve the existing exclusive distribution rights of consumer-owned utilities;

(d) Ensure the preservation of contract rights currently existing between consumer-owned utilities and an incumbent utility;

(e) Preserve the authority of cities to impose franchise fees and privilege taxes and to execute contracts with Oregon Community Power; and

(f) Ensure that Oregon Community Power has access to benefits from the Bonneville Power Administration, as mandated by the federal Pacific Northwest Electric Power Planning and Conservation Act, that are equivalent to the benefits received by the incumbent utility at the time the utility is acquired by Oregon Community Power.

(2) As used in this section, "federal electric power" means electricity generated, distributed or sold by the Bonneville Power Administration. [2007 c.807 §27]

Note: See note under 757.812.

(Direct Access)

757.915 Definitions for ORS 757.915 to 757.930. As used in ORS 757.915 to 757.930:

(1) "Ancillary services" has the meaning given that term in ORS 757.600.

(2) "Direct access" means the ability of a retail electricity consumer to purchase electricity and ancillary services, as determined by the board of directors of Oregon Community Power, directly from an entity other than Oregon Community Power.

(3) "Economic utility investment" means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation or conservation, the full benefits of which are no longer available to consumers as a result of electing direct access, absent transition credits.

(4) "Electricity," "electricity services" and "electricity service supplier" have the meanings given those terms in ORS 757.600.

(5) "Nonresidential electricity consumer" means a retail electricity consumer that is not a residential electricity consumer.

(6) "Portfolio access" means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the board and may include product and pricing options offered by Oregon Community Power or by an electricity service supplier.

(7) "Retail electricity consumer" means the end user of electricity for specific purposes that is served through the distribution system of Oregon Community Power, whether or not the end user purchases the electricity from Oregon Community Power.

(8) "Transition charge" and "transition credit" have the meanings given those terms in ORS 757.600.

(9) "Uneconomic utility investment" means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation, conservation and workforce commitments, the full costs of which are no longer recoverable as a result of direct access, absent transition charges. [2007 c.807 §28]

Note: See note under 757.812.

757.918 Oregon Community Power required to allow direct access. (1) Oregon Community Power shall allow nonresidential electricity consumers direct access.

(2) Unless the board of directors of Oregon Community Power determines otherwise, Oregon Community Power shall provide all retail electricity consumers of Oregon Community Power with a regulated, cost-of-service rate option.

(3)(a) Oregon Community Power shall supply default electricity service to a nonresidential electricity consumer in an emergency.

(b) The board shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances in which the consumer is receiving electricity services through direct access and elects instead to receive electricity services through the default service.

(4)(a) Oregon Community Power shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(b) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access. [2007 c.807 §29]

Note: See note under 757.812.

757.920 Rights of electricity service suppliers. (1) Every electricity service supplier is authorized to use the distribution facilities of Oregon Community Power on a nondiscriminatory basis.

(2) Oregon Community Power shall provide:

(a) Electricity service suppliers and retail electricity consumers access to the Oregon Community Power transmission facilities and distribution system that is comparable to that provided for Oregon Community Power's own use; and

(b) Electricity service suppliers and retail electricity consumers timely access to information about the Oregon Community Power transmission facilities and distribution system, metering and loads comparable to that provided to Oregon Community Power's own nondistribution divisions, affiliates and related parties.

(3) Oregon Community Power shall allow any electricity service supplier that has been certified by the Public Utility Commission to provide direct access to nonresidential electricity consumers. [2007 c.807 §30]

Note: See note under 757.812.

757.922 Transition credits and charges. (1) Each retail electricity consumer of Oregon Community Power shall receive a transition credit or pay a transition charge as determined under this section.

(2) The total of all transition credits or transition charges shall equal the net value of all economic utility investments and all uneconomic utility investments of Oregon Community Power.

(3) The board of directors of Oregon Community Power shall adopt one of the following methods to establish the net value described under subsection (2) of this section and all procedures connected with the adopted method:

(a) Auction;

(b) Administrative valuation; or

(c) Ongoing valuation.

(4) The transition credit or transition charge that applies to a retail electricity consumer under this section may change to reflect the duration of the service option chosen by the consumer, but may not be changed because of the electricity service supplier chosen by the consumer. [2007 c.807 §31]

Note: See note under 757.812.

757.924 Portfolio access to electricity service providers. The board of directors of Oregon Community Power shall determine whether and under what conditions Oregon

Community Power will offer retail electricity consumers portfolio access to electricity service suppliers. The board shall have sole authority to determine:

(1) The quality and nature of electricity services, including but not limited to different product and pricing options, that will be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates, tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) The degree to which provision of portfolio access necessitates modification of transition credits, transition charges and the net value described in ORS 757.922 (2) on which transition credits or transition charges are based.

(5) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the Oregon Community Power service territory in dealings with electricity service suppliers.

(6) Access to or use of the Oregon Community Power transmission facilities or distribution system by retail electricity consumers or electricity service suppliers.

(7) Oregon Community Power's qualification standards for electricity service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service suppliers in a nondiscriminatory manner. [2007 c.807 §32]

Note: See note under 757.812.

(Consumer-Owned Utilities)

757.930 Distribution rights; service territories. (1) Notwithstanding any other provision of law, a consumer-owned utility has exclusive distribution rights, to the extent the distribution rights are provided by law other than ORS 757.812 to 757.950, and exclusive responsibility for the performance and oversight of:

(a) The utility's distribution system, including the acquisition, construction, financing, operation and maintenance of distribution facilities; and

(b) Metering, billing, collection and consumer response functions related to the distribution of electricity to retail electricity consumers located within the utility's service territory.

(2) ORS 757.812 to 757.950 do not:

(a) Diminish or enlarge the rights of any person under ORS 758.400 to 758.475; or

(b) Affect the administration or enforcement of ORS 758.400 to 758.475. [2007 c.807 §33]

Note: See note under 757.812.

(Financing Agreements)

757.935 Definitions for ORS 757.935 to 757.945. As used in ORS 757.935 to 757.945:

(1) "Credit enhancement agreement" means any agreement or contractual relationship between Oregon Community Power and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by ORS 757.935 to 757.945.

(2) "Financing agreement" means a bond, installment sale agreement, loan agreement, note, note agreement, short-term promissory note, commercial paper, line of credit or similar obligation or any other agreement to finance real or personal property, tangible or intangible, that is or will be owned and operated by Oregon Community Power, to otherwise borrow money, or to refinance previously executed financing agreements. [2007 c.807 §34]

Note: See note under 757.812.

757.937 Financing agreements authorized. (1) Oregon Community Power may enter into financing agreements in accordance with ORS 757.935 to 757.945 upon such terms as the board of directors of Oregon Community Power determines to be necessary or desirable. Amounts payable by Oregon Community Power under a financing agreement shall be limited to funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power. If there are insufficient available funds to pay amounts due under a financing agreement, the lender may exercise any property rights that Oregon Community Power has granted to the lender in the financing agreement against the property that was purchased with the proceeds of the financing agreement, and may apply the amounts so received toward payments scheduled to be made by Oregon Community Power under the financing agreement.

(2) Oregon Community Power may enter into a financing agreement only following adoption by the board of directors of a resolution authorizing the execution of the financing agreement or a series of similar financing agreements.

(3) Any obligation of any kind incurred by Oregon Community Power shall state on

its face that it is solely an obligation of Oregon Community Power. [2007 c.807 §35]

Note: See note under 757.812.

757.940 Delegation of powers relating to financing agreements. The board of directors of Oregon Community Power may delegate to any board member, or to the chief executive officer, president, general manager or chief financial officer of Oregon Community Power, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or methods for determining variable or adjustable interest rates, denominations, methods of sale, agreements for the exchange of interest rates as an issuer under ORS 287A.335 and other terms and conditions of a financing agreement that are not appropriately determined at the time of enactment or adoption of a resolution authorizing the execution of the financing agreement. The board may also delegate entering into a financing agreement or any other instrument authorized by law. This delegated authority shall be exercised subject to applicable requirements of law and any limitations and criteria as may be set forth in the resolution authorizing the execution of a financing agreement or in Oregon Community Power bylaws. [2007 c.807 §36; 2009 c.538 §14]

Note: See note under 757.812.

757.942 Powers of Oregon Community Power relating to financing agreements. Oregon Community Power may:

(1) Enter into agreements with third parties to hold financing agreement proceeds, payments and reserves as security for lenders, and to issue certificates of participation in the right to receive payments due from Oregon Community Power under a financing agreement. Amounts so held shall be invested at the direction of the board of directors of Oregon Community Power. Interest earned on any investments held as security for a financing agreement may, at the option of the board, be credited to the accounts held by the third party and applied in payment of sums due under a financing agreement.

(2) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that any credit enhancement agreements shall be payable solely from funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power and amounts received from the exercise of property rights granted under the financing agreements.

(3) Use financing agreements to finance the costs of acquiring or refinancing real or personal property, either tangible or intangible, plus the costs of reserves and credit enhancements and the costs associated with obtaining the financing.

(4) Grant security interests in property to trustees or lenders.

(5) Make pledges for the benefit of trustees and lenders.

(6) Purchase fire and extended coverage or other casualty insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain any insurance while the financing agreement is unpaid, as long as available funds are sufficient to purchase the insurance. [2007 c.807 §37]

Note: See note under 757.812.

757.945 Consultation with State Treasurer. Oregon Community Power may consult with and obtain advice from the State Treasurer on proposed or executed financing agreements. The State Treasurer may recover from Oregon Community Power any costs incurred by the State Treasurer in providing consultation and advice. [2007 c.807 §38]

Note: See note under 757.812.

(Revenue Bonds)

757.950 Authorization to issue and sell revenue bonds. (1) Oregon Community Power may issue and sell revenue bonds as provided in ORS chapter 287A. However, ORS 287A.150 does not apply to revenue bonds issued by Oregon Community Power. Revenue bonds issued by Oregon Community Power are not a general obligation of Oregon Community Power and may not be a charge upon any revenues or property of Oregon Community Power that is not specifically pledged thereto. Any obligation of any kind incurred by Oregon Community Power under this section is not, and may not be considered, an indebtedness of the State of Oregon.

(2) Revenue bonds or other financing agreements issued by Oregon Community Power under this section are bonds or obligations of a political subdivision of the State of Oregon for the purposes of all laws of this state. [2007 c.807 §39; 2009 c.538 §15]

Note: See note under 757.812.

(City Rights of Way)

757.954 City's authority to control, and collect charges for, use of rights of way. ORS 757.812 to 757.950 do not diminish, or authorize the adoption of rules that diminish, the authority of a city to control the use of the city's rights of way or to collect license fees, privilege taxes, rent or other charges for the use of the rights of way of the city. [2007 c.807 §42]

Note: See note under 757.812.

WILDFIRE PROTECTION AND MITIGATION

757.960 Commission to convene workshops; wildfire protection and mitigation best practices. The Public Utility Commission shall periodically convene workshops for the purpose of helping public utilities that provide electricity, municipal electric utilities, people's utility districts organized under ORS chapter 261 that sell electricity, electric cooperatives organized under ORS chapter 62 and operators of electrical transmission and distribution systems to develop and share information for the identification, adoption and carrying out of best practices regarding wildfires, including, but not limited to, risk-based wildfire protection and risk-based wildfire mitigation procedures and standards. [2021 c.592 §2]

757.963 Public utility required to develop wildfire protection plan; rules. (1) A public utility that provides electricity must have and operate in compliance with a risk-based wildfire protection plan that is filed with the Public Utility Commission and has been evaluated by the commission. The plan must be based on reasonable and prudent practices identified through workshops conducted by the commission pursuant to ORS 757.960 and on commission standards adopted by rule. The public utility must design the plan in a manner that seeks to protect public safety, reduce risk to utility customers and promote electrical system resilience to wildfire damage.

(2) A public utility that provides electricity shall regularly update a risk-based wildfire protection plan on a schedule determined by the commission. The plan must, at a minimum:

(a) Identify areas that are subject to a heightened risk of wildfire and are:

(A) Within the service territory of the public utility; and

(B) Outside the service territory of the public utility but within a reasonable distance, as determined by the commission, of the public utility's generation or transmission assets.

(b) Identify a means for mitigating wildfire risk that reflects a reasonable balancing of mitigation costs with the resulting reduction of wildfire risk.

(c) Identify preventive actions and programs that the public utility will carry out to minimize the risk of utility facilities causing a wildfire.

(d) After seeking information from regional, state and local entities, including municipalities, identify a protocol for the de-energizing of power lines and adjusting of power system operations to mitigate wildfires, promote the safety of the public and first responders and preserve health and communication infrastructure.

(e) Describe the procedures, standards and time frames that the public utility will use to inspect utility infrastructure in areas that the public utility identifies under paragraph (a) of this subsection.

(f) Describe the procedures, standards and time frames that the public utility will use to carry out vegetation management in areas that the public utility identifies under paragraph (a) of this subsection.

(g) Identify the development, implementation and administration costs for the plan.

(h) Identify the community outreach and public awareness efforts that the public utility will use before, during and after a wildfire season.

(3) To develop a plan described in subsection (2) of this section, a public utility may consult with and consider information from regional, state and local entities, including municipalities.

(4) The commission, in consultation with the State Forestry Department and local emergency services agencies, shall evaluate a public utility's wildfire protection plan and plan updates through a public process.

(5) Not more than 180 days after receiving a wildfire protection plan or plan update from a public utility, the commission shall approve or approve with conditions the plan or update if the commission finds that the plan or update is based on reasonable and prudent practices identified through workshops pursuant to ORS 757.960 and designed to meet all applicable rules and standards adopted by the commission.

(6) The commission's approval of a wildfire protection plan does not establish a defense to any enforcement action for violation of a commission decision, order or rule or relieve a public utility from proactively managing wildfire risk, including by monitoring emerging practices and technologies.

(7) The commission shall adopt rules for the implementation of this section. The rules may include, but need not be limited to, procedures and standards regarding vegetation management, public power safety shutoffs and restorations, pole materials, circuitry and monitoring systems.

(8) All reasonable operating costs incurred by, and prudent investments made by, a public utility to develop, implement or operate a wildfire protection plan under this section are recoverable in the rates of the public utility from all customers through a filing under ORS 757.210 to 757.220. The commission shall establish an automatic ad-

justment clause, as defined in ORS 757.210, or another method to allow timely recovery of the costs. [2021 c.592 §3]

757.966 Consumer-owned utility required to develop wildfire mitigation plan. (1) As used in this section, "consumer-owned utility" and "governing body" have the meanings given those terms in ORS 757.600.

(2) A consumer-owned utility must have and operate in compliance with a risk-based wildfire mitigation plan approved by the governing body of the utility. The plan must be designed to protect public safety, reduce risk to utility customers and promote electrical system resilience to wildfire damage.

(3) The consumer-owned utility shall regularly update the risk-based wildfire mitigation plan on a schedule the governing body deems consistent with prudent utility practices.

(4) A consumer-owned utility shall conduct a wildfire risk assessment of utility facilities. The utility shall review and revise the assessment on a schedule the governing body deems consistent with prudent utility practices.

(5) A consumer-owned utility shall submit a copy of the risk-based wildfire mitigation plan approved by the utility governing body to the Public Utility Commission to facilitate commission functions regarding statewide wildfire mitigation planning and wildfire preparedness. [2021 c.592 §4]

757.968 Electric utility easement over private land. (1) As used in this section, "electric utility" has the meaning given that term in ORS 757.600.

(2) ORS 757.963 and 757.966 do not affect the terms or conditions of an easement held by an electric utility over private land as of July 19, 2021. [2021 c.592 §6a]

Note: 757.968 and 757.969 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.969 Municipally owned utility exempt from requirements. ORS 757.963 and 757.995 do not apply to municipally owned utilities organized under ORS chapter 225. [2021 c.592 §6b]

Note: See note under 757.968.

PENALTIES

757.990 Penalties. (1) Any person or municipality, or their agents, lessees, trustees or receivers, who omits, fails or refuses to do any act required by ORS 757.035, or fails to comply with any orders, rules or regulations of the Public Utility Commission made in pursuance of ORS 757.035, shall forfeit and pay into the State Treasury a sum of not less than $100, nor more than $10,000 for each such offense.

(2) Any public utility, or an officer or agent of a public utility, violating ORS 757.310 commits a Class A violation.

(3) Violation of ORS 757.325 is a Class A violation if committed by an individual. Violation of ORS 757.325 is a specific fine violation if committed by a person other than an individual and is subject to a fine of not more than $10,000.

(4) Violation of ORS 757.330 is a Class A violation.

(5) Violation of ORS 757.445 is a specific fine violation subject to a fine of not more than $20,000 for each offense.

(6) Violation of ORS 757.450 is a Class C felony. [Amended by 1971 c.655 §95; 1979 c.990 §428; 1987 c.320 §245; 1999 c.1051 §224; 2011 c.597 §93]

757.991 Civil penalty for noncompliance with gas regulations. (1)(a) Any person or municipality, or any agent, lessee, trustee or receiver of the person or municipality, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of gas by pipeline, or of facilities for the storage or treatment of gas to be transmitted or distributed by pipeline, that fails to comply with ORS 757.039, or fails to comply with any order, rule or regulation of the Public Utility Commission made pursuant to ORS 757.039, is subject to a civil penalty established by rule by the commission.

(b) The civil penalty amount for a violation or series of violations described in this section may not exceed the administrative civil penalty amount set forth in 49 C.F.R. 190.223 for a violation or series of violations of the applicable federal law described therein.

(2) Notwithstanding ORS 183.315 (6), 183.745 (7)(d) and 756.500 to 756.610, civil penalties under this section must be imposed by the commission as provided in ORS 183.745.

(3) Civil penalties collected under this section must be paid into the General Fund and credited to the Public Utility Commission Account as described in ORS 756.990 (7). [1969 c.372 §4; 1991 c.199 §1; 2015 c.231 §1; 2021 c.35 §1]

757.992 [Formerly 758.990; renumbered 165.990]

757.993 Penalty for violation of utility excavation notification provisions. (1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not

more than $1,000 for the first violation and not more than $5,000 for each subsequent violation.

(2) In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than $5,000 for the first violation and not more than $10,000 for each subsequent violation.

(3) Each violation of any rule of the Oregon Utility Notification Center shall be a separate offense. In the case of a continuing violation, each day that the violation continues shall constitute a separate violation.

(4) Penalties under this section shall not be imposed except by order following complaint as provided in ORS 756.500 to 756.610. A complaint must be filed within two years following the date of the violation.

(5) The Public Utility Commission may reduce any penalty provided in this section on such terms as the commission considers proper if:

(a) The defendant admits to the violation or violations alleged in the complaint and makes a timely request for reduction of the penalty; or

(b) The defendant submits to the commission a written request for reduction of the penalty within 15 days from the date of the penalty order.

(6) If the amount of the penalty is not paid to the commission, the Attorney General, at the request of the commission, shall bring an action in the name of the State of Oregon in the Circuit Court for Marion County to recover the penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commission.

(7) Notwithstanding any other provision of law, the commission shall pay penalties recovered under this section to the Oregon Utility Notification Center.

(8) The commission shall not seek penalties under this section except in response to a complaint alleging a violation of a rule or rules adopted by the Oregon Utility Notification Center. The commission may investigate any such complaint, and the commission shall have sole discretion to seek penalties under this section. [1995 c.691 §7]

757.994 Civil penalty for violation of statute, rule or order related to water utilities. (1) In addition to all other penalties provided by law, a person who violates any statute, rule or order of the Public Utility Commission related to water utilities is subject to a civil penalty of not more than $500 for each violation. The commission may require that penalties imposed under this section be used for the benefit of the customers of water utilities affected by the violation.

(2) Notwithstanding ORS 183.745 (7)(d), 183.315 (6) and 756.500 to 756.610, civil penalties under this section must be imposed by the commission as provided in ORS 183.745. [2003 c.202 §3]

Note: 757.994 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.995 Civil penalty for violation of wildfire protection provisions or rule. (1) In addition to all other penalties provided by law, violation of ORS 757.963 or a rule adopted pursuant to ORS 757.963 is subject to a civil penalty not to exceed $10,000.

(2) Notwithstanding ORS 183.315 (6), 183.745 (7)(d) and 756.500 to 756.610, civil penalties under this section must be imposed by the Public Utility Commission as provided in ORS 183.745.

(3) Civil penalties collected under this section must be paid into the General Fund and credited to the Public Utility Commission Account as described in ORS 756.990 (7). [2021 c.592 §3a]

Chapter 758

2023 EDITION

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RIGHTS OF WAY

758.010 Authority to construct lines and facilities; requirements and conditions. (1) Except within cities, any person has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to state government, as defined in ORS 174.111, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and subject to ORS 758.025 may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to state government, as defined in ORS 174.111, with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person exercising such right and privilege over any land belonging to state government, as defined in ORS 174.111, shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person is conditioned upon compliance with the requirements imposed by this subsection. [Amended by 1955 c.123 §1; 1971 c.655 §100; 1981 c.153 §76; 2001 c.664 §§3,6; 2009 c.444 §4; 2015 c.55 §1]

758.012 Notice of intent to build transmission line to consumer-owned utilities and public utilities; exemptions. (1) As used in this section:

(a) "Public utility" has the meaning given that term in ORS 757.005.

(b) "Transmission line" means a linear utility facility by which a utility provider transmits or transfers electricity from a point of origin or generation or between transfer stations.

(2) A person who applies for a permit with the Energy Facility Siting Council or with a county to build a transmission line must notify each people's utility district organized under ORS chapter 261, municipal utility organized under ORS chapter 225, electric cooperative organized under ORS chapter 62 and public utility in whose service territory the transmission line will be constructed of the intent to receive approval for the construction of the transmission line unless the person is:

(a) A people's utility district organized under ORS chapter 261, a municipal utility organized under ORS chapter 225 or an electric cooperative organized under ORS chapter 62; or

(b) A public utility. [2013 c.235 §2]

758.013 Operator of electric power line to provide Public Utility Commission with safety information; availability of information to public utilities. (1) Each person who is subject to the Public Utility Commission's authority under ORS 757.035 and who engages in the operation of an electric power line as described in ORS 757.035 must provide the commission with the following information before January 2 of each even-numbered year:

(a) The name and contact information of the person that is responsible for the operation and maintenance of the electric power line, and for ensuring that the electric power line is safe, on an ongoing basis; and

(b) The name and contact information of the person who is responsible for responding to conditions that present an imminent threat to the safety of employees, customers and the public.

(2) In the event that the contact information described in subsection (1) of this section changes or that ownership of the electric power line changes, the person who engages in the operation of the electric power line must notify the commission of the change as soon as practicable, but no later than within 90 days.

(3) If the person described in subsection (1) of this section is not the public utility, as defined in ORS 757.005, in whose service territory the electric power line is located, the commission shall make the information provided to the commission under subsection (1) of this section available to the public utility in whose service territory the electric power line is located. [2013 c.235 §3]

758.015 Certificate of public convenience and necessity. (1) When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, or any transmission company, proposes to construct an overhead transmission line which

will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commission for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.

(2) The commission shall give notice and hold a public hearing on such petition. The commission, in addition to considering facts presented at such hearing, shall make the commission's own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly. Except for petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line, the order shall be subject to review as in other cases. Orders on petitions for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line are subject to judicial review in the same manner as an order in a contested case as set forth in ORS 758.017. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

(3) This section shall not apply to construction of transmission lines in connection with a project for which a permit or license is otherwise obtained pursuant to state or federal law.

(4) As used in this section and ORS 758.020, "transmission company" means a person or entity that owns or operates high voltage transmission lines and is subject to the jurisdiction of the Federal Energy Regulatory Commission. "Transmission company" does not include a cooperative organized under ORS chapter 62. [1961 c.691 §19; 2001 c.913 §6; 2013 c.335 §1]

758.017 Appeal of grant or denial of certificate of public convenience and necessity for transmission lines subject to Energy Facility Siting Council approval; review vested in Supreme Court. (1) Any party to a contested case hearing related to the application for a certificate of public convenience and necessity under ORS 758.015 for a proposed transmission line for which the petitioner also seeks approval from the Energy Facility Siting Council for the same transmission line may appeal the Public Utility Commission's grant or denial of the application. Issues on appeal shall be limited to those raised by the parties to the contested case hearing before the commission.

(2) Jurisdiction for judicial review of the commission's approval or rejection of an application for a certificate of public convenience and necessity under subsection (1) of this section is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the commission's final order. Date of service shall be the date on which the commission delivered or mailed the final order in accordance with ORS 183.470.

(3) The filing of a petition for judicial review may not stay the order, except that a party to the contested case hearing may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that the petitioner will suffer irreparable injury.

(4) If the Supreme Court grants a stay pursuant to subsection (3) of this section, the court:

(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of $5,000.

(b) May grant the stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(5) The review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to a petition for review under this section and render a decision within six months of the filing of the petition for review.

(6) The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (5) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

(7) No period of delay resulting from a continuance granted by the Supreme Court

under subsection (6)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, the court's reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (6)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, because of the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

(8) No continuance under subsection (6)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [2013 c.335 §3]

758.020 Joint occupancy of poles. (1) The county court, board of county commissioners or the Department of Transportation, when designating the location where poles or other aboveground facilities described in ORS 758.010 may be placed on a road or highway which fronts on the ocean or on a river or other body of water and the water frontage of the highway is being developed or maintained for its scenic or recreational value, may require all lines to occupy the opposite side of the right of way, if such joint occupancy can be maintained without undue impairment of service or damage to public life and property.

(2) If the owners of such lines are unable to agree on the terms and conditions of joint occupancy, such department, court or board shall request the Public Utility Commission to determine the practicability of such joint occupancy and the effect thereof upon adequate and safe service by the prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before making or entering an order, such commission shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610. The order of the commission is subject to judicial review in the manner provided by ORS 756.610. In fixing terms and conditions pursuant to which joint occupancy shall be accomplished, the Public Utility Commission shall require the installation by each occupant of standards, devices and equipment reasonably necessary to protect the equipment of the other occupants from damage and the public from injury arising from such joint occupancy.

(3) The right of any public utility, telecommunications utility or transmission company to construct, maintain and operate on a public highway poles or fixtures is contingent on compliance with reasonable requirements established by the Department of Transportation, county courts, boards of county commissioners or the Public Utility Commission under authority of this section and ORS 758.010. Such rights are likewise contingent and conditioned on all facilities, equipment and installations being constructed and maintained in strict conformance with modern and approved standards. [Amended by 1971 c.655 §102; 1987 c.447 §98; 2001 c.913 §7; 2005 c.638 §11; 2017 c.312 §6]

758.025 Relocation of utilities in highway right of way; required consultation; recovery of costs. (1) As used in this section:

(a) "Highway" has the meaning given that term in ORS 801.305 (1) but does not include highways located on property owned by the Port of Portland that is subject to federal relocation regulations authorized under 49 U.S.C. 47107, as in effect on January 1, 2010.

(b) "Public body" has the meaning given that term in ORS 174.109.

(c) "Utility" means a public utility, as defined in ORS 757.005, or a telecommunications utility or competitive telecommunications provider, as those terms are defined in ORS 759.005.

(2) If a public body plans a project that would require utilities to relocate their utility facilities that are located in the highway right of way, the public body shall notify affected utilities of the project in writing as soon as is practicable.

(3) During the planning and design phase of a project, the public body shall coordinate with the affected utilities to discuss the project's scope and schedule. At a minimum, the discussion must include a description of the plans, goals and objectives of the proposed project and options to minimize or eliminate costs to the public body and the utilities. The public body is not required to avoid or minimize costs to the utilities in a way that materially affects the project's scope, costs or schedule. Failure of the affected utilities to respond or participate in the coordination or discussion does not affect the ability of the public body to proceed with design and construction of the project.

(4) A public body having jurisdiction over a highway may not prohibit a utility from seeking reimbursement from private parties or customers for costs under this section in any permit application, license application or other written agreement authorizing the utility to relocate the facilities.

(5)(a) Notwithstanding any other provision of ORS chapter 759, a telecommunications utility that is not subject to rate-of-return regulation, including a utility regulated under ORS 759.255 may, after participating in the process described in subsection (3) of this section, request authorization from the Public Utility Commission to recover from customers prudent costs incurred for the relocation of facilities required by a public body that are not otherwise paid or reimbursed from another source. Recoverable relocation costs are the nonfacility costs incurred in the relocation plus the undepreciated value of the facilities replaced, including the cost of placing such facilities underground if underground placement is required by the public body or other provision of law. The commission may authorize the recovery of relocation costs that the commission determines to be substantial and beyond the normal course of business.

(b) The commission shall:

(A) Verify the relocation costs for which the utility requests recovery;

(B) Determine the allocation of costs between interstate and intrastate services, geographic areas, customers and services; and

(C) Prescribe the method of cost recovery.

(c) In determining the level of cost recovery and the allocation of costs, the commission shall consider:

(A) The overall impact on the utility; and

(B) Other relevant factors identified by the commission.

(d) Relocation costs may be recovered for a reasonable period of time subject to approval by the commission and not to exceed the depreciable life of the facilities. [2009 c.444 §2]

758.030 [Renumbered 271.440]

758.035 Commission's power to enforce joint use of facilities. (1) Every public utility, telecommunications utility, person, association or corporation having conduits, subways, street railway tracks, poles or other equipment on, over or under any street or highway shall for a reasonable compensation permit the use of the same by any public utility or telecommunications utility whenever public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other users of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, any public utility, telecommunications utility, person, association or corporation interested may apply to the Public Utility Commission, and if after investigation the commission ascertains that public convenience or necessity requires such use and that it would not result in irreparable injury to the owner or other users of such equipment, the commission shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use.

(3) The use so ordered shall be permitted and the prescribed conditions and compensation shall be the lawful conditions and compensation to be observed, followed and paid. The order of the commission is subject to judicial review in the manner provided by ORS 756.610. The order may be modified by the commission upon application of any interested party or upon the commission's own motion. All public utilities and telecommunications utilities shall afford all reasonable facilities and make all necessary regulations for the interchange of business, or traffic carried or their product between them, when ordered by the commission so to do. [Formerly 757.040; 1987 c.447 §99; 2005 c.638 §12; 2017 c.312 §7]

758.040 [Renumbered 757.606]

758.050 [Renumbered 757.611]

758.060 [Amended by 1971 c.743 §426; renumbered 757.616]

758.070 [Renumbered 757.621]

758.080 [Renumbered 757.626]

758.090 [Renumbered 757.631]

758.100 [Renumbered 757.636]

758.110 [Renumbered 757.641]

PROVISION OF BROADBAND SERVICES BY ELECTRIC COOPERATIVE

758.120 Electric easement in provision of broadband services; exceptions; notice; remedies for property owners. (1) As used in this section and ORS 758.125 and 758.130:

(a) "Attachment" has the meaning given that term in ORS 757.270.

(b) "Broadband" has the meaning given that term in ORS 276A.406.

(c) "Commercial broadband service provider" means a provider of broadband service that is not affiliated with or a division of an electric cooperative.

(d) "Electric cooperative" has the meaning given that term in ORS 757.600.

(e) "Electric easement" means any recorded or unrecorded easement or license, including easements created by operation of law, held or used by an electric cooperative for the installation and maintenance of electric facilities, regardless of whether the easement is for the exclusive benefit of the electric cooperative or is also for use in connection with other utility services that may or may not be provided by the electric cooperative.

(f) "Electric facilities" means any line, wire, pipe, conduit, main, pump, pole, tower, fixture, manhole, handhole or other similar facility or facilities, and any other related or ancillary materials, which are owned or controlled, in whole or in part, by one or more electric cooperatives.

(g) "Property owner" means a person with a recorded fee simple interest in land upon which an electric easement is located.

(2)(a)(A) Except as provided in paragraph (b) of this subsection, an electric cooperative may use or allow for the use of an electric easement in the provision of broadband services.

(B) If use of an electric easement in the provision of broadband services as authorized under this paragraph would result in an expansion of the uses for which the easement is granted or acquired, the electric cooperative shall, no later than 60 days prior to the expansion of use, provide written notice to the property owner pursuant to subsection (3) of this section.

(C) A commercial broadband service provider may request for an electric cooperative to send notice to a property owner as required by this subsection. A commercial broadband service provider shall include in a request under this subparagraph the addresses of subject poles and the pole numbers if labeled on the pole, and the names and addresses of the property owners to whom the commercial broadband service provider requests notice to be sent. Absent unusual circumstances such as an outage or similar emergency, an electric cooperative shall send notice to a property owner as requested under this subparagraph no later than 10 days after receipt of the request from a commercial broadband service provider.

(b)(A) The provisions of this section do not authorize an electric cooperative to use or allow for the use in the provision of broadband services any electric easements that are granted on property owned, managed or operated by a city, including but not limited to public rights of way within the boundaries of the city.

(B) If an electric easement is an unrecorded easement, license or easement created by operation of law, the electric easement must be in current use by the electric cooperative for the installation and maintenance of electric facilities in order for the electric cooperative to exercise the authority granted under this section. For purposes of this section, the location and extent of an unrecorded easement, license or easement created by operation of law is limited to:

(i) The location of the electric easement as it was in use prior to commencement of use of the electric easement in the provision of broadband services; and

(ii) A width of no more than 10 feet on each side from the center line of the electric easement.

(3)(a) Written notice as required by subsection (2) of this section must be sent by certified mail to the last known address of the property owner, according to publicly available records of the county assessor. The notice must contain:

(A) The name and mailing address of the electric cooperative;

(B) The mailing address, telephone number and electronic mail address for a representative of the electric cooperative;

(C) A summary statement of the purpose and character of the expansion of the use of the electric easement; and

(D) An offer for an onsite meeting prior to commencement of any installation activities associated with the expanded use.

(b) If the notice is sent by an electric cooperative on behalf of a commercial broadband service provider, the notice must also contain:

(A) The name and mailing address of the commercial broadband service provider; and

(B) The mailing address, telephone number and electronic mail address for a representative of the commercial broadband service provider.

(4) If the activities necessary to expand use of the electric easement for provision of broadband services will require trenching or other underground work that is not included in the uses for which the easement is granted or acquired:

(a) The notice provided under subsection (3) of this section must also include:

(A) A summary statement describing the activities to be conducted during the trenching or other underground work; and

(B) The approximate dates when the trenching or other underground work will start and end;

(b) Any new conduit must be installed in a location that is adjacent to and as close to

existing conduit as allowed under applicable code requirements or regulations;

(c) To the extent allowed under any applicable code requirements or regulations, the property owner may choose which side of the existing conduit to install any new conduit; and

(d) Any surface area disturbed during trenching or other underground work must be restored to its condition prior to the trenching or other underground work.

(5) In installing and maintaining facilities necessary to provide broadband services, the provider of broadband services that is making use of an electric easement as authorized pursuant to this section must:

(a) Make reasonable accommodations to prevent disruption to active agricultural and forest operations;

(b) Employ best practices to prevent the introduction of noxious weeds onto the property upon which the electric easement is located;

(c) Provide compensation to the property owner for property damage or crop loss caused by the installation or maintenance of the facilities; and

(d) Upon the request of the property owner, provide at least seven days advance notice before the commencement of any installation or routine maintenance activities.

(6) An expansion of use described in subsection (2) of this section is deemed vested in the electric cooperative and shall run with the land as of the date that the property owner receives notice from the electric cooperative.

(7) Except as provided in ORS 758.125 (1), a property owner that receives notice under subsection (3) of this section may bring a cause of action, in the circuit court of the county where the electric easement is located, against the provider of broadband services for damages relating to a decrease in the value of the property owner's real property caused by the use of the easement in the provision of broadband services. A cause of action authorized by this subsection must be brought no later than 18 months after the date that the electric cooperative provided notice under subsection (3) of this section. The cause of action provided for in this subsection shall be the exclusive remedy in law or equity with respect to use of the electric easement for the provision of broadband services.

(8)(a) In an action brought under subsection (7) of this section:

(A) The court or jury shall ascertain and assess the decrease in value of property, if any, based on the difference between:

(i) The fair market value of the entire parcel of real property upon which the electric easement is located immediately before the expanded use; and

(ii) The fair market value of the entire parcel of real property immediately after the expanded use;

(B) Evidence of revenues or profits derived from the expanded use or related attachment rates is not admissible in determining fair market value; and

(C) Evidence of the increase in fair market value due to the availability of broadband services is admissible in determining fair market value.

(b) Prior to the commencement of trial in an action brought under subsection (7) of this section, the defendant shall make at least one offer of compensation to the property owner. If the property owner obtains a judgment that exceeds the offer of compensation made by the defendant, the property owner shall be entitled to an additional award for trial costs, disbursements, reasonable attorney fees and expenses as defined in ORS 35.335 (2).

(c) At any point not later than 10 days before the trial of the action, after making an initial offer of compensation pursuant to paragraph (b) of this subsection, the defendant may serve an offer of compromise on the plaintiff in the action, as provided in ORS 35.300. If the plaintiff accepts the offer of compromise, the plaintiff shall be entitled to an award for costs and disbursements, attorney fees and expenses incurred by the plaintiff before service of the offer on plaintiff. If the plaintiff rejects the offer of compromise and fails to obtain a judgment more favorable than the offer, the plaintiff may not recover prevailing party fees or costs and disbursements, attorney fees and expenses that were incurred on and after service of the offer.

(9) The electric cooperative may include required reimbursement for expanded use compensation awards and litigation costs in any attachment license agreement with a provider of broadband services that is not the electric cooperative and that is directly benefited by the expanded use.

(10) A class action may not be maintained against a provider of broadband services in any action for damages based on a claim of expanded use for broadband services. [2021 c.149 §1]

Note: 758.120 to 758.130 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.125 Duties and rights not altered by ORS 758.120. (1) ORS 758.120 does not alter the rights of an electric cooperative or commercial broadband service provider to acquire the rights to use real property for broadband services through any other means authorized by law.

(2) ORS 758.120 does not authorize an expanded use that is expressly prohibited by the terms of a written electric easement.

(3) Exercise of the authority granted in ORS 758.120 does not:

(a) Change the legal relationship between the electric cooperative as the easement holder and the property owner;

(b) Create an easement right for any third party, including but not limited to a commercial broadband service provider or a broadband division or affiliate of the electric cooperative; or

(c) Expand the footprint of the existing easement.

(4) An expanded use of an electric easement authorized under ORS 758.120 may not alter or interfere with any easement rights held by parties other than the electric cooperative that existed, within or outside the area of the electric easement, prior to the expanded use.

(5)(a) Nothing in ORS 758.120 requires an electric cooperative that does not have a broadband division or affiliate to offer or authorize the access or use of an electric easement or to use attachments or electric service infrastructure owned or controlled by the electric cooperative for provision of broadband services in a manner that would, in the electric cooperative's reasonable discretion, materially interfere with the electric cooperative's construction, maintenance or use of any electric cooperative attachments or infrastructure for the provision of electric service.

(b) Subject to subsection (2) of this section, if an electric cooperative has a broadband division or affiliate, the electric cooperative may withhold authorization for a commercial broadband service provider to access or use an electric easement or to use attachments or electric service infrastructure owned or controlled by the electric cooperative for provision of broadband services only if:

(A) There is insufficient capacity for attachments necessary for the provision of broadband service; or

(B) Concerns of safety or reliability or generally applicable engineering purposes weigh against granting the authorization.

(6) Nothing in this section or ORS 758.120 imposes any duty or liability on a property owner in addition to any liability provided for in an electric easement for unintentional damage by the property owner to facilities necessary for the provision of broadband that are installed in an electric easement pursuant to an expanded use authorized under ORS 758.120. An electric cooperative that exercises the authority granted under ORS 758.120 shall indemnify and hold harmless the property owner against damage to existing easement holders resulting from activities related to the installation or maintenance of facilities described in this subsection. [2021 c.149 §2]

Note: See note under 758.120.

758.130 Requirements for electric cooperative in provision of broadband services; audit; compliance. (1) An electric cooperative that exercises the authority granted under ORS 758.120 for the provision of broadband services:

(a) For as long as the electric cooperative maintains an exclusive right to provide electric service to customers within its exclusive service territory, may provide broadband service only through a broadband affiliate or through a separate broadband division within the electric cooperative; and

(b) If the electric cooperative has a broadband affiliate or separate broadband division:

(A) Shall maintain or cause to be maintained an accounting system for the broadband affiliate or division that is separate from the accounting system for the electric cooperative's electric division;

(B) Shall cause, within two years after commencement of commercial operation by the electric cooperative's broadband affiliate or division and at least once every two years thereafter, a financial audit to be performed by an independent certified public accountant with respect to the broadband affiliate's or division's provision of retail broadband service, including an audit of the allocation of costs for property and services that are used in both the provision of broadband service and the electric cooperative's provision of electric service; and

(C) May not provide the broadband affiliate or division of the electric cooperative a right to install maintain, own, operate, or use attachments at rates, terms or conditions that are more favorable than the rates, terms or conditions provided to commercial broadband service providers.

(2)(a) An electric cooperative may not use its exclusive right to provide electric service within its exclusive territory to cross-subsidize a broadband affiliate of the electric cooperative or a separate broadband division within the electric cooperative, or to

cross-subsidize a broadband affiliate's or division's provision of broadband service through:

(A) Below fair market pricing;

(B) Payment of capital or operating costs properly charged to the broadband affiliate or division under applicable accounting rules; or

(C) Use of any revenue from or subsidy for the provision of electric service to provide broadband service below market value, except in connection with the electric cooperative's provision of electricity.

(b) An electric cooperative may:

(A) Enter into transactions with the broadband affiliate or division of the electric cooperative on terms and conditions that are substantially similar to the terms and conditions that would be agreed to between two similarly situated parties in an arm's-length commercial transaction;

(B) Loan funds to the broadband affiliate or division of the electric cooperative if the interest rate on the loan is no less than the electric cooperative's lowest cost of capital;

(C) Provide for reduced-cost broadband service to low-income customers;

(D) Conduct and fund due diligence, operational analysis, entity set-up, and associated noncapital expenditures relating to and prior to the establishment of a broadband affiliate or division; or

(E) Offer broadband service through a broadband affiliate or division at below market pricing on a temporary basis for promotional purposes.

(3)(a) Upon request from a commercial broadband service provider, an electric cooperative subject to this section and any broadband affiliate or division of the electric cooperative shall cause an officer of the electric cooperative and the broadband affiliate or division, respectively, to certify that both the electric cooperative and the broadband affiliate or division are in compliance with this section.

(b) If a dispute arises between an electric cooperative or its broadband affiliate or division and a commercial broadband service provider regarding matters addressed in this subsection, the parties to the dispute have standing to file a claim or cause of action in any court of competent jurisdiction in the state. The following are discoverable and admissible as evidence in court regarding compliance by the electric cooperative and the broadband affiliate or division of the electric cooperative compliance with this section:

(A) Any certification requested and produced pursuant to this subsection; and

(B) Any audit required to be performed pursuant to subsection (1) of this section, except that the court shall provide appropriate restrictions upon the disclosure of any trade secret, as that term is defined in ORS 192.345 (2), that may be included in the audit. [2021 c.149 §3]

Note: See note under 758.120.

UNDERGROUND ELECTRIC AND COMMUNICATIONS FACILITIES

758.210 Policy. The legislature finds that in many areas of this state landowners, utilities and public authorities desire to convert existing overhead electric and communication facilities to underground facilities by means of special assessment proceedings. The legislature declares that a public purpose will be served and that the public welfare will be promoted by providing a procedure to accomplish such conversion by special assessment proceedings and that it is in the public interest for such conversion to be accomplished as provided in ORS 758.210 to 758.270. [1969 c.385 §1]

758.215 Definitions for ORS 758.210 to 758.270. As used in ORS 758.210 to 758.270, unless the context requires otherwise:

(1) "Convert," "converting" or "conversion" means the removal of overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities at the same or different locations.

(2) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services; however:

(a) "Electric facilities" does not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

(b) "Communication facilities" does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(c) "Electric or communication facilities" does not include any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right of way of the railroad or pipeline.

(3) "Landowner" or "owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the county assessor.

(4) "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground.

(5) "Public authority" means a city or county.

(6) "Public lands and right of way" includes rights of way for streets, roads and highways and all land or interests in land owned by a public authority.

(7) "Underground assessment district" or "district" means an assessment district created as provided by ORS 758.210 to 758.270.

(8) "Underground electric or communication facilities" means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the surface in areas where utility facilities are underground in accordance with standard underground practices.

(9) "Utility" means any electric or communication utility described by ORS 757.005 or any telecommunications utility described by ORS 759.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to consumers. [1969 c.385 §2; 1971 c.360 §1; 1987 c.447 §100]

758.220 Authority for conversion to underground facilities; formation of assessment district. (1) A public authority shall have the power to require the conversion of overhead electric or communication facilities to underground facilities; to provide and receive funds to pay for such conversion; and to assess the whole or any part of the cost thereof against the real property included in the underground assessment district specially benefited by such conversion.

(2) An underground assessment district shall include an area having a frontage of not less than 400 feet upon a public street, road or highway along which overhead electric or communication facilities are located.

(3) An underground assessment district:

(a) Created by a city, may include area along city streets, county roads and state highways or any part thereof located within the district.

(b) Created by a county, may include areas along county roads, state highways or any part thereof located within the district. [1969 c.385 §3]

758.225 Petition, ordinance or resolution for conversion; contents; filing. (1) A proceeding for conversion may be initiated:

(a) By a petition signed by not less than 60 percent of the landowners within the proposed assessment district who own not less than 60 percent of the land area within the district; or

(b) By an ordinance or resolution of a public authority declaring its intention to order a conversion.

(2) A petition shall:

(a) Describe the proposed boundaries of the assessment district;

(b) Generally describe the proposed conversion; and

(c) Request that a proceeding for such conversion be taken pursuant to ORS 758.210 to 758.270.

(3) The petition shall be filed with the city recorder, county clerk or other person designated by the public authority to receive the petition and to verify the signatures. If the petition is signed by the requisite number of qualified signers, the official so designated shall execute a certificate of sufficiency and present the petition and certificate to the governing body of the city or to the county court or board of county commissioners, as the case may be. [1969 c.385 §4]

758.230 Assessment procedure; objections to conversion. (1) Upon presentation of the petition and certificate of sufficiency, or upon adoption of an ordinance or resolution, the public authority shall proceed in the manner provided by ORS 223.389.

(2) Unless the charter of a county provides otherwise, a county shall declare a proposed conversion abandoned if, after notice as provided by ORS 223.389, objections to the conversion are received by a county court or board of county commissioners signed by more than 50 percent of the landowners within the proposed assessment district who own more than 50 percent of land within the district. If a proposed conversion is abandoned because of objections, no new proceeding for the conversion shall be undertaken within a period of one year thereafter. [1969 c.385 §5]

758.235 Applicability of local improvement laws; issuance of bonds. Unless otherwise provided by ORS 758.210 to 758.270, the provisions relating to the procedure for local improvements in cities, as set forth in ORS 223.205, 223.210 to 223.295, 223.387 to 223.399, 223.401, 223.405 to 223.485, 223.505 to

223.595, 223.610, 223.615 to 223.650 and 223.770, apply to proceedings for a conversion by a city or county under ORS 758.210 to 758.270. In a proceeding conducted by a county, where the statutes referred to in this section refer to officials of cities, the corresponding officials of the county shall perform the required functions, unless otherwise provided by order of the county court or board of county commissioners. Cities and counties may, as provided by ORS 223.205 and 223.210 to 223.295, issue improvement bonds in the total amount of the valid applications received to pay assessments in installments. [1969 c.385 §6; 1995 c.333 §20; 2017 c.17 §60]

758.240 Contract with utility for conversion. (1) When a public authority in accordance with ORS 758.230 determines that a conversion shall be made, it may contract with the utilities supplying electric or communication service within the underground assessment district to perform the conversion. A contract shall provide:

(a) A description of the electric and communication facilities to be converted;

(b) That plans and specifications for such conversion shall be supplied or approved by the affected utility;

(c) The time and manner in which underground electric and communication facilities will be installed and overhead electric and communication facilities will be removed;

(d) The estimated cost of converting overhead facilities located on public lands and right of way to underground facilities;

(e) The estimated cost of converting related utility service facilities located on privately owned lots and parcels;

(f) The time and manner of making payments and the source of funds for such payments; and

(g) That upon completion of the work of conversion, the utility performing the conversion shall have legal title to the electric or communication facilities, which shall thereafter constitute a part of a system of the utility and be used, operated, maintained and managed by it as part of its system.

(2) Upon approval and execution of the conversion contracts by the utilities and public authority, the public authority shall direct the utilities owning overhead electric or communication facilities within the district to convert such facilities as required by the contract. [1969 c.385 §7]

758.245 Payment of costs for conversion; removal of overhead facilities. Upon completion of the conversion of the overhead electric or communication facilities on public lands and right of way to underground, the affected utility shall file a verified statement of the costs of such conversion with the public authority. The public authority shall adopt an ordinance assessing the whole or any part of the cost of the conversion against the real property in the underground assessment district specifically benefited and shall promptly thereafter mail to each landowner a statement of the amount of such costs assessed to the property of the landowner. With the statement the public authority shall mail to each landowner a notice stating that:

(1) Service from the underground facilities is available;

(2) The landowner has 90 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on the lot or parcel to underground service facilities; and

(3) After the 90-day period following the date of the mailing of the notice, the public authority will order the utilities to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area. [1969 c.385 §8]

758.250 Conversion of facilities on private lands; procedure; payment of costs. (1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made at the expense of the landowner by the utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs or ordinances. The utility shall not be required to convert service lines on property, other than public lands and right of way, until the landowner furnishes to the utility a permit or easement authorizing the utility and its employees, agents and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the utility shall file with the public authority a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter the public authority shall mail to each landowner a copy of such verified statement. [1969 c.385 §9]

758.255 Discontinuance of utility service for noncompliance with conversion provisions. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or ease-

ment referred to in ORS 758.250 or if such an owner fails to convert to underground service facilities within 90 days after the mailing to the owner of the notice provided by ORS 758.245, the public authority shall order the utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement. [1969 c.385 §10]

758.260 Competitive bidding for utility conversion. To the extent that the contract between the utility and the public authority provides that all or any part of the conversion work shall be performed by the utility, any statute or charter provision requiring competitive bidding and the award of a contract to the lowest responsible bidder does not apply. [1969 c.385 §11]

758.265 Overhead facilities in assessment district after conversion. Once converted, no overhead electric or communication facilities shall be installed, maintained or operated in any underground assessment district except as authorized by ORS 758.210 to 758.270. [1969 c.385 §12]

758.270 Effect of ORS 758.210 to 758.270 on existing laws and rights. ORS 758.210 to 758.270 are supplemental and cumulative of existing rights, laws, charters, ordinances and franchises and shall not abrogate or modify any franchise granted to a utility by any local government or abrogate or modify in any way existing rights, laws, charters or ordinances of any local government. [1969 c.385 §13]

LIABILITY OF ELECTRIC UTILITY FOR PRUNING AND REMOVING VEGETATION

758.280 Definitions for ORS 758.280 to 758.286. For the purposes of ORS 758.280 to 758.286:

(1) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, crossarms, receivers, transmitters, transformers, instruments, machines, appliances and all other devices and apparatuses used, operated, owned or controlled by an electric utility for the purposes of manufacturing, transforming, transmitting, distributing, selling or furnishing electricity.

(2) "Electric utility" has the meaning given that term in ORS 758.505.

(3) "Vegetation" means trees, shrubs, vines and all other plants. [2001 c.420 §1]

Note: 758.280 to 758.286 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.282 Immunity of electric utility for pruning or removing vegetation in certain cases. (1) An electric utility is immune from any civil liability for pruning or removing vegetation that is growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located, if the pruning or removal is consistent with policies of the Public Utility Commission relating to the pruning or removal of vegetation, or is consistent with a local ordinance or resolution applicable to the property that relates to the pruning or removal of vegetation, and:

(a) The vegetation has come in contact with or caused damage to electric facilities; or

(b) Pruning or removing the vegetation is necessary to protect life or property or to restore electric service.

(2) ORS 105.810 and 105.815 do not apply to any claim against an electric utility based on the pruning or removal of vegetation growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located. [2001 c.420 §2]

Note: See note under 758.280.

758.284 Immunity of electric utility for pruning or removing vegetation in other cases; notice to property owner. (1) An electric utility is immune from any civil liability for pruning or removing vegetation that is growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located, if the pruning or removal is consistent with policies of the Public Utility Commission relating to the pruning or removal of vegetation, or is consistent with a local ordinance or resolution applicable to the property that relates to the pruning or removal of vegetation, and any of the following apply:

(a) The vegetation to be pruned or removed is hanging over electric facilities or growing in such close proximity to overhead electric facilities that the vegetation constitutes an electrical hazard under any electrical safety code adopted by the Public Utility Commission or constitutes a danger under state or federal health and safety codes to a person working on the facilities or with access to the facilities.

(b) The vegetation to be removed is diseased, dead or dying or is close enough to electric facilities that pruning or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities. A determination under this paragraph must be made by a qualified forester or arborist if

a local ordinance or resolution requires that such determinations be made by a qualified forester or arborist.

(c) The vegetation is of such size, condition and proximity to electric facilities that the vegetation can reasonably be expected to cause damage to electric facilities in the future. A determination under this paragraph must be made by a qualified forester or arborist if a local ordinance or resolution requires that such determinations be made by a qualified forester or arborist.

(2) The limitation on liability provided by this section does not apply unless the electric utility has provided notice to owners of the property where the vegetation is located. Notice may be provided by posting a flyer in a conspicuous location on the property where the vegetation is located. The flyer must:

(a) Indicate that the electric utility intends to prune or remove vegetation on the property;

(b) Include a brief statement of the nature of the work to be performed and the reason the work is needed;

(c) Include an estimate of the time period during which the work will occur; and

(d) Provide information on how the electric utility can be contacted.

(3) The limitation on liability provided by this section does not apply unless the pruning or removal complies with rules adopted by the Public Utility Commission relating to pruning or removal. In adopting rules, the commission shall give consideration to the American National Standard for Tree Care Operations adopted by the American National Standards Institute. [2001 c.420 §3]

Note: See note under 758.280.

758.286 Immunity not applicable to liability for cost of abating fires. The immunities provided by ORS 758.280 to 758.284 do not affect any liability that an electric utility may have for the costs of abating fires under ORS 477.064 to 477.120. [2001 c.420 §4]

Note: See note under 758.280.

WATER UTILITIES

758.300 Definitions for ORS 758.300 to 758.320. As used in ORS 758.300 to 758.320:

(1) "Commission" means the Public Utility Commission.

(2) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks or group care homes.

(3) "Water utility" means any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of water, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city. "Water utility" does not include a municipal corporation. [1999 c.695 §1]

Note: 758.300 to 758.320 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.302 Application for exclusive service territory; hearing on application; notice. (1) A water utility may apply to the Public Utility Commission for an order designating an area as an exclusive service territory for the water utility. The commission may designate as an exclusive service territory any area that on the date of application is being served in an adequate manner by the applicant and is not being served by any other water provider.

(2) In addition to the area described in subsection (1) of this section, a private water utility may apply for inclusion in an exclusive service territory designated for the private water utility any area adjacent to the area described in subsection (1) of this section if:

(a) The applicant plans to extend service to the adjacent area in the six months immediately following the date of the application;

(b) The adjacent area is not being served by any other water provider; and

(c) The applicant demonstrates that it is more economical and feasible to provide services to the adjacent area by an extension of the applicant's existing facilities than by an extension of the facilities of another water provider or community water supply system.

(3) An application under this section must be made on forms provided by the commission, contain all information required by commission rule and include a copy of the notice of the filing to be given to all customers of record. The applicant shall, within 30 days after filing an application under this section, give notice of the filing in the manner provided by subsection (5) of this section.

(4) Within 30 days after the filing of an application under this section, the commission shall give notice of the filing to all

other water providers in the areas adjacent to the area described in the application.

(5)(a) A notice given pursuant to this subsection shall be given:

(A) By mail or electronic mail to all customers of record of the water utility in the area described in the application;

(B) By press release to news media local to the area described in the application; and

(C) By publication in one or more newspapers of general circulation in the area described in the application at least once weekly for two successive weeks.

(b) The notice must describe the area of the proposed exclusive service territory and the general rate impact to existing customers.

(6) If the commission, on its own motion, chooses, or if any customer or customers of the water utility request a hearing on the application within 30 days of the date notice is given under subsection (3) of this section, the commission shall hold a hearing. The commission shall give notice of the time and place of the hearing in the manner provided by subsection (5) of this section. If the hearing is held by reason of a customer's request, the commission shall give notice of the hearing within 30 days after the request is received by the commission. The hearing shall be held at a place within or conveniently accessible to the area described in the application.

(7) The commission may make such investigations relating to an application under this section as the commission deems proper, including physical examination and evaluation of the facilities and systems of the applicant, estimates of their operating costs and revenues, and studies of such other information as the commission deems relevant.

(8) The commission shall enter an order granting or denying an application for an exclusive service territory under this section. The order must contain findings of fact supporting the order. The commission may grant an application subject to such conditions and limitations as the commission deems appropriate.

(9) ORS 756.500 to 756.610 govern the conduct of hearings under this section and any appeal of the commission's order.

(10) If the commission considers competing applications under subsection (2) of this section to extend exclusive service to the same area, there is a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [1999 c.695 §2; 2003 c.202 §4; 2023 c.53 §3]

Note: See note under 758.300.

758.305 Exclusive service territories. (1) Designated service territories of a water utility approved by the Public Utility Commission shall be exclusive. A water utility or community water supply system shall not provide water utility service within the designated exclusive service territory of another water utility without the express approval of the commission.

(2) A water utility shall serve only customers within its designated exclusive service territory and shall serve all applicants for service within its designated territory. The water utility may refuse service only as provided by commission rule.

(3) Upon petition by the water utility for an order, or by the commission on its own motion, a designated service territory may be expanded to include unserved areas. In reviewing a petition, the commission shall consider at least the current ability of the water utility to serve the expanded area, the demand for service in the expanded area, the impact on existing customers and the availability of alternative service. The commission may take other factors into consideration as prescribed by commission rule. Notice and hearing of the proposed expansion shall be given as provided in ORS 758.302.

(4) Upon petition by the water utility or a customer of the utility for an order, or by the commission on its own motion, a designated exclusive service territory may be decreased upon a showing that the water utility is not providing adequate service to its customers or does not have the capacity to serve the designated area. Notice of the proposed decrease of service territory shall be given as provided in ORS 758.302. [1999 c.695 §6]

Note: See note under 758.300.

758.310 Assignment or transfer of rights in exclusive service territory; approval of commission. (1) The rights acquired by the designation of an exclusive service territory may be assigned or transferred only with the approval of the Public Utility Commission after a finding that the assignment or transfer is in the public interest. However, a hearing is not required if at least 75 percent of the affected customers agree to the proposed assignment or transfer.

(2) An order designating an exclusive service territory shall not be construed to confer any property right. However, upon the death of an applicant under an approved designation, the executor or administrator shall continue operating the water utility for the purpose of transferring such rights for a period not to exceed two years from the date of death.

(3) The territory served by a water utility under an order of the commission designating exclusive service territory shall not be altered solely as the result of a change in ownership or form of ownership. [1999 c.695 §5]

Note: See note under 758.300.

758.315 Water utility service provided by persons not designated by commission; remedy. In the event a designated exclusive service territory is served by a person not authorized by the Public Utility Commission, the commission or the water utility designated by the commission to serve the area may file an action for injunctive relief in the circuit court for any county where some or all of the designated service territory is located. The action shall proceed as in an action not triable by right to a jury. Any party to the action may appeal to the Court of Appeals from the trial court's order. An injunction ordered under this section shall be in addition to any other remedy provided by law. [1999 c.695 §7]

Note: See note under 758.300.

758.320 Application of ORS 758.300 to 758.320 to cities; effect on certain voluntary associations; existing franchise; exception. (1) The provisions of ORS 758.300 to 758.320 shall not be construed to restrict the powers granted to cities to issue franchises or to restrict the powers of condemnation of a municipality.

(2) The provisions of ORS 758.300 to 758.320 shall not be construed to restrict the formation of homeowners associations pursuant to ORS chapter 94, cooperatives pursuant to ORS chapter 62 or districts pursuant to ORS chapter 198 within the designated exclusive service territory of a water utility. A homeowners association, cooperative or district may petition the Public Utility Commission for an order excluding the association, cooperative or district from the exclusive service territory of a water utility. Upon a showing by the association, cooperative or district that exclusion is not detrimental to the public interest, the commission may issue an order excluding the association, cooperative or district from the exclusive service territory of a water utility.

(3) The commission shall recognize the service territories of a water utility that has an existing franchise on October 23, 1999, with a municipality as exclusive service territories. Upon application as provided in ORS 758.302, any such water utility may request an order from the commission to designate exclusive service territories in addition to those identified in the franchise agreement if the water utility is providing adequate and exclusive service to areas outside the areas identified in the franchise agreement.

(4) A district, as defined in ORS 198.010, that provides water utility service shall be exempt from the requirements of ORS 758.302. However, upon request of the commission, the district shall provide to the commission a map of its service territory and shall in all other respects comply with the requirements of ORS 758.300 to 758.320. [1999 c.695 §8; 2003 c.202 §6]

Note: See note under 758.300.

ELECTRIC AND GAS UTILITIES; ALLOCATION OF TERRITORIES AND CUSTOMERS

758.400 Definitions for ORS 758.015 and 758.400 to 758.475. As used in ORS 758.015 and 758.400 to 758.475 unless the context requires otherwise:

(1) "Allocated territory" means an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission or established by an order of the commission approving an application for the allocation of territory.

(2) "Person" includes individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agent, lessee, trustee or referee.

(3) "Utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users or the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities for the production or transmission of electricity or gas which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service. [Formerly 757.605; 1979 c.62 §2; 1985 c.550 §8; 1987 c.447 §101; 1999 c.59 §232]

758.405 Purpose of ORS 758.400 to 758.475. The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services. [Formerly 757.610]

758.410 Contracts for allocation of territories and customers; transfer of facilities. (1) Any person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating

which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "public utility" as defined in ORS 757.005 is also subject to the approval of the Public Utility Commission to the extent required by ORS chapter 757.

(3) The commission may approve a contract entered into under this section that authorizes Coos County to construct a natural gas pipeline into allocated territory in Coos County and that contains terms for the allocation of industrial customers in Coos County between the county and the other party to the contract. The contract need not specify the territory in which industrial customers subject to the allocation are located. The commission may approve the provisions of a contract under this subsection that govern allocation of industrial customers only if the commission determines that the provisions promote the purposes specified in ORS 758.405. The commission shall actively supervise the implementation of any contract entered into pursuant to this subsection to ensure that the contract continues to promote the purposes specified in ORS 758.405. [Formerly 757.615; 2003 c.32 §1; 2023 c.53 §5]

758.415 Enforceability of contract approved by commission; conditions for approval. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 758.410, when approved by the Public Utility Commission as provided in ORS 758.420 to 758.475, shall be valid and enforceable; provided, that the commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 758.420 to 758.475, that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby. [Formerly 757.620]

758.420 Filing of contract; hearing on contract; notice. (1) A person who enters into a contract pursuant to ORS 758.410 shall promptly file the contract with the Public Utility Commission. A contract filed under this section must include a copy of the notice of the filing to be given to all customers of record, and the person shall, within 30 days after filing a contract under this section, give notice of the filing in the manner provided by subsection (3) of this section.

(2) If the commission chooses or if any customer or customers request a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone, video conference or other electronic means of communication or in person. The commission shall give notice of such hearing in the manner provided by subsection (3) of this section within 30 days of the customer's request. The notice shall set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

(3)(a) A notice given under this section shall be given:

(A) By mail or electronic mail to all customers of record affected by the contract;

(B) By press release to news media local to the area affected by the contract; and

(C) By publication in one or more newspapers of general circulation in the area affected by the contract at least once weekly for two successive weeks.

(b) The notice must include a description of the area subject to the contract and the general rate impact to existing customers. [Formerly 757.625; 1985 c.633 §3; 2023 c.53 §4]

758.425 Order of commission on contract. (1) On the basis of the applicant's filing or, if there is a hearing, on the record made at the hearing held pursuant to ORS 758.420, the Public Utility Commission shall enter an order either approving or disapproving the contract as filed, together with any appropriate findings of the facts supporting such order.

(2) An order of the commission under this section is subject to judicial review in the manner provided by ORS 756.610.

(3) If the commission approves a contract and a petition for judicial review is not filed, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file a petition for judicial review expires. [Formerly 757.630; 1985 c.633 §4; 2005 c.638 §13; 2017 c.312 §8]

758.430 Amendment of contract; approval of commission. Any contract that has been approved as provided in ORS 758.400 to 758.475 may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the Public Utility Commission and shall thereafter be approved or disapproved by the commission in the manner provided in ORS 758.420 and 758.425. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in ORS 758.465. [Formerly 757.635; 1983 c.540 §5]

758.435 Application for allocation of territory; hearing on application; notice. (1) Any person providing a utility service in a territory that is not served by another person providing a similar utility service may file an application with the Public Utility Commission for an order allocating such territory to the person providing the utility service. The application may include any adjacent area when it is more economical and feasible to serve the adjacent area by an extension of the applicant's existing facilities than by an extension of the facilities of another person. An application must include a copy of the notice of the filing to be given to all customers of record, and the applicant shall, within 30 days after filing an application under this section, give notice of the filing in the manner provided by subsection (4) of this section.

(2) Within 30 days after the filing of an application under this section, the commission shall give notice of the filing to all providers of similar utility services in the areas adjacent to the area covered by the application.

(3) If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone, video conference or other electronic means of communication or in person. The commission shall give notice of the hearing in the manner provided by subsection (4) of this section within 30 days of the request. The notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application.

(4)(a) A notice given pursuant to this subsection shall be given:

(A) By mail or electronic mail to all customers of record in the area covered by the application;

(B) By press release to news media local to the area covered by the application; and

(C) By publication in one or more newspapers of general circulation in the area covered by the application at least once weekly for two successive weeks.

(b) The notice must include a description of the area covered by the application and the general rate impact to existing customers.

(5) Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to be served exclusively by any person, if such city is, on such date, served by more than one person having necessary municipal or franchise authority to serve within the entire city. [Formerly 757.640; 1985 c.633 §1; 2023 c.53 §6]

758.440 Order of commission on application. (1) On the basis of the application, or, if there is a hearing, on the record made at the hearing held pursuant to ORS 758.435, the Public Utility Commission shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of the facts supporting such order.

(2) The commission, before approving an application for the allocation of territory, shall find that the applicant is exclusively serving the territory covered by the application and in the case of an adjacent unserved area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person. [Formerly 757.645; 1985 c.633 §2]

758.445 Judicial review of order on application. An order of the Public Utility Commission under ORS 758.440 is subject to judicial review in the manner provided by ORS 756.610. If a petition for judicial review is not filed within the specified time, the order shall thereafter be valid and enforceable for the purposes herein specified from the date on which the right to file a petition for judicial review expires. [Formerly 757.650; 2005 c.638 §14; 2017 c.312 §9]

758.450 Contract required for allocation of territory; prohibited activities; exceptions; third party financing. (1) Territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the Public Utility Commission.

(2) Except as provided in subsection (4) of this section, no other person shall offer, construct or extend utility service in or into an allocated territory.

(3) Except as provided in subsection (4) of this section, during the pendency of an application for an allocation of exclusively served territory, no person other than applicant shall offer, construct or extend utility

service in or into the territory applied for; nor shall any person, without the express consent of the commission, offer, construct or extend utility service in or into any unserved territory which is the subject of a filing pending before the commission under ORS 758.420 or 758.435.

(4) The provisions of ORS 758.400 to 758.475 do not apply to any corporation, company, individual or association of individuals providing heat, light or power:

(a) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(b) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(c) From solar or wind resources to any number of customers; or

(d) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(5) Nothing in subsection (4) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer. [Formerly 757.652; 1981 c.360 §2; 1985 c.779 §2]

758.455 Investigation by commission respecting contracts or applications; hearing procedure. (1) The Public Utility Commission may make such investigations respecting a contract or an application for the allocation of territory as the commission deems proper including the physical examinations and evaluations of the facilities and systems of the parties to the contract, estimates of their operating costs and revenues and studies of such other information as the commission deems pertinent.

(2) Insofar as applicable and consistent herewith, the provisions of ORS 756.500 to 756.610 shall govern the conduct of hearings.

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [Formerly 757.655]

758.460 Assignment or transfer of rights acquired by allocation; approval of commission. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

(2) No approved contract or order approving an allocation of territory shall be construed to confer any property right; providing, however, upon the death of an individual who is a party to an approved contract or the applicant under an approved order, the executor or administrator shall continue the operation thereunder for the purpose of transferring such rights for a period of not to exceed two years from the date of death.

(3) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making such allocation. [Formerly 757.670; 1983 c.540 §6]

758.465 Enforcement procedure. In the event a contract approved by the Public Utility Commission is breached or in the event an allocated territory is served by a person not authorized by such contract, or order of the commission, the aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in said breach or invasion, for an injunction against said alleged breach or invasion. The trial of such action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the court's judgment, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [Formerly 757.675; 1979 c.284 §198; 2003 c.576 §561]

758.470 Application to cities, municipalities and cooperatives of ORS 758.400 to 758.475. (1) ORS 758.015 and 758.400 to 758.475 shall not be construed or applied to restrict the powers granted to cities to issue franchises, or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 758.015 and 758.400 to 758.475 shall not be construed to restrict the right of a municipality to provide utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 758.015 and 758.400 to 758.475 shall not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities. [Formerly 757.680]

758.475 Fees. Except in cases under ORS 758.430 and 758.460 where no hearing is required, to cover the costs of administering ORS 758.015 and 758.400 to 758.475 the Public Utility Commission is required to receive fees before filing any contract, application, petition, complaint, protest, appearance, motion, answer or other pleading and for holding any hearing. All fees shall be collected in accordance with the following schedule:

(1) Filing application for allocated territory under ORS 758.435 by a person having annual gross revenue derived from within the state for the calendar year 1960:

(a) In excess of $5 million or more, a fee of two-tenths of one mill of such revenue but in no event shall such fee exceed, $10,000.

(b) In excess of $100,000 but less than $5 million, $100.

(c) Less than $100,000, $50.

(2) Filing a contract or application under ORS 758.015 or 758.420, $100.

(3) Filing petition or complaint, $25.

(4) Filing protest, appearance, motion, answer or other pleading, $10.

(5) Filing an application for allocated territory under ORS 758.435 subsequent to an original allocation and payment of fee under subsection (1) of this section, $100. [Formerly 757.685; 1983 c.540 §7]

TROJAN NUCLEAR PLANT

758.480 Assumption of obligations arising out of Trojan Nuclear Plant. (1) As used in this section:

(a) "Agreement" means the agreement dated October 5, 1970, and titled "Agreement for Construction, Ownership and Operation of the Trojan Nuclear Plant," as amended.

(b) "Allocated territory" has the meaning given that term in ORS 758.400.

(c) "Person" means:

(A) A person as defined in ORS 174.100;

(B) A person as defined in ORS 758.400;

(C) A public body as defined in ORS 174.109; or

(D) Any combination of entities described in subparagraphs (A), (B) and (C) of this paragraph.

(d) "Trojan obligations" means all of the obligations and liabilities of the Portland General Electric Company to pay amounts that are due or that may become due under the agreement or that are due or that may become due as a result of a requirement imposed by a federal, state or local governmental body, agency or instrumentality.

(e) "Utility service" has the meaning given that term in ORS 758.400.

(2) Any person acquiring all or a portion of any allocated territory of the Portland General Electric Company, or acquiring the right to provide utility service within the allocated territory of the Portland General Electric Company, shall assume a share of Trojan obligations that is proportionate to the total amount of allocated territory or the percentage of retail customer load for which the person has acquired the right to provide utility service, whichever is greater.

(3) The assumption of Trojan obligations described in this section shall occur without regard to whether the acquisition described in subsection (2) of this section occurs through market transactions or condemnation proceedings or by any other means.

(4) Any person assuming a share of Trojan obligations shall pay all required or necessary amounts, when due, into any decommissioning or other fund established, required or approved by any federal, state or local governmental body, agency or instrumentality for the purpose of meeting Trojan obligations. A person making payments into a fund described in this subsection may use the person's share of the fund for the purpose of meeting the person's Trojan obligations, subject to any limitation imposed by a federal, state or local governmental body, agency or instrumentality.

(5) The obligations imposed by subsection (2) of this section do not apply to any person acquiring allocated territory or customers of the Portland General Electric Company when:

(a) The acquisition occurs pursuant to the terms of a contract allocating territory that has been approved by the Public Utility Commission under ORS 758.400 to 758.475 and that is in effect on July 22, 2005; or

(b) The acquisition comprises less than one percent of the total allocated territory of the Portland General Electric Company or less than one-tenth of one percent of the total retail customer load of the Portland General Electric Company at the time of acquisition, whichever is greater. [2005 c.630 §1]

Note: 758.480 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.500 [1979 c.730 §2; 1981 c.714 §1; repealed by 1981 c.714 §5 and by 1983 c.799 §9]

COGENERATION AND SMALL POWER PRODUCTION FACILITIES

758.505 Definitions for ORS 758.505 to 758.555. As used in ORS 758.505 to 758.555:

(1) "Avoided cost" means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would

generate itself or purchase from another source but for the purchase from a qualifying facility.

(2) "Cogeneration facility" means a facility that:

(a) Produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest or any combination thereof.

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

(4) "Electric utility" means a nonregulated utility or a public utility.

(5) "Index rate" means the lowest avoided cost approved by the commission for a generating utility for the purchase of energy or energy and capacity of similar characteristics including online date, duration of obligation and quality and degree of reliability.

(6) "Nonregulated utility" means an entity providing retail electric utility service to Oregon consumers that is a people's utility district organized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(7) "Public utility" means a utility regulated by the commission under ORS chapter 757, that provides electric power to consumers.

(8) "Qualifying facility" means a cogeneration facility or a small power production facility.

(9) "Small power production facility" means a facility that:

(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest or any combination thereof; and

(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts. [1983 c.799 §1]

758.510 [1979 c.730 §3; 1981 c.714 §2; repealed by 1981 c.714 §7 and by 1983 c.799 §9]

758.515 Legislative findings. The Legislative Assembly finds and declares that:

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of Oregon to:

(a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and

(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

(3) It is, therefore, the policy of the State of Oregon to:

(a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens; and

(b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon. [1983 c.799 §2]

758.520 [1979 c.730 §4; 1981 c.714 §3; repealed by 1981 c.714 §9 and by 1983 c.799 §9]

758.525 Avoided cost schedules; filing; requirement to purchase energy from qualifying facilities. (1) At least once every two years each electric utility shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs equaling the utility's forecasted incremental cost of electric resources over at least the next 20 years. Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commission.

(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the utility's avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be based on:

(a) The avoided costs calculated at the time of delivery; or

(b) The projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.

(3) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555 shall be construed to require an electric utility to pay full avoided-cost prices for a purchase from a qualifying facility on which construction began before November 8, 1978, but the price for a purchase from such a facility shall be sufficient to encourage production of energy or energy and capacity.

(4) The rates of an electric utility for the sale of electricity shall not discriminate against qualifying facilities. [1983 c.799 §3]

758.530 [1979 c.730 §5; 1981 c.714 §4; repealed by 1981 c.714 §11 and by 1983 c.799 §9]

758.535 Criteria for qualifying facility; terms and conditions of energy sale. (1) The Public Utility Commission shall establish minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility under ORS 543.610, 757.005 and 758.505 to 758.555.

(2) The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall:

(a) Be established by rule by the commission if the purchase is by a public utility;

(b) Be adopted by an electric cooperative or people's utility district according to the applicable provision of ORS chapter 62 or 261; and

(c) Be established by a municipal utility according to the requirements of the municipality's charter and ordinance.

(3) The rules or policies adopted under subsection (2) of this section also shall:

(a) Establish safety and operating requirements necessary to adequately protect all systems, facilities and equipment of the electric utility and qualifying facility;

(b) Be consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); and

(c) Be made available to the public at the commission's office. [1983 c.799 §4]

758.540 [1979 c.730 §6; repealed by 1981 c.714 §13]

758.545 Electric utility required to make good faith effort to transmit energy; remedy. (1) If an electric utility fails to make a good faith effort to comply with a request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonneville Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

(a) The electric utility's avoided cost; or

(b) The index rate.

(2) As used in this section, "good faith effort" shall be demonstrated by the electric utility's publication of a generally applicable, reasonable policy of the electric utility to allow a qualifying facility to use the electric utility's transmission facilities on a cost-related basis. [1983 c.799 §5]

758.550 [1979 c.730 §7; repealed by 1983 c.799 §9]

758.552 Ownership of renewable energy certificates for energy generated by qualifying facility. (1) For contracts executed pursuant to the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) and in effect prior to November 30, 2005, renewable energy certificates created pursuant to a system established by the State Department of Energy under ORS 469A.130, for generation during the term of such a contract, are owned by the owner of a qualifying facility, unless the owner has transferred a certificate in a contract between the owner and another person.

(2) Subsection (1) of this section applies to qualifying facilities that:

(a) Are located in this state;

(b) Are certified as qualifying small power production facilities or qualifying cogeneration facilities under the Federal Power Act (16 U.S.C. 796) as in effect on June 7, 2011; and

(c) Produce electricity that is priced under ORS 758.525. [2011 c.248 §2]

758.555 Effect of energy sales on qualifying facility. A qualifying facility shall not become a public utility within the meaning of ORS 757.005 on account of sales made under ORS 543.610, 757.005 and 758.505 to 758.555. [1983 c.799 §6]

758.990 [Renumbered 757.992]

Chapter 759

2023 EDITION

Telecommunications Utility Regulation

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GENERAL PROVISIONS

759.005 Definitions. As used in this chapter:

(1) "Competitive telecommunications provider" means a telecommunications services provider that has been classified as a competitive telecommunications provider by the Public Utility Commission pursuant to ORS 759.020.

(2) "Intrastate telecommunications service" means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(3) "Local exchange telecommunications service" means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commission.

(4) "Private telecommunications network" means a system for the provision of telecommunications service or any portion of telecommunications service, including the construction, maintenance or operation of the system, by a person for the exclusive use of that person and not for resale, directly or indirectly.

(5) "Radio common carrier" means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.

(6) "Shared telecommunications service" means the provision of telecommunications and information management services and equipment to a user group located in discrete premises in building complexes, campuses or high-rise buildings, by a commercial shared services provider or by a users' association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to local exchange telecommunications service.

(7) "Telecommunications" means the transmission of information chosen by a person, between or among points specified by the person, without change in the form or content of the information sent or received.

(8) "Telecommunications service" means telecommunications that are offered for a fee to the public, or to such class of users as to be effectively available to the public, without regard to the facilities used to provide the telecommunications. "Telecommunications service" does not include:

(a) Services provided by radio common carrier.

(b) One-way transmission of television signals.

(c) Private telecommunications networks.

(d) Communications of the customer that take place on the customer side of on-premises equipment.

(9)(a) "Telecommunications utility" means:

(A) Any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, directly or indirectly to or for the public, whether or not the plant or equipment, or any portion of the plant or equipment, is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals that is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction, engineering or financing fees, and has an affiliated interest with the telecommunications utility.

(b) "Telecommunications utility" does not include:

(A) Any plant owned or operated by a municipality.

(B) Any corporation not providing intrastate telecommunications service to the public in this state, whether or not the corporation has an office in this state or has an affiliated interest with a telecommunications utility as defined in this chapter.

(C) Any person acting only as a competitive telecommunications provider.

(D) Any corporation, company, individual or association of individuals providing only telephone customer premises equipment to the public.

(10) "Toll" means switched telecommunications between exchanges carried on the public switched network. "Toll" does not include services that are an option to flat rate local or extended area service, even though the options may include charges on a per-unit basis. [1987 c.447 §1; 1989 c.5 §15; 1991 c.326 §2; 2005 c.232 §1; 2007 c.825 §1]

759.010 [1987 c.447 §2; 1989 c.17 §2; repealed by 2005 c.232 §2]

759.015 Legislative findings on universal telecommunications service. The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The Public Utility Commission shall

administer the statutes with respect to telecommunications rates and services in accordance with this policy. [Formerly 757.810]

759.016 Legislative findings on broadband services. The Legislative Assembly finds and declares:

(1) That it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations; and

(2) That the goal set forth in subsection (1) of this section may be achieved by:

(a) Expanding broadband and other telecommunications services;

(b) Creating incentives to establish and expand broadband and other telecommunications services;

(c) Undertaking telecommunications planning at the local, regional and state levels that includes participants from both the public and the private sectors;

(d) Removing barriers to the full deployment of broadband digital applications and services and providing incentives for the removal of those barriers; and

(e) Removing barriers to public-private partnerships in areas where the private sector cannot justify investments. [2003 c.775 §1]

Note: 759.016 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 759 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

759.020 Certificate of authority; application; procedure; criteria; intrastate toll service level; rules. (1) A person, corporation, company or association of individuals or their lessees, trustees or receivers may not provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

(2) Applications for certificates of authority must be in a form prescribed by the commission and must describe the telecommunications services the applicant proposes to provide.

(3)(a) Except as provided in ORS 759.050, a certificate may not authorize any person to provide local exchange telecommunications service within the local exchange telecommunications service area of a telecommunications utility unless the utility consents, is unable to provide the service or fails to protest an application.

(b) Paragraph (a) of this subsection does not apply to any application for a certificate by a provider of shared telecommunications services.

(4) A hearing need not be held prior to issuance of a certificate of authority except upon the commission's own motion or unless the application is to authorize a person to provide local exchange telecommunications service in the local exchange telecommunications service area of a telecommunications utility and the utility protests. After hearing, the commission shall issue the certificate only upon a showing that the proposed service is required by the public interest.

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. The commission shall conduct the initial classification and any subsequent review of the classification in accordance with procedures the commission may establish by rule, after hearings. The commission may attach reasonable conditions to the classification and may amend or revoke any order as provided in ORS 756.568. For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(6) Any provider of intrastate toll service must inform customers of the service level furnished by that provider, according to rules of the commission. The commission, by rule, shall determine the level of intrastate toll service that is standard. Any provider of intrastate toll service must identify the service level the provider plans to furnish in an annual report to the commission. The commission shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's

annual report. [Formerly 757.815; 1991 c.326 §1; 1993 c.423 §1; 2022 c.60 §9]

759.025 Certificates of authority for persons, companies and corporations providing services on January 1, 1986. (1) Notwithstanding ORS 759.020, the Public Utility Commission shall issue to any person, company or corporation providing intrastate telecommunications services that are subject to regulation by the commission on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986.

(2) Notwithstanding any other provision of law, the commission shall issue to any cooperative corporation, or unincorporated association providing intrastate telecommunications service on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986. Such actions shall not subject such cooperative corporations or association to the commission's general powers of regulation. [Formerly 757.820]

759.027 Shared telecommunications service provider; alternative access to local exchange telecommunications services. If the Public Utility Commission finds upon notice and investigation that customers of shared telecommunications services have no alternative access to local exchange telecommunications services, the commission may require the shared telecommunications service provider to make alternative facilities or conduit space available on reasonable terms and conditions and at reasonable prices. [2005 c.232 §5]

759.030 [Formerly 757.825; 1991 c.301 §1; repealed by 2005 c.232 §6]

759.035 Duty to furnish adequate and safe service at reasonable rates. Every telecommunications utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited. [1987 c.447 §3]

REGULATION OF TELECOMMUNICATIONS SERVICES

759.036 Commission authority. Except as otherwise provided by law, the Public Utility Commission shall have authority to determine the manner and extent of the regulation of telecommunications services within the State of Oregon. [2005 c.232 §7]

759.040 Exemptions for certain unaffiliated utilities with fewer than 50,000 access lines. (1) Subject to subsection (6) of this section, ORS 759.180 to 759.190 do not apply to new or revised tariff schedules filed with the Public Utility Commission by telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(2) Subject to subsection (6) of this section, ORS 759.375 to 759.393 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(3) Subject to subsection (6) of this section, ORS 759.300 to 759.360 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(4) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon and affiliated or under common control with another public utility providing service in Oregon, and a finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from:

(a) ORS 759.180 to 759.190.

(b) ORS 759.375 to 759.393.

(c) ORS 759.300 to 759.360.

(5) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon, and finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from ORS 759.175 and 759.205 to 759.215.

(6) Upon petition by the telecommunications utility or upon petition by 10 percent of the then current access line subscribers, or 500 subscribers, whichever is the lesser, of any telecommunications utility:

(a) Filed with the commission not less than 10 days prior to the proposed effective date of new or revised tariff schedules, the commission may impose all or part of the procedures of ORS 759.180 to 759.190 to any of the schedules of a telecommunications utility exempted from ORS 759.180 to 759.190 pursuant to this section.

(b) After notice and hearing and a finding that the action is required by the public interest, the commission may revoke any exemption granted pursuant to this section or impose reasonable conditions upon the continued exercise of the exemption.

(7) Any telecommunications utility for which an exemption from the application of ORS 759.180 to 759.190 is provided pursuant to this section shall notify its affected customers of any price increase for intrastate telecommunications services at least 45 days prior to the proposed effective date of the increase.

(8) Any telecommunications utility for which an exemption from the application of any statute is provided pursuant to this section shall file with the commission an annual report that includes copies of the income statement and balance sheet the telecommunications utility files with the Federal Communications Commission. Each telecommunications utility described in this subsection shall notify customers that the income statement and balance sheet are on file with the commission. [Formerly 757.870; 1999 c.451 §1; 2005 c.232 §12]

759.045 Special rules for utilities exempted from regulation under ORS 759.040. The Public Utility Commission shall adopt specific rules to apply to telecommunications utilities which are exempted from certain regulation under ORS 759.040. An objective of these rules shall be to minimize the regulatory burden on these utilities to the extent this objective is feasible and consistent with the public interest. These rules shall not pertain to the statutes from which these utilities are exempted under ORS 759.040. [1991 c.658 §2]

759.050 Competitive zone service regulation. (1) As used in this section:

(a) "Competitive zone" means a telecommunications service area within all or part of a local exchange, described both by service and territory, that has been designated a competitive zone by the Public Utility Commission under subsection (2) or (4) of this section.

(b) "Competitive zone service" means a local exchange telecommunications service that the commission has authorized to be provided within a competitive zone.

(c) "Essential function" means a functional component of a competitive zone service necessary to the provision of the service by a telecommunications provider for which there is no adequate alternative in terms of quality, quantity and price to the incumbent telecommunications utility.

(d) "Telecommunications utility" and "competitive provider" mean those entities that are classified as such by the commission under ORS 759.020. "Telecommunications provider" includes both telecommunications utilities and competitive providers.

(2)(a) Notwithstanding the provisions of ORS 759.020 (3), the commission may certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certificated telecommunications utility if the commission determines that the authorization would be in the public interest. For the purpose of determining whether the authorization would be in the public interest, the commission shall consider:

(A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.

(B) The effect on competition in the local exchange telecommunications service area.

(C) The effect on access by customers to high quality, innovative telecommunications service in the local exchange telecommunications service area.

(D) Any other facts the commission considers relevant.

(b) Upon certification of a telecommunications provider under paragraph (a) of this subsection, the commission shall establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider. Price and service competition within the meaning of ORS 759.052 may not be deemed to exist by virtue of the establishment of a competitive zone.

(c) At the time of certification of a telecommunications provider, or thereafter, the commission may impose reasonable conditions upon the authority of the telecommunications provider to provide competitive zone service within the competitive zone. Reasonable conditions include, but are not limited to, conditions:

(A) Designed to promote fair competition, such as interconnection; and

(B) Requiring contributions of the type required of a telecommunications utility on account of the provision of local exchange service, including those to the Residential Service Protection Fund or the Telecommunication Devices Access Program.

(3) Upon demand, a competitive provider of competitive zone services shall make available to the commission any information relating to competitive zone services that the commission requests. Information provided to the commission by a competitive provider under this subsection shall be confidential and may not be disclosed by the commission, except for regulatory purposes in the context of a proceeding before the commission.

(4) Upon application by a telecommunications utility and a showing of competition

within its local exchange, whether or not from certificated providers, the commission may designate all or part of the local exchange a competitive zone.

(5)(a) Except with respect to telecommunications utilities that are exempt from the provisions of ORS 759.180 to 759.190, unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations and modifications of competitive zone services offered by a telecommunications utility in the zone are not subject to ORS 759.180 to 759.190 and, at the telecommunication utility's discretion, may be made effective upon filing with the commission.

(b) The price and terms of service offered by a telecommunications utility for a competitive zone service within a competitive zone may differ from that outside of the zone. However, the price for a competitive zone service within the zone may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service within the zone and the charges for essential functions used in providing the service, but the commission may establish rates for residential local exchange telecommunications service at any level necessary to achieve the commission's universal service objectives. Within the zone, the price of a competitive zone service, or any essential function used in providing the competitive zone service, may not be higher than those prices in effect when the competitive zone was established, unless authorized by the commission.

(c) The commission may revoke the exemption of a telecommunications utility from ORS 759.180 to 759.190 if the commission finds that the utility has violated statutes, rules or conditions of the commission applicable to competitive zone services or that there has been a substantial change in the circumstances that prevailed at the time the competitive zone was first established.

(d) On the motion of a telecommunications provider or on its own motion, the commission may order a telecommunications utility to disaggregate and offer essential functions of the telecommunications utility's local exchange network.

(6) A decision of the commission, with respect to the terms and conditions under which competitive zone services may be offered within a competitive zone by a telecommunications utility, to authorize a competitor to provide service within the local exchange service area of a telecommunications utility or to otherwise designate a competitive zone shall be subject to judicial review, but may not be stayed other than by order of the commission, except upon a showing by clear and convincing evidence that failure to stay the decision will result in irreparable harm to the aggrieved party.

(7) The exclusive remedy of a telecommunications provider aggrieved by the prices, terms of service or practices of another provider with respect to competitive zone services within a competitive zone is to file a complaint with the commission under ORS 756.500. The commission, either upon complaint or its own motion, may permanently suspend a filing made by a provider with respect to a competitive zone service or take such other action as the commission deems appropriate, except an award for damages. A claim for damages arising from a commission decision in favor of the provider on a matter alleged in the complaint shall be brought as a separate action at law.

(8) Nothing in this section shall serve to shield any telecommunications provider of local exchange telecommunications service from state or federal antitrust laws. [1993 c.423 §3; 2005 c.232 §13; 2022 c.60 §10]

759.052 Commission authority to exempt telecommunications services from regulation. (1)(a) Upon petition by any interested party and following notice and investigation, the Public Utility Commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that:

(A) Price or service competition exists;

(B) Telecommunications services can be demonstrated by the petitioner or the commission to be subject to competition; or

(C) The public interest no longer requires full regulation of the telecommunications services.

(b) The commission may attach reasonable conditions to an exemption made under paragraph (a) of this subsection and may amend or revoke any order as provided in ORS 756.568.

(2) Upon petition by a telecommunications utility, and after notice and hearing, the commission shall exempt a telecommunications service from regulation if the commission finds that price and service competition exists.

(3) Prior to making the findings required by subsection (1) or (2) of this section, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates and under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(4) A service that is deregulated under subsection (2) of this section may be reregulated, after notice and hearing, if the commission determines an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest. [2005 c.232 §8]

759.054 Price listing for product or service offered as part of local exchange telecommunications services. (1) If the Public Utility Commission determines that a product or service offered by a telecommunications utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or that a product or service is not an essential product or service, the commission may authorize the utility to file a price list with the commission.

(2) The price list shall contain the description, terms, conditions and prices of the service or product described in subsection (1) of this section. No other schedule for price listed services need be filed with the commission. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately upon filing with the commission unless a later date is specified.

(3) In determining whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates or under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission. [2005 c.232 §9]

759.056 Price listing for product or service offered as part of interexchange telecommunications services. (1) If the Public Utility Commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under conditions that the commission determines are reasonable, may authorize the utility to file a price list with the commission.

(2) The price list shall contain the description, terms, conditions and prices of the service or product described in subsection (1) of this section. No other schedule for price listed services need be filed with the commission. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately on filing with the commission unless a later date is specified.

(3) In determining whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates or under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission. [2005 c.232 §10]

759.058 Commission action on petition under ORS 759.052, 759.054 or 759.056. Within 60 days of a filing under ORS 759.052, 759.054 or 759.056, the Public Utility Commission shall either determine the appropriateness of the filing or determine that further investigation is necessary. If the commission determines that further investigation is necessary, the commission may suspend operation of the filing for a period not longer than five months from the end of the initial 60-day period. Upon a showing of good cause, any party may request extension of the suspension period for an additional three months. [2005 c.232 §11]

759.060 Information submitted by local exchange telecommunications utilities; rules exempting disclosure. (1) The Public Utility Commission, by rule, shall specify information submitted to the commission by local exchange telecommunications utilities or cooperatives that is exempt from disclosure under ORS 192.311 to 192.478 as provided in this section. In adopting rules, the commission shall consider, among other matters:

(a) Whether the information is of a type that could potentially be used to the competitive disadvantage of a local exchange telecommunications utility or cooperative.

(b) Whether the information concerns matters of a nature personal to an employee or stockholder of a local exchange telecommunications utility or an employee or member of a cooperative.

(c) Whether the information is otherwise publicly available.

(2) Information specified under subsection (1) of this section is exempt from disclo-

sure unless the public interest requires disclosure in the particular instance.

(3) Nothing in subsection (1) of this section limits the exemptions granted to a local exchange telecommunications utility or cooperative under ORS 192.311 to 192.478. [1995 c.538 §2]

759.070 Charge to access public body radio tower; market rate; exception. (1) As used in this section:

(a) "Market rate" means a price, lease rate or other form of compensation for goods or services provided by a public body, when participating in a proprietary transaction, that is comparable to the average price, lease rate or other form of compensation in the same market for the same goods or services provided by a private-sector provider.

(b) "Private business" does not include a nonprofit emergency services organization.

(c) "Public body" has the meaning given that term in ORS 174.109.

(d) "Radio tower" means a lattice tower that is generally 60 to 200 feet tall with three or four steel support legs, or a monopole that is generally 25 to 125 feet tall, to which multiple antennae may be attached to accommodate a variety of communication services, including radio communications service, radio paging and cellular communications service.

(2) A public body shall charge a private business a market rate for access to a radio tower if the private business uses the radio tower to deliver any of the following communication services for hire:

(a) Radio communications service;

(b) Radio paging; or

(c) Cellular communications service.

(3) Subsection (2) of this section does not prohibit a public body, when participating in a proprietary transaction, from charging or receiving compensation in the form of an exchange of goods or services or in any other nonmonetary form. [2013 c.440 §1]

Note: 759.070 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 759 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

RIGHTS OF WAY

759.075 Authority to construct lines and facilities; condemnation power; procedure. (1) Any telecommunications utility may:

(a) Enter upon lands within this state for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities.

(2) Notwithstanding subsection (1) of this section, any telecommunications utility may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees which are liable to fall and constitute a hazard to its wire or line, such telecommunications utility may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. [1987 c.447 §69]

759.080 Use of property outside limits of municipal corporation; agreement; condemnation upon failure to agree. When it is necessary or convenient, in the location of any poles or lines mentioned in ORS 759.075, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any municipal corporation, the county court or board of county commissioners of the county within which such road, street, alley or public grounds is located, may agree with the telecommunications utility upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation. If such parties are unable to agree, the telecommunications utility may condemn so much thereof as is necessary and convenient in the location and construction of the poles or lines. The provisions of ORS chapter 35 are applicable to condemnations under this section. [1987 c.447 §70]

759.100 [1987 c.447 §5; repealed by 2005 c.232 §14]

759.105 [1989 c.484 §7; renumbered 759.219 in 2005]

759.110 [1987 c.447 §6; repealed by 2005 c.232 §14]

759.115 [1987 c.447 §7; repealed by 2005 c.232 §14]

ACCOUNTS AND RECORDS

759.120 Form and manner of accounts prescribed by commission. (1) Every telecommunications utility shall keep and render to the Public Utility Commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every telecommunications utility engaged directly or indirectly in any other business than that of a telecommunications utility shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the accounts and records of such other business. [1987 c.447 §8]

759.125 Records and accounts prescribed by commission; prohibition on other records or accounts; exception; blanks for reports. (1) The Public Utility Commission shall prescribe the accounts and records required to be kept and every telecommunications utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.

(2) No telecommunications utility shall keep any other accounts or records of its telecommunications utility business transacted than those prescribed or approved by the commission except such as may be required by the laws of the United States.

(3) The commission shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each telecommunications utility. [1987 c.447 §9]

759.130 Closing date of accounts; filing balance sheet; audit. (1) The accounts shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet, together with such other information as the Public Utility Commission shall prescribe, verified by an officer of the telecommunications utility, shall be filed with the commission.

(2) The commission may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commission. [1987 c.447 §10]

759.135 Depreciation accounts; undepreciated investment allowed in rates; conditions. (1) Every telecommunications utility shall carry a proper and adequate depreciation account. The Public Utility Commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each telecommunications utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each telecommunications utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [1987 c.447 §11; 1989 c.956 §3]

RATE REGULATION AND PROCEDURES; MEASURING EQUIPMENT

759.175 Filing rate schedules and data with commission. (1) Every telecommunications utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules showing all rates, tolls and charges that the utility has established and that are in force at the time for any service performed by the utility within the state, or for any service in connection with or performed by any utility controlled or operated by the utility. Schedules filed with the commission shall be open to public inspection.

(2) Every telecommunications utility shall file, with and as part of every schedule filed under subsection (1) of this section, all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(3) Where a schedule of joint rates or charges is or may be in force between two or more telecommunications utilities, the schedule shall in like manner be printed and filed with the commission. [1987 c.447 §12; 2005 c.232 §15]

759.180 Hearing on reasonableness of rates; procedures; exceptions. (1)(a) Except as provided in ORS 759.195 and 759.410 and ORS 759.052, 759.054 or 759.056, whenever any telecommunications utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of the rate or schedule. The commission shall conduct the hearing upon written complaint filed by the telecommunications utility, its customer or customers, or any other proper party within 60 days of the telecommunications utility's filing. A hearing need not be held if the particular rate change is the result of an automatic adjustment clause. At the hearing the telecommunications utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable.

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule, authorized pursuant to ORS 759.195 (6), that provides for rate increases, decreases or both, without prior hearing, reflecting increases, decreases or both in costs incurred by a telecommunications utility and that is subject to review by the commission at least once every two years.

(2) The commission and staff may consult at any time with, and provide technical assistance to, telecommunications utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the decisions of the commission shall be based on the record made at the hearing. [1987 c.447 §13; 1989 c.5 §16; 2005 c.232 §16]

759.182 Rate schedules for service promotions; rules. (1) A telecommunications utility may file rate schedules for service promotions that are offered by the utility for the purpose of:

(a) Increasing the use of the utility's services by present or future customers;

(b) Preventing a decrease in the use of the utility's services by present or future customers; or

(c) Inducing any person to use the utility's services instead of a competing provider's services.

(2) The rates charged under a service promotion by a telecommunications utility must be adequate to ensure that:

(a) The utility will recover an amount equal to the sum of the total service long run incremental cost of providing the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions; and

(b) The utility will recover the amount under paragraph (a) of this subsection during the average time that customers use the service.

(3) Notwithstanding ORS 759.190, service promotion rate schedules become effective upon filing with the Public Utility Commission.

(4) The commission shall adopt rules governing service promotion rate schedules filed under this section. [2001 c.309 §2]

Note: 759.182 was added to and made a part of 759.180 to 759.190 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

759.185 Suspension of rates pending hearing; time limitation; refund of revenue collected; interim rates. (1) The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission may enter an order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

(2) This section does not prevent the commission and the telecommunications utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commission may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

(4) If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 759.180, but does not order a suspension thereof, any increased revenue collected by the telecommunications utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the telecommunications utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future

bills or otherwise, in such manner as the commission orders.

(5) The commission may, in a suspension order, authorize an interim rate or rate schedule under which the telecommunications utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the telecommunications utility. An interim rate or rate schedule shall remain in effect until terminated by the commission. [1987 c.447 §14]

759.190 Notice of schedule change. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the Public Utility Commission. All changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect. [1987 c.447 §15]

759.195 Price listing of services; conditions; maximum rates; essential services; justification by utility of rates for price-listed services; rules. (1) Except as provided in subsection (6) of this section, upon petition of a telecommunications utility that provides local exchange service directly, or is affiliated with a utility that provides local exchange service, and after notice and hearing, the Public Utility Commission may authorize the utility to set rates for toll and other telecommunications services by filing a price list containing the price and terms for the service. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective as determined by the commission. The commission may prescribe conditions on an authorization to establish rates by price list, including conditions relating to the sharing of revenues received by the utility that are in excess of allowances provided for in the order of authorization.

(2) Telecommunications utilities that provide telecommunications services only between exchanges and are not affiliated with a utility that provides local exchange service may establish rates by price list without special authorization from the commission.

(3) Prior to granting a petition to set rates by price list under this section, the commission shall find that pricing flexibility:

(a) Is reasonably necessary to enable the utility to respond to current and future competitive conditions for any or all telecommunications services;

(b) Will maintain the appropriate balance between the need for price flexibility and the protection of consumers;

(c) Is likely to benefit the consumers of fixed rate services; and

(d) Is unlikely to cause any undue harm to any customer class.

(4) A rate set for a service by a utility may not be lower than the long run incremental cost of providing the service.

(5) Upon its own motion the commission may fix maximum rate levels and terms of service for price listed services and for toll services on noncompetitive routes. Upon request of any affected person, the commission shall fix maximum rate levels and terms of service for price listed services not subject to competition and for toll services on noncompetitive routes.

(6) By rule, the commission shall designate local exchange services that it deems essential, and rates for such services shall be prescribed under ORS 759.180 to 759.190. The commission also may authorize automatic adjustment clauses which reflect increases, decreases, or both, in particular costs incurred by the utility. For the purposes of this subsection, "essential services" need not be essential for all classes of customers.

(7) The commission may, at any time, order a telecommunications utility to appear and establish that any of its price listed rates are just and reasonable and in conformity with the requirements of this section and the authorization to price list issued by the commission. Price listed rates shall also be subject to complaint under ORS 756.500. [Formerly 757.850; 2005 c.232 §13a]

759.200 Inclusion of amortizations in rates; deferral of certain expenses or revenues; limitation on amounts; prohibited uses. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in subsection (5) of this section, under amortization schedules set by the commission, a rate or rate schedule may reflect the following:

(a) Amounts lawfully imposed retroactively by order of another governmental agency; or

(b) Amounts deferred under subsection (2) of this section.

(2) Upon application of a telecommunications utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral, for later incorporation in rates, telecommunications utility expenses or revenues, the

recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers. The authority under this subsection is limited to the following accounts:

(a) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in jurisdictional separations approved by the Federal Communications Commission;

(b) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in depreciation rates or amortization schedules approved by the commission;

(c) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in income, excise, franchise or ad valorem taxes by the federal, state or local governments;

(d) Increases or decreases in amounts incurred by a telecommunications utility resulting from restoration of telecommunications services interrupted by floods, fires, earthquakes, storms or other acts of nature;

(e) Increases or decreases in amounts incurred by a telecommunications utility for research, development, planning and advance advertising for products and services not yet in service;

(f) Increases or decreases in amounts incurred by a telecommunications utility for telephone plant transfers and property sales approved by the commission;

(g) Increases or decreases in amounts incurred by a telecommunications utility from affiliated interest contracts and transactions approved by the commission;

(h) Increases or decreases in amounts incurred by a telecommunications utility from attorney's fees, court settlements and court awards;

(i) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in accounting methods approved by the commission; and

(j) Increases or decreases in amounts incurred by a telecommunications utility from customer service contracts, intercompany service contracts and joint and through service arrangements.

(3) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application.

(4) Unless subject to an automatic adjustment clause under ORS 759.180, amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding to change rates and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) In any one year, the overall average rate impact of the amortizations authorized under this section shall not exceed three percent of the telecommunications utility's gross revenues for the preceding calendar year.

(6) The provisions of this section may be used as a means of deferring the effect of readily identifiable and readily measurable changes in particular costs or revenues of a telecommunications utility, but shall not be used to implement a claim for an increase or decrease in the overall revenue requirement of a telecommunications utility when the amount of the change or changes would not be known until the completion of a rate case. [1989 c.929 §2]

759.205 Conformance of rates charged with schedule. No telecommunications utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in this chapter. [1987 c.447 §16]

759.210 Classification of service and rates; considerations; rules. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each telecommunications utility. The classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on these considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. Each telecommunications utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 759.175 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates; and

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the telecommunications utility.

(2) The commission may prescribe any changes in the form in which the schedules are issued by any telecommunications utility as the commission finds to be expedient. The commission shall adopt rules that allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [1987 c.447 §17; 1989 c.5 §17; 2005 c.232 §18]

759.215 Public access to schedules. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public, shall be made available to the public.

(2) Except as provided in ORS 759.410 (8), copies of all new schedules shall be made readily accessible to the public as required by the commission 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [1987 c.447 §18; 2005 c.232 §19]

759.217 [2001 c.957 §17; repealed by 2011 c.83 §26]

759.218 Revenues and expenses of unregulated activities. (1) A telecommunications utility may not use revenues earned from, or allocate expenses to, that portion of the utility's business that is regulated under this chapter in order to subsidize activities that are not regulated by this chapter.

(2) The Public Utility Commission may not require revenues or expenses from an activity that is not regulated under this chapter to be attributed to the regulated activities of a telecommunications utility.

(3) The commission may approve a telecommunications utility rate proposal for basic local service rates that utilizes revenues from other regulated services to partially cover the costs of providing basic local service. [2005 c.232 §4]

759.219 Certain taxes as operating expense; charge pro rata to users; condition. The privilege tax authorized by ORS 221.515, or other similar exactions imposed by any municipality in this state upon telecommunications utilities for use and occupancy of streets, alleys or highways, or all of them, shall be allowed as an operating expense of the affected telecommunications utilities operating in the municipality for rate-making purposes by the Public Utility Commission. The cost of such privilege tax or other similar exactions shall be charged pro rata to the users of such telecommunications utility within the municipality unless the Public Utility Commission determines on a statewide basis that such pro rata charges would be inequitable, in whole or in part, to city ratepayers or should otherwise be borne as a statewide operating expense by the telecommunications utility. [Formerly 759.105]

759.220 Joint rates and classifications; procedure; considerations. (1) A telecommunications utility may establish reasonable through service and joint rates and classifications with other telecommunications utilities. Telecommunications utilities establishing joint rates shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof, as between the public utilities participating therein which shall not unduly prefer or prejudice any of the participating telecommunications utilities and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited.

(2) The Public Utility Commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission's own initiative without complaint, establish through service, classifications and joint rates, the divisions of such rates and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate or classification without the consent of all the telecommunications utilities party thereto, or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the telecommunications utility proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is of the opinion that the divisions of joint rates between the telecommunications utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the telecommunications utilities party thereto, whether agreed upon by such telecommunications utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several telecommunications utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the

just, reasonable and equitable division thereof to be received by the several telecommunications utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates, the commission shall give due consideration, among other things, to:

(a) The efficiency with which the telecommunications utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their telecommunications utility property held for and used in service;

(c) The importance to the public of the services of such telecommunications utilities;

(d) Whether any particular participating telecommunications utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one telecommunications utility to a greater or less proportion of the joint rate than another. [1987 c.447 §19]

759.225 Application of ORS 759.220 to unincorporated associations and cooperative corporations. Notwithstanding any other provision of law, ORS 759.220 applies to any unincorporated association or cooperative corporation providing intrastate telecommunications service. The application of ORS 759.220 to unincorporated associations and cooperative corporations:

(1) Does not allow the Public Utility Commission to establish terms, conditions, classifications or rates for services rendered to members of unincorporated associations or cooperative corporations;

(2) Does not make unincorporated associations or cooperative corporations subject to the commission's general powers of regulation;

(3) Allows the commission to regulate access charges imposed by unincorporated associations and cooperative corporations; and

(4) Requires unincorporated associations and cooperative corporations to provide information to the commission that the commission deems necessary to establish new extended service areas. [Formerly 757.860; 2001 c.853 §1]

759.230 Measured service rate for business customers; restriction. (1) Notwithstanding any other provision of this chapter, the Public Utility Commission shall not authorize a telecommunications utility to implement a rate schedule that includes optional measured service for business customers unless the rate for the service is sufficient to defray all costs that must be incurred to implement the service, including the costs of measuring and billing.

(2) As used in this section:

(a) "Local exchange telephone service" means telephone service provided within the boundaries of exchange maps filed with and approved by the commission.

(b) "Measured service" means local exchange telephone service, the rate for which is based upon the number of calls, length of calls, distance or time of day. [Formerly 757.835]

759.235 Mandatory measured service rate; prohibition. (1) The Public Utility Commission shall be prohibited from requiring any call aggregator, telephone customer or class of customers to pay for local exchange telephone service, or any portion thereof, on a mandatory measured service basis.

(2) As used in this section:

(a) "Call aggregator" has the meaning given that term in ORS 759.680.

(b) "Measured service" means charging for local exchange telephone service based upon number of calls, length of calls, distance, time of day, or any combination thereof.

(3) Nothing in this section is intended to prohibit the commission from requiring telephone customers to pay on a mandatory measured service basis for:

(a) Land, marine, or air mobile service.

(b) Local exchange telephone service resold at a profit.

(4) The commission shall not change boundaries of local exchange service areas nor take any other actions if such changes or actions have the effect of circumventing subsections (1) and (2) of this section. [Formerly 757.840; 1997 c.317 §1]

759.240 Measuring quality of service; standards; rules. (1) The Public Utility Commission shall ascertain and prescribe for each kind of telecommunications utility suitable and convenient standard commercial units of service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the service rendered by any telecommunications utility and prescribe reasonable regulations for examination and testing of such service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every telecommunications utility is required to carry

into effect all orders issued by the commission relative thereto. [1987 c.447 §20]

759.245 Examination and testing of measuring appliances; rules; fees. (1) The Public Utility Commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a telecommunications utility and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any telecommunications utility until it has been examined and tested by the commission and found to be accurate.

(2) The commission shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commission by the telecommunications utility.

(3) The commission shall declare and establish reasonable fees for the testing of such appliances on the application of the customer, the fee to be paid by the customer at the time of the customer's request, but to be repaid to the customer by the commission and to be paid by the telecommunications utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commission into the State Treasury.

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [1987 c.447 §21]

759.250 Contracts for special services; procedure for filing and approval; subsequent review and investigation. (1) A telecommunications utility may enter into a contract with any customer for the provision of a telecommunications service that the Public Utility Commission determines is a new service with limited availability, is designed to respond to a unique customer requirement or is subject to competition. Contracts shall be for a stated time period, not to exceed five years. If a contract includes competitive and noncompetitive service elements, the noncompetitive service elements shall be unbundled and priced separately from all other facilities and service elements in the contract. Such noncompetitive service elements shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms and conditions.

(2) The telecommunications utility shall file any contract with the commission no later than 90 days following its effective date. At the customer's request, the telecommunications utility shall file the contract at least 30 days in advance of the effective date. Notice of the filing of the contract shall be given by the commission to all persons who have filed with the commission a petition to receive such notice.

(3) Contracts entered into under this section are not schedules of rates, tolls or charges within the meaning of ORS 759.175. A contract entered into under this section shall be enforceable by the contracting parties according to its terms, unless the contract has been rejected by the commission as provided in this section.

(4) Notwithstanding ORS 759.175 to 759.185, the commission shall approve any contract for a telecommunications service entered into under this section if the commission finds the following:

(a) The telecommunications service is a new service with limited availability, is designed to respond to a unique customer requirement or is subject to competition. In making the determination of whether a service is subject to competition, the commission shall consider whether the customer might reasonably have chosen an alternative to the telecommunications utility's service.

(b) The contracted price for the telecommunications service is above the long run incremental costs of providing such service during the term of the contract. In making this calculation for a contract that includes both competitive and noncompetitive service elements, the commission shall consider separately whether the competitive service elements are priced above the long run incremental costs of providing such service elements.

(c) The contracted price for the telecommunications service includes all costs of providing such service, including the rate that would be charged by a telecommunications utility to any competitive telecommunications provider for any component essential to the competitive telecommunications provider's ability to offer the telecommunications service. The commission shall determine which components of the service shall be deemed essential and the method to include prices of those components in costs of such services.

(5) The commission shall issue an order regarding any contract filed under subsection (2) of this section within 90 days of the filing. If the commission does not act within 90 days of the filing, the contract shall be deemed approved. If the commission disapproves the contract, it shall enter an order describing the ways in which the contract fails to meet the standards set forth in subsection (4) of this section and declaring the contract null and void. The telecommuni-

cations utility or customer may request that the commission hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the commission not later than 15 days after the date of service of the order, and the commission shall hold the hearing not later than 60 days after receipt of such request for hearing.

(6) Notwithstanding ORS 192.311 to 192.478, the commission shall not disclose the identity of a customer or any customer proprietary information contained in a contract filed under subsection (2) of this section without the consent of the customer and the telecommunications utility.

(7) No contract filed under subsection (2) of this section may be automatically renewed. A contract renewal shall be treated as a new contract.

(8) Nothing in this section shall be deemed state action for the purpose of exempting a telecommunications utility from liability for anticompetitive conduct or other unlawful practices.

(9) Any contract executed prior to September 29, 1991, and approved by the commission is deemed lawful and shall be enforceable by the contracting parties according to its terms. A contract renewal shall be deemed a new contract.

(10) Nothing in this section shall restrict the commission from subsequent scrutiny of the reasonableness of contracts filed under this section for ratemaking purposes.

(11) In accordance with ORS 756.515, the commission may investigate contracts filed by a specific telecommunications utility under this section. Notwithstanding any other provision of this section, if the commission finds that contracts entered into by a telecommunications utility have not generally been in the public interest, the commission, by order, may prevent or restrict the telecommunications utility from future contracting pursuant to this section and may require the telecommunications utility to file contracts under ORS 759.175. [1991 c.527 §2]

759.255 Setting prices without regard to return on utility investment; petition; findings; conditions; application of statutes to approved plan. (1) In addition to powers vested in the Public Utility Commission under ORS 759.195, and subject to the limitations contained in subsections (2) to (4) of this section, upon petition of a telecommunications utility that provides local exchange service directly, or is affiliated with a utility that provides local exchange service, the commission, after notice and hearing, may approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility. Prices approved under the plan are not subject to the provisions of ORS 759.180 to 759.190 and shall become effective as stated in the plan.

(2) Prior to granting a petition to approve a plan under subsection (1) of this section, the commission must find that the plan is in the public interest. In making its determination the commission shall consider, among other matters, whether the plan:

(a) Ensures prices for telecommunications services that are just and reasonable;

(b) Ensures high quality of existing telecommunications services and makes new services available;

(c) Maintains the appropriate balance between the need for regulation and competition; and

(d) Simplifies regulation.

(3) If the commission approves a plan under subsection (1) of this section, the commission shall establish objectives of the plan and conditions for review of the plan during the operation of the plan. The commission may not consider return on investment of the utility when the commission establishes objectives of the plan and conditions for review of the plan during the operation of the plan.

(4) A rate for any service in the plan authorized under subsection (1) of this section may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service and the charges of essential functions used in providing the service. However, the commission may allow a telecommunications utility to establish rates for residential local exchange service at any level necessary to achieve the commission's universal service objectives.

(5) If the commission approves a plan under subsection (1) of this section, the commission may waive, in whole or in part, compliance by the telecommunications utility with ORS 759.120, 759.125, 759.130, 759.135, 759.180 to 759.205, 759.215, 759.220, 759.285 and 759.300 to 759.393. [1995 c.399 §2; 2005 c.232 §13b]

759.257 Extended area service: Portland to Scappoose. (1) Two-way, flat rate or measured extended area service shall be provided by each telecommunications utility providing service between the Portland EAS Region and the Scappoose Exchange, as described by EAS and exchange maps filed with and approved by the Public Utility Commission.

(2) The service provided for in subsection (1) of this section may be implemented during the currently pending Portland EAS Re-

gion Expansion, but in no event shall such implementation occur later than November 1, 1998.

(3) Nothing in subsection (1) of this section authorizes a telecommunications utility to discontinue two-way, flat rate or measured extended area service in any exchange area where that service was provided prior to October 4, 1997. [1997 c.796 §2]

759.259 Extended area service: Portland to Molalla. (1) Two-way, flat rate or measured extended area service shall be provided by each telecommunications utility providing service between the Portland EAS Region and the Molalla Exchange, as described by EAS and exchange maps filed with and approved by the Public Utility Commission.

(2) The service provided for in subsection (1) of this section may be implemented during the currently pending Portland EAS Region Expansion, but in no event shall such implementation occur later than November 1, 1998, after approval by customers of the Molalla Exchange.

(3) Nothing in subsection (1) of this section authorizes a telecommunications utility to discontinue two-way, flat rate or measured extended area service in any exchange area where the service was provided prior to October 4, 1997. [1997 c.505 §2]

ILLEGAL PRACTICES

759.260 Unjust discrimination in rates. (1) Except as provided in ORS 759.265, no telecommunications utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) That prescribed in the public schedules or tariffs then in force or established; or

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances. A difference in rates or charges based upon a difference in classification pursuant to ORS 759.210 shall not constitute a violation of this paragraph.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination. [1987 c.447 §46; 1989 c.5 §22; 1993 c.18 §165]

759.265 Practices not constituting unjust discrimination. (1) ORS 759.260 does not prevent any telecommunications utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

(b) Former employees of such telecommunications utilities or members of their families where such former employees have become disabled in the service of such telecommunications utility or are unable from physical disqualification, including retirement, to continue in the service; or

(c) Members of families of deceased employees of such telecommunications utility.

(2) The Public Utility Commission may require any telecommunications utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a telecommunications utility under the provisions of this section. [1987 c.447 §47]

759.267 Service promotion activities. A telecommunications utility may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon or a premium with the purchase of a service. ORS 759.260 and 759.265 do not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. [1993 c.204 §4]

759.270 Reducing rates for persons furnishing part of facilities; rental of customer facilities; furnishing meters and appliances. (1) No telecommunications utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the telecommunications utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any telecommunications utility from renting any customer's facilities incident to providing its services and for paying a reasonable rental therefor.

(3) This section does not require a telecommunications utility to furnish any part of such appliances which are situated in and upon the premises of any customer, except meters and appliances for measurements of any service, unless otherwise ordered by the Public Utility Commission. [1987 c.447 §48]

759.275 Undue preferences and prejudices. (1) No telecommunications utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination. [1987 c.447 §49]

759.280 Soliciting or accepting rebates or special advantage. No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter. [1987 c.447 §50]

759.285 Charging rates based on cost of property not presently providing service. No telecommunications utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer, rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer. [1987 c.447 §51]

759.290 [1989 c.621 §2; repealed by 2007 c.823 §6]

ISSUANCE OF SECURITIES

759.300 "Stocks" defined. As used in ORS 759.300 to 759.360, "stocks" means stocks, stock certificates or other evidence of interest or ownership. [1987 c.447 §28]

759.305 Power to regulate issuance of telecommunications stocks; rules. The power of telecommunications utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the Public Utility Commission may prescribe. [1987 c.447 §29]

759.310 When issuance of securities void. All stocks and bonds, notes or other evidences of indebtedness and any security of a telecommunications utility shall be void when issued:

(1) Without an order of the Public Utility Commission authorizing the same then in effect except as provided in ORS 759.315 (3) or (5).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with the terms or conditions of the order of authorization of the commission and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of indebtedness, or security issued pursuant to and in substantial conformity with an order of the commission, except as to a person taking the same otherwise than in good faith and for value and without actual notice. [1987 c.447 §30; 1993 c.204 §1]

759.315 Purposes for which securities may be issued; order required; exceptions; rules. (1) A telecommunications utility may issue stocks and bonds, notes and other evidences of indebtedness, and securities for the following purposes and no others, except as otherwise permitted by subsection (4) of this section:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the telecommunications utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such telecommunications utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(2) Before issuing such securities, a telecommunications utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a telecommunications utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other

evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 759.310 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 759.300 to 759.360 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in any amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) A telecommunications utility that derives one-half or more of its gross revenue from sources outside this state does not require commission authorization to issue stocks and bonds, notes or other evidences of indebtedness and any security unless the commission finds that the authorization requirements of ORS 759.310 and subsection (2) of this section are necessary to:

(a) Prevent the telecommunications utility from issuing securities for purposes not permitted under subsection (1) of this section; or

(b) Prevent impairment of the telecommunications utility's ability to provide telecommunications utility services to its customers in this state. The commission shall adopt rules that set forth independently determined financial indicators upon which the commission must base any finding of impaired ability to provide utility telecommunications services. [1987 c.447 §31; 1993 c.204 §2; 2001 c.236 §1]

759.320 Application of ORS 759.315. ORS 759.315 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of $75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the telecommunications utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the telecommunications utility. [1987 c.447 §32]

759.325 Application of ORS 759.375. ORS 759.375 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 759.315. [1987 c.447 §33]

759.330 Hearings and supplemental orders for securities issuance; joint approval for issuance by utility operating in another state. (1) To enable the Public Utility Commission to determine whether the commission will issue an order under ORS 759.315, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as the commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the telecommunications utility.

(2) The commission may, upon application of the telecommunications utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 759.315. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any telecommunications utility within such other state, the commission of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a telecommunications utility owning or operating a telecommunications utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the

consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commission. [1987 c.447 §34]

759.335 Obligation of state as consequence of approval of issuance. No provision of ORS 759.300 to 759.360, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 759.300 to 759.360. [1987 c.447 §35]

759.340 Conditional approval of issuance. The Public Utility Commission may by order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of the permission such condition or conditions as the commission deems reasonable and necessary. [1987 c.447 §36]

759.345 Use of proceeds from issuance; accounting; rules. (1) No telecommunications utility shall, without the consent of the Public Utility Commission, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.

(2) The commission has power to require telecommunications utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as the commission deems advisable, and to establish such rules and regulations as the commission deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order. [1987 c.447 §37]

759.350 Limitation on authority of utility to guarantee debt of another. No telecommunications utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the Public Utility Commission an order authorizing it to do so. Every assumption made other than in accordance with such an order is void. [1987 c.447 §38]

759.355 Issuance or use of proceeds contrary to commission order. No telecommunications utility shall directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 759.300 to 759.360, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order, in excess of the amount in the order authorized for such purpose. [1987 c.447 §39]

759.360 Prohibited acts regarding issuance of securities. No person shall:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 759.300 to 759.360 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 759.300 to 759.360, negotiate, or cause the same to be negotiated. [1987 c.447 §40]

TRANSACTIONS OF UTILITIES

759.375 Approval prior to sale, mortgage or disposal of operative utility property. (1) A telecommunications utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

(a) Sell, lease, assign or otherwise dispose of the whole of the property of such telecommunications utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such telecommunications utility or telecommunications utility property, or perform any service as a telecommunications utility;

(b) Mortgage or otherwise encumber the whole or any part of the property of such telecommunications utility necessary or useful in the performance of its duties to the public, including any franchise, permit or right to maintain and operate such telecommunications utility or telecommunications utility property, or perform any service as a telecommunications utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any telecommunications utility property, or perform any service as a telecommunications utility, or any part thereof, with any other public utility or telecommunications utility.

(2) A telecommunications utility that sells, leases, assigns or otherwise disposes of the whole of the property of such telecommunications utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of $25,000, but less than $100,000, shall notify the commission of the sale within 60 days following the date of the sale.

(3) Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation subject to subsection (1) of this section made other than in accordance with the order of the commission authorizing the same is void.

(4) This section does not prohibit or invalidate the sale, lease or other disposition by any telecommunications utility of property which is not necessary or useful in the performance of its duties to the public. [1987 c.447 §41; 1999 c.530 §2]

759.380 Purchase of stock or property of another utility. (1) No telecommunications utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes and having a value in excess of $10,000 of any other public utility or telecommunications utility unless authorized to do so by the Public Utility Commission.

(2) Every contract by any telecommunications utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other telecommunications utility by or through any person, partnership or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose. [1987 c.447 §42]

759.385 Contracts regarding use of utility property; filing with commission; investigation. (1) When any telecommunications utility doing business in this state, except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410, enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of the telecommunications utility in Oregon, or the use of the property of the other contracting party, or any part of the property, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges with respect to any of the property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for investigation and approval when the telecommunications utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any proposed contract described in subsection (1) of this section shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 759.390 (4) and (7).

(3) In making an investigation of the contract, the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the telecommunications utility, as well as of the corporation with which it is proposing to contract, that the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that the contract is unfair, unrea-

sonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect. A determination and finding by the commission under this subsection has the same force and effect as any other determination or order of the commission.

(4) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than $100,000. [1987 c.447 §43; 1989 c.956 §4; 1991 c.899 §1; 1999 c.809 §1; 2005 c.232 §21; 2009 c.11 §97]

759.390 Contracts with affiliated interests; procedure; use in rate proceedings. (1) As used in this section, "affiliated interest" with a telecommunications utility means:

(a) Every person owning or holding directly or indirectly five percent or more of the voting securities of the telecommunications utility.

(b) Every person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.

(c) Every corporation five percent or more of whose voting securities are owned by any person owning five percent or more of the voting securities of the telecommunications utility or by any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.

(d) Every individual who is an officer or director of the telecommunications utility or of any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.

(e) Every corporation that has two or more officers or two or more directors in common with the telecommunications utility.

(f) Every entity, five percent or more of which is directly or indirectly owned by a telecommunications utility.

(g) Every person that the Public Utility Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of the telecommunications utility, even though the influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this section.

(h) Every person that the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of the telecommunications utility in conjunction with one or more other persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with the telecommunications utility within the meaning of this section even though no one of them alone is so affiliated.

(2) When any telecommunications utility doing business in this state, except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410, enters into any contract to make any payment, directly or indirectly, to any person having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enters any charge on the books of the utility, and the contract is to be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any telecommunications utility doing business in this state enters into any contract, oral or written, with any person having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of the telecommunications utility in Oregon, or the purchase of property, materials or supplies that is to be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(4) The commission promptly shall examine and investigate any contract submitted to the commission under subsection (2) or (3) of this section. If, after the investigation, the commission determines that it is fair and reasonable and not contrary to the public interest, the commission shall enter findings and order approving the contract and serve a copy of the findings and order upon the telecommunications utility. Following the commission's determination of fairness and reasonableness, any expenses and capital expenditures incurred by the telecommunications utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after the investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest,

the commission shall enter findings and order disapproving the contract and serve a copy of the findings and order upon the telecommunications utility. Except as provided in subsection (5) of this section, it is unlawful to recognize a disapproved contract for the purposes specified in this section.

(5) When any contract described in subsection (2) or (3) of this section has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (4) of this section, the commission may not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that the contract has not been approved under subsection (4) of this section.

(6) A telecommunications utility may not issue notes or loan its funds or give credit on its books or otherwise to any person having an affiliated interest, either directly or indirectly, without the approval of the commission.

(7) The action of the commission with respect to all the matters described in this section shall be by findings and order to be entered within 90 days after the matter has been submitted to the commission for consideration. An order of the commission under this section is subject to judicial review in the manner provided by ORS 756.610.

(8) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than $100,000. [1987 c.447 §44; 1989 c.956 §5; 1991 c.899 §2; 1999 c.809 §2; 2005 c.232 §22; 2005 c.638 §16a; 2017 c.312 §10]

759.393 Applicability of ORS 759.385 and 759.390. (1) Except as provided in subsection (2) of this section, the filing of proposed contracts under ORS 759.385 and 759.390 shall constitute a telecommunications utility's sole reporting obligation under ORS 759.385 and 759.390 and the Public Utility Commission may not require a telecommunications utility to submit annual or other cumulative reports regarding such contracts, including contracts with affiliates of the utility.

(2) On April 1 of each year, every telecommunications utility shall file with the commission a list of affiliate contracts executed in the preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts and the dates of execution of the contracts. [1999 c.809 §3]

759.394 [1991 c.899 §4; repealed by 1999 c.809 §5]

759.395 [1987 c.447 §45; repealed by 1991 c.315 §1]

PRICE CAP REGULATION

(Generally)

759.400 Definitions for ORS 759.400 to 759.455. As used in ORS 759.400 to 759.455:

(1) "Basic telephone service" means local exchange telecommunications service defined as basic by rule of the Public Utility Commission.

(2) "Commercial mobile radio service" has the meaning given that term in 47 C.F.R. 20.3.

(3) "Interconnected voice over internet protocol service" has the meaning given the term "interconnected VoIP service" in 47 C.F.R. 9.3.

(4) "Retail telecommunications service" means a telecommunications service provided for a fee to customers. "Retail telecommunications service" does not include a service provided by one telecommunications carrier to another telecommunications carrier, unless the carrier receiving the service is the end user of the service.

(5) "Telecommunications carrier" means any provider of retail telecommunications services, except a call aggregator as defined in ORS 759.680. [1999 c.1093 §23; 2020 s.s.1 c.17 §1]

759.405 Election of regulation under ORS 759.405 and 759.410; conditions; Telecommunications Infrastructure Account; remedy for failure of utility to comply with conditions. (1) A telecommunications carrier may elect to be subject to this section and ORS 759.410. The telecommunications carrier shall notify, in writing, the Public Utility Commission of its election. Such election shall be effective 30 days after the written notification is received by the Public Utility Commission. A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall be subject to the infrastructure investment and price regulation requirements of this section and ORS 759.410 and shall not be subject to any other regulation based on earnings, rates or rate of return.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall establish in its accounts a Telecommunications Infrastructure Account. The telecommunications carrier shall commit to its Telecommunications Infrastructure Account over a four-year period amounts totaling 20 percent of the telecommunications carrier's gross regulated intrastate revenue for the calendar year immediately prior to the year the telecommunications carrier elects to be subject to this section and ORS 759.410. Of the total committed amount, 30 percent shall be credited to and made available for the purposes of the electing carrier's

account on the date the telecommunications carrier's election becomes effective. An electing telecommunications carrier shall credit an equal amount on the same date in the next following year. The electing carrier shall credit to its Telecommunications Infrastructure Account an amount equal to 20 percent of the total committed amount on the same date in each of the next following two years.

(3)(a) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall expend the moneys in the telecommunications carrier's Telecommunications Infrastructure Account on a plan or plans approved by the Oregon Business Development Commission under ORS 759.430. Subject to paragraphs (c) and (d) of this subsection, the total amount of capital and other expenses associated with completing the projects shall equal the total amount of moneys available in the account.

(b) Moneys in the account shall be used primarily to ensure that rural and urban Oregonians have improved access to telecommunications technology and services. Expenditures from the account shall be used for investment in telecommunications infrastructure and deployment of new and advanced telecommunications services.

(c)(A) Within 120 days following the effective date of a telecommunications carrier's election to be regulated under this section and ORS 759.410, but not later than January 1 of the year following the effective date of a telecommunications carrier's election, and on the same date in each of the next following three years, a telecommunications carrier serving less than one million access lines in Oregon shall transfer 40 percent of the moneys most recently credited to its Telecommunications Infrastructure Account to the Connecting Oregon Communities Fund established under ORS 759.445.

(B) Within 120 days following the effective date of a telecommunications carrier's election to be regulated under this section and ORS 759.410, but not later than January 1 of the year following the effective date of a telecommunications carrier's election, and on the same date in the next following year, a telecommunications carrier serving one million or more access lines in Oregon shall transfer 70 percent of the moneys most recently credited to its Telecommunications Infrastructure Account to the Connecting Oregon Communities Fund established under ORS 759.445.

(d) Notwithstanding ORS 285A.075 (2), if the Oregon Business Development Commission determines, following notice and a public hearing, that the telecommunications carrier is not complying with plans or plan modifications approved under ORS 759.430, following notice to the telecommunications carrier and reasonable opportunity to cure any noncompliance, the Oregon Business Development Commission may require the telecommunications carrier to transfer any or all moneys remaining in the carrier's Telecommunications Infrastructure Account, and any future amounts credited to the account, to the Connecting Oregon Communities Fund established under ORS 759.445.

(4) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515. [1999 c.1093 §24; 2001 c.104 §295]

759.410 Intent of ORS 759.410; establishing maximum and minimum price for telecommunications services; packaging services; notice of price change, new service; enforcement. (1) It is the intent of the Legislative Assembly that:

(a) The State of Oregon cease regulation of telecommunications carriers on a rate of return basis;

(b) Telecommunications carriers subject to rate of return regulation have the ability to opt out of rate of return regulation;

(c) A telecommunications carrier that opts out of rate of return regulation under this section and ORS 759.405 shall be subject to price cap regulation and the carrier under price cap regulation shall continue to meet service quality requirements; and

(d) Telecommunications carriers that opt out of rate of return regulation under this section and ORS 759.405 shall make payments to the state to support the use of advanced telecommunications services and to support deployment of advanced telecommunications services.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.405 shall be subject to price regulation as provided in this section and shall not be subject to any other retail rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return regulation.

(3) The price a telecommunications utility that elects to be subject to this section and ORS 759.405 may charge for basic telephone service shall be established by the Public Utility Commission under ORS 759.425. Subject to ORS 759.415, the regular tariff rate of intrastate switched access and retail telecommunications services regulated by the commission, other than basic telephone service, in effect on the date the car-

rier elects to be subject to this section and ORS 759.405 shall be the maximum price the telecommunications carrier may charge for that service.

(4) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may adjust the price for intrastate switched access or a regulated retail telecommunications service between the maximum price established under this section and a price floor equal to the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Basic telephone service shall not be subject to a price floor.

(5) The price for a new regulated retail telecommunications service introduced by a telecommunications carrier within four years after the date the carrier elects to be subject to this section and ORS 759.405 shall be subject to a price floor test by the commission to ensure that the service is not priced below the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Beginning on the date four years after September 1, 1999, the price of a new telecommunications service shall be subject to a price floor test by the commission to ensure that the service is not priced below the total service long run incremental cost of providing the service, without regard to whether the service is considered essential or nonessential.

(6) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may package and offer any of its retail telecommunications services with any other service at any price, provided the following conditions apply:

(a) Any regulated telecommunications service may be purchased separately at or below the maximum price.

(b) The price of the package is not less than the sum of the price floors of each regulated retail telecommunications service included in the package.

(c) The price of a package that is comprised entirely of regulated retail telecommunications services does not exceed the sum of the maximum prices for each of the services.

(d) The price of a package comprised of regulated and unregulated retail telecommunications services does not exceed the sum of the maximum prices established under this section for regulated services and the retail price charged by the carrier for the individual unregulated services in the package. A telecommunications carrier subject to regulation under this section shall provide notice to the commission within 30 days of a change in the price of an unregulated telecommunications service contained in the package.

(7) Nothing in this section or ORS 759.405 is intended to limit the ability of a telecommunications carrier to seek deregulation of telecommunications services under ORS 759.052.

(8)(a) Notice of a price change authorized under subsection (4) of this section, of the introduction of a new regulated telecommunications service or of the packaging of services, must be given to the commission within 30 days following the effective date of the price change, new service or packaged service. Notice of a new regulated telecommunications service shall indicate the retail price charged by the carrier for the service.

(b) The commission may investigate any price change authorized under subsection (4) of this section, the price of a new regulated telecommunications service or the price of a package of services to determine that the price complies with the provisions of this section and any other applicable law. If the commission determines that the price of the service or package of services does not comply with the provisions of this section or other applicable law, the commission may order the telecommunications carrier to take such action as the commission determines necessary to bring the price into compliance with this section or other applicable law.

(9) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515.

(10) Notwithstanding any other provision of this section, the commission shall establish prices for extended area service in a manner that allows a telecommunications carrier that elects to be subject to this section and ORS 759.405 to recover all costs and lost net revenues attributable to implementing new extended area service routes. The provisions of this subsection apply to telecommunications service provided on a flat or measured basis between exchanges defined by exchange maps filed with and approved by the commission. [1999 c.1093 §25; 2001 c.966 §1; 2005 c.232 §23]

759.415 Order in rate proceeding filed prior to January 1, 1999, to establish maximum rate for affected telecommunications services; dismissal of rate proceeding filed after January 1, 1999. (1) In a rate proceeding brought by a telecommuni-

cations carrier that elects to be subject to ORS 759.405 and 759.410, or by the Public Utility Commission against an electing telecommunications carrier, prior to January 1, 1999, that is on appeal on September 1, 1999, a final rate for a telecommunications service implemented as a result of the final judgment and order or negotiated settlement shall become the maximum rate for purposes of ORS 759.410.

(2) A rate proceeding brought by or against an electing telecommunications carrier, after January 1, 1999, that is pending on the effective date of the carrier's election to be subject to ORS 759.405 and 759.410, shall be dismissed by the commission or by the court if on appeal, provided the carrier elects to be subject to regulation under ORS 759.405 and 759.410 within the later of:

(a) Ninety days from the commencement of the proceeding; or

(b) Ninety days from September 1, 1999.

(3) Notwithstanding subsection (2) of this section, the parties to a rate proceeding brought by or against an electing telecommunications carrier, after January 1, 1999, that is pending on the effective date of the carrier's election to be subject to ORS 759.405 and 759.410, may agree to continue the proceeding. [1999 c.1093 §27]

759.420 Application of ORS 759.400 to 759.455 to wholesale transactions regulated under federal law. Nothing in ORS 759.400 to 759.455 is intended to affect, alter or in any way modify wholesale transactions regulated by the federal Telecommunications Act of 1996 (Public Law 104-104) as in effect on September 1, 1999, and regulations adopted thereunder. [1999 c.1093 §26]

(Universal Service Fund)

759.425 Universal service fund; transfer of moneys to Broadband Fund; commission to establish price for basic telephone service; universal service surcharge; application to cellular services; rules. (1)(a) The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund. The commission shall:

(A) Use the universal service fund to ensure basic telephone service is available at a reasonable and affordable rate; and

(B) Transfer from the universal service fund to the Oregon Business Development Department for deposit in the Broadband Fund established under ORS 285A.167, an amount per year that is equal to the lesser of:

(i) $5 million; or

(ii) The remainder of moneys deposited in the universal service fund that are unobligated after making the designation required in paragraph (b) of this subsection.

(b) The commission shall designate the amount of moneys deposited annually in the universal service fund to be used to ensure basic telephone service. The amount designated under this paragraph may not exceed $28 million per year.

(c) The commission may:

(A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommunications Act of 1996 (P.L. 104-104), and to related regulations adopted by the Federal Communications Commission, to the extent that the Public Utility Commission determines conforming the rules is appropriate; and

(B) In addition to using the universal service fund to ensure basic telephone service, use the universal service fund to encourage broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service.

(2)(a) The commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

(3)(a) The commission shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service program.

(b) The commission shall periodically review the benchmark established under paragraph (a) of this subsection and adjust the benchmark as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

(4)(a) There is imposed a universal service surcharge on the sale in this state of all:

(A) Retail telecommunications services;

(B) Retail commercial mobile radio services; and

(C) Retail interconnected voice over internet protocol services.

(b) A retail commercial mobile radio service provider shall identify the intrastate revenues subject to the universal service surcharge based on the inverse of the percentage of interstate revenues utilized for purposes of federal universal service contributions or based on any other method approved by the Public Utility Commission. A retail commercial mobile radio service provider may rely upon the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (P.L. 106-252) to identify revenues attributable to Oregon.

(c) A retail interconnected voice over internet protocol service provider may identify, in accordance with federal guidelines, the intrastate revenues subject to the universal service surcharge based on any one of the following:

(A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected voice over internet protocol service for federal universal service contribution purposes, as the interstate safe harbor percentage may be revised from time to time;

(B) A traffic study specific to the interconnected voice over internet protocol service provider that allocates revenues between federal and state jurisdictions; or

(C) Another methodology for accurately apportioning interconnected voice over internet protocol service revenues between federal and state jurisdictions.

(d) For any service provider subject to the universal service surcharge that provides, to multiple locations, shared simultaneous voice channel capacity configured to provide local dial in different states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this state as identified:

(A) By information itemizing, on the billing statements provided to customers, the charges subject to the surcharge, as may be identified by individual end-user location, the total number of end users and the number of end users at each end-user location; or

(B) If information described in subparagraph (A) of this paragraph does not exist, by the service provider's billing system books and records.

(e) Unless otherwise provided by the Public Utility Commission by rule, the universal service surcharge must be a uniform percentage of the sale of services subject to the surcharge in an amount sufficient to support the purposes of the universal service fund established under subsection (1) of this section, provided that the percentage does not exceed six percent of the sale of services subject to the surcharge.

(f) The universal service surcharge may be listed by a telecommunications carrier as a separate line item in billing statements provided to customers, as prescribed by the commission by rule or order. The commission may not prescribe whether, or the manner by which, a commercial mobile radio services provider or an interconnected voice over internet protocol services provider may list the surcharge in billing statements provided to customers.

(g) A service provider required to collect the universal service surcharge shall:

(A) Transmit amounts collected pursuant to this section to the commission in accordance with a schedule adopted by the commission; and

(B) Provide the commission with information requested by the commission as necessary for the commission to implement this section.

(5) The commission shall deposit moneys transmitted to the commission pursuant to subsection (4) of this section in the universal service fund established under subsection (1) of this section.

(6) The universal service fund established under subsection (1) of this section is separate and distinct from the General Fund. The universal service fund shall consist of all universal service surcharge moneys collected by service providers required to collect the surcharge and transmitted to the commission for deposit in the universal service fund. The universal service fund may be used only for the purposes described in this section and for payment of expenses incurred by the commission or a third party appointed by the commission to administer this section. All moneys in the universal service fund are continuously appropriated to the commission to carry out the provisions of this section.

Interest on moneys deposited in the universal service fund shall accrue to the universal service fund.

(7) A pay telephone provider may apply to the commission, on a form developed by the commission, for a refund of the universal service surcharge imposed on the pay telephone provider under subsection (4) of this section for the provision of pay telephone service.

(8) Nothing in this section is intended to grant the commission the authority to impose any requirement or condition, or to exercise any regulatory authority, with respect to commercial mobile radio services or interconnected voice over internet protocol services other than as expressly provided for in this section. [1999 c.1093 §28; 2001 c.966 §3; 2003 c.14 §§455,456; 2007 c.353 §1; 2009 c.885 §16; 2011 c.189 §1; 2017 c.32 §1; 2020 s.s.1 c.17 §2]

Note: The amendments to 759.425 by section 3, chapter 17, Oregon Laws 2020 (first special session), become operative January 2, 2030. See section 10, chapter 17, Oregon Laws 2020 (first special session). The text that is operative on and after January 2, 2030, is set forth for the user's convenience.

759.425. (1)(a) The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund. The commission shall use the universal service fund to ensure basic telephone service is available at a reasonable and affordable rate.

(b) The commission shall designate the amount of moneys deposited annually in the universal service fund to be used to ensure basic telephone service. The amount designated under this paragraph may not exceed $28 million per year.

(c) The commission may:

(A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommunications Act of 1996 (P.L. 104-104), and to related regulations adopted by the Federal Communications Commission, to the extent that the Public Utility Commission determines conforming the rules is appropriate; and

(B) In addition to using the universal service fund to ensure basic telephone service, use the universal service fund to encourage broadband service availability and to provide support to telecommunications carriers that provide both basic telephone service and broadband service.

(2)(a) The commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

(3)(a) The commission shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing basic telephone service and the benchmark, less any explicit compensation received by the telecommunications carrier from federal sources specifically used to recover local loop costs and less any explicit support received by the telecommunications carrier from a federal universal service program.

(b) The commission shall periodically review the benchmark established under paragraph (a) of this subsection and adjust the benchmark as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

(4)(a) There is imposed a universal service surcharge on the sale in this state of all:

(A) Retail telecommunications services;

(B) Retail commercial mobile radio services; and

(C) Retail interconnected voice over internet protocol services.

(b) A retail commercial mobile radio service provider shall identify the intrastate revenues subject to the universal service surcharge based on the inverse of the percentage of interstate revenues utilized for purposes of federal universal service contributions or based on any other method approved by the Public Utility Commission. A retail commercial mobile radio service provider may rely upon the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (P.L. 106-252) to identify revenues attributable to Oregon.

(c) A retail interconnected voice over internet protocol service provider may identify, in accordance with federal guidelines, the intrastate revenues subject to the universal service surcharge based on any one of the following:

(A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected voice over internet protocol service for federal universal service contribution purposes, as the interstate safe harbor percentage may be revised from time to time;

(B) A traffic study specific to the interconnected voice over internet protocol service provider that allocates revenues between federal and state jurisdictions; or

(C) Another methodology for accurately apportioning interconnected voice over internet protocol service revenues between federal and state jurisdictions.

(d) For any service provider subject to the universal service surcharge that provides, to multiple locations, shared simultaneous voice channel capacity configured to provide local dial in different states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this state as identified:

(A) By information itemizing, on the billing statements provided to customers, the charges subject to the surcharge, as may be identified by individual end-user location, the total number of end users and the number of end users at each end-user location; or

(B) If information described in subparagraph (A) of this paragraph does not exist, by the service provider's billing system books and records.

(e) Unless otherwise provided by the Public Utility Commission by rule, the universal service surcharge must be a uniform percentage of the sale of services subject to the surcharge in an amount sufficient to support the purposes of the universal service fund established under subsection (1) of this section, provided

that the percentage does not exceed six percent of the sale of services subject to the surcharge.

(f) The universal service surcharge may be listed by a telecommunications carrier as a separate line item in billing statements provided to customers, as prescribed by the commission by rule or order. The commission may not prescribe whether, or the manner by which, a commercial mobile radio services provider or an interconnected voice over internet protocol services provider may list the surcharge in billing statements provided to customers.

(g) A service provider required to collect the universal service surcharge shall:

(A) Transmit amounts collected pursuant to this section to the commission in accordance with a schedule adopted by the commission; and

(B) Provide the commission with information requested by the commission as necessary for the commission to implement this section.

(5) The commission shall deposit moneys transmitted to the commission pursuant to subsection (4) of this section in the universal service fund established under subsection (1) of this section.

(6) The universal service fund established under subsection (1) of this section is separate and distinct from the General Fund. The universal service fund shall consist of all universal service surcharge moneys collected by service providers required to collect the surcharge and transmitted to the commission for deposit in the universal service fund. The universal service fund may be used only for the purposes described in this section and for payment of expenses incurred by the commission or a third party appointed by the commission to administer this section. All moneys in the universal service fund are continuously appropriated to the commission to carry out the provisions of this section. Interest on moneys deposited in the universal service fund shall accrue to the universal service fund.

(7) A pay telephone provider may apply to the commission, on a form developed by the commission, for a refund of the universal service surcharge imposed on the pay telephone provider under subsection (4) of this section for the provision of pay telephone service.

(8) Nothing in this section is intended to grant the commission the authority to impose any requirement or condition, or to exercise any regulatory authority, with respect to commercial mobile radio services or interconnected voice over internet protocol services other than as expressly provided for in this section.

(Public Purpose Funding)

759.430 Approval of projects funded by carrier's Telecommunications Infrastructure Account; Connecting Oregon Communities Advisory Board; rules. (1)(a) Notwithstanding ORS 285A.075 (2), the Oregon Business Development Commission shall approve plans and plan modifications for projects funded by a telecommunications carrier's Telecommunications Infrastructure Account established under ORS 759.405. Projects funded from a telecommunications carrier's Telecommunications Infrastructure Account shall be completed by the carrier and shall be substantially for the benefit of the carrier's customers. Plans approved by the commission must be consistent with the purpose of the fund as described in ORS 759.405. The commission shall give priority to projects that provide increased bandwidth between communities, route diversity and access to advanced telecommunications services in an expedited manner. The commission shall seek to ensure that an approved project is the most technically appropriate means of addressing the circumstances presented in a project plan. The commission shall review recommendations and analysis from the Connecting Oregon Communities Advisory Board established in subsection (2) of this section prior to approving a plan. Project plans may be submitted by local communities including but not limited to local governments, community institutions, citizen groups, public and private educational institutions and business groups.

(b) Under the policies and guidance of the commission, the Oregon Business Development Department shall adopt rules for the submission of project plans by telecommunications carriers and other persons, including criteria for approval of such plans. The rules shall include criteria to determine if the telecommunications carrier reasonably should be expected to make the investment based on an economic analysis of the project. Projects that are determined to meet the criteria but are not economically self-supporting or would not be undertaken in the time frame proposed shall be given priority over similar projects that would be economically self-supporting or likely would be completed in the time frame proposed. The rules shall provide for review of the economic benefits of the proposed plan to the affected community and the potential for the proposed plan to leverage other funding sources including but not limited to federal, state and private sources.

(c) The commission also shall approve expenditures from the Public Access Account of the Connecting Oregon Communities Fund established in ORS 759.445 (4).

(2) There is established within the Oregon Business Development Department the Connecting Oregon Communities Advisory Board consisting of five members appointed by the commission. The commission shall seek advice from the Governor prior to making an appointment to the advisory board.

(3) There shall be one member of the advisory board from each of the following areas:

(a) Eastern Oregon, including Hood River County;

(b) Central Oregon;

(c) Southern Oregon;

(d) Coastal Oregon; and

(e) The Willamette Valley.

(4) Employees of the Public Utility Commission, employees of state or local govern-

ment who are responsible for purchasing telecommunications services or equipment and employees of a telecommunications carrier may not be appointed to the advisory board.

(5) The advisory board shall select one of its members as chairperson and another of its members as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of those offices as the board determines.

(6) The purpose of the advisory board is to review and make recommendations to the Oregon Business Development Commission for approval of and modifications to projects funded by a telecommunications carrier's Telecommunications Infrastructure Account under this section and ORS 759.405. The advisory board shall seek advice and comment on plans submitted by a telecommunications carrier from affected local communities including but not limited to local governments, citizens and businesses. The advisory board also shall seek advice and comment from state and federal agencies when appropriate to ensure that investments will maximize statewide public benefits and are consistent with the needs and desires of the local communities. The advisory board shall consider the needs of and impact on education, health care, economic development and the delivery of state and local governmental services when evaluating a plan.

(7) The advisory board also shall review proposals submitted to the commission under ORS 759.445 (5) and make recommendations to the commission regarding approval, modification or denial of the proposals.

(8) The advisory board shall make an annual report to the Joint Legislative Committee on Information Management and Technology on the plans and activities funded under ORS 759.405 and 759.445 (5).

(9)(a) Reasonable expenses incurred by the members of the advisory board in the performance of their duties, costs of the Oregon Business Development Department directly related to providing staff to the advisory board and costs to the department for providing technical assistance to local communities shall be paid out of the Telecommunications Infrastructure Accounts created under ORS 759.405.

(b) Following the transfer of funds required under ORS 759.405 (2) and (3), a telecommunications carrier that elects to be subject to regulation under ORS 759.405 and 759.410 shall transfer from the remaining funds in its Telecommunications Infrastructure Account the following amounts to the Oregon Business Development Department to be used for the payment of expenses described in paragraph (a) of this subsection:

(A) $575,000 in 2000;

(B) $325,000 in 2001;

(C) $325,000 in 2002; and

(D) $325,000 in 2003.

(c) If more than one telecommunications carrier elects to be subject to regulation under ORS 759.405 and 759.410, the funding requirements described in paragraph (b) of this subsection shall be distributed pro rata among the electing carriers. [1999 c.1093 §31]

759.435 Assessment of telecommunications infrastructure and community needs; contents; report. (1) The Oregon Business Development Department, in collaboration with affected telecommunications carriers, the Connecting Oregon Communities Advisory Board, representatives of local communities and other members of the public interested in improved telecommunications services, shall conduct an assessment of telecommunications infrastructure and community telecommunications needs in local communities and across the various regions of this state. The assessment shall include:

(a) The type of telecommunications services and technology, including infrastructure, already deployed within communities and regions;

(b) The type of telecommunications technology and services desired by communities within regions;

(c) The competitiveness of the local telecommunications market, including a list of all telecommunications carriers and Internet service providers;

(d) The economic significance of desired telecommunications investments;

(e) Community and regional priority lists for telecommunications infrastructure and service investments;

(f) The ability of qualified public and nonprofit users within the community or region to aggregate demand for telecommunications services and the benefits of such aggregation;

(g) The estimated costs and implementation schedule of desired or proposed telecommunications investments;

(h) An analysis of state, federal, nonprofit and private sources of funding for the proposed improvements;

(i) The ability of the investment to be self-supporting; and

(j) The ability of a community or region to make the investments necessary to connect to the Oregon Enterprise Network, and the local and statewide benefits of such investments.

(2)(a) To the maximum extent practicable, the assessment shall recognize and include existing state, regional and local plans and information. The department may use its own staff or may contract with third parties to conduct the assessment.

(b) A copy of the assessment shall be submitted to the Oregon Business Development Commission and to the Joint Legislative Committee on Information Management and Technology. The commission shall consider the information contained in the report when adopting or amending the rules required under ORS 759.430 (1).

(3) The commission shall not approve plans under ORS 759.430 (1) until the commission has received the assessment required under this section. The department shall report to the Joint Legislative Committee on Information Management and Technology on implementation of ORS 759.430 to 759.445 prior to the approval of project plans under ORS 759.430 (1). [1999 c.1093 §32]

759.440 Additional funding for evaluating project plans. The Oregon Business Development Department may request approval from the Emergency Board for the transfer of additional funds from a telecommunications carrier's Telecommunications Infrastructure Account created under ORS 759.405 for the purpose of providing technical assistance to the department and the Oregon Business Development Commission in evaluating project plans submitted under ORS 759.430. If the request is approved, the commission by order may direct the transfer of funds from a telecommunications carrier's Telecommunications Infrastructure Account to the Oregon Business Development Department. The department may not request and the Emergency Board shall not approve a request or requests in excess of $100,000 per year. [1999 c.1093 §32a]

759.445 Connecting Oregon Communities Fund; School Technology Account; Public Access Account. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Connecting Oregon Communities Fund. Moneys in the fund shall consist of amounts deposited in the fund under ORS 759.405 and any other moneys deposited by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, including amounts deposited pursuant to a performance assurance plan implemented by a telecommunications carrier in connection with an application under 47 U.S.C. 271, as in effect on January 1, 2002. Interest earned on moneys in the fund shall accrue to the fund. Moneys in the fund may be invested as provided in ORS 293.701 to 293.857. Moneys in the fund shall be used to provide access to advanced telecommunications technology in elementary schools and high schools, colleges and universities, community colleges, public television corporations, rural health care providers, public libraries and other eligible persons.

(2) Two dedicated accounts shall be established within the Connecting Oregon Communities Fund for purposes of supporting education and public access to advanced telecommunications services. The first $25 million of the moneys deposited in the Connecting Oregon Communities Fund in both 2000 and 2001 shall be appropriated to the School Technology Account established under subsection (3) of this section. Except as provided in subsection (8) of this section, any additional moneys available in the fund shall be appropriated to the Public Access Account established under subsection (4) of this section.

(3) There is established the School Technology Account within the Connecting Oregon Communities Fund. The purpose of the School Technology Account is to improve access to advanced telecommunications services for students attending public school in kindergarten through grade 12. Moneys in the account shall be expended as provided in section 34, chapter 1093, Oregon Laws 1999.

(4)(a) There is established the Public Access Account within the Connecting Oregon Communities Fund. The purpose of the Public Access Account is to improve access to advanced telecommunications services for community colleges, universities, public libraries and rural health care providers.

(b) If funding has not been provided from other sources, the first $3 million available in the Public Access Account shall be transferred to the Higher Education Coordinating Commission for the purpose of funding the Oregon Wide Area Network project to provide and expand Internet access for public universities listed in ORS 352.002.

(c) Following the transfer of funds described in paragraph (b) of this subsection, the next $1 million available in the Public Access Account shall be transferred to the Higher Education Coordinating Commission for Oregon State University for the purpose of providing virtual access to persons with disabilities.

(d) Following the transfer of funds as described in paragraphs (b) and (c) of this subsection, the next $2 million available in the Public Access Account shall be transferred to the Higher Education Coordinating Commission for distribution to community colleges for the purpose of developing connectivity and distance education programs.

(e) Following the transfer of funds described in paragraphs (b) to (d) of this subsection, the next $4 million available in the Public Access Account shall be transferred to the Higher Education Coordinating Commission for video transport and network management services for public universities.

(f) Following the transfer of funds described in paragraphs (b) to (e) of this subsection, the next $5.5 million available in the Public Access Account shall be transferred to the Oregon Public Broadcasting Corporation for the purpose of digitizing the state television network, using the Oregon Enterprise Network when possible.

(g) Following the transfer of funds described in paragraphs (b) to (f) of this subsection, the next $500,000 available in the Public Access Account shall be transferred to the Southern Oregon Public Television Corporation for the purpose of digitizing the state television network, using the Oregon Enterprise Network when possible.

(h) Following the transfer of funds described in paragraphs (b) to (g) of this subsection, a public university listed in ORS 352.002 or the Oregon Health and Science University may apply for one-time matching funds up to $1 million from the Public Access Account to endow a telecommunications chair for the purpose of increasing research and development of advanced telecommunications services applications. Only one chair may be endowed under this paragraph.

(5)(a) The Oregon Business Development Commission shall approve expenditure of any remaining moneys in the Public Access Account consistent with this section and ORS 759.430.

(b) Community colleges, public universities listed in ORS 352.002, public libraries, public television corporations and rural health care providers may apply to the Oregon Business Development Commission for funding from the Public Access Account under this subsection.

(c) Funds received from the account shall be used for the purchase of advanced telecommunications services, equipment or recurring costs of telecommunications connectivity. Priority shall be given to collaborative projects that improve access to advanced telecommunications services.

(d) Funds available in the Public Access Account under this subsection are continuously appropriated to the Oregon Business Development Department for the purposes described in this subsection.

(6) Public libraries and rural health care providers must apply for federal universal service support in order to be eligible for a grant from the Public Access Account.

(7) The video transport and network management services purchased with funds made available under this section shall be purchased through the Oregon Department of Administrative Services.

(8) Any moneys deposited in the Connecting Oregon Communities Fund under subsection (1) of this section pursuant to a performance assurance plan implemented by a telecommunications carrier in connection with an application under 47 U.S.C. 271, as in effect on January 1, 2002, shall be placed in the School Technology Account to be expended as provided in section 34, chapter 1093, Oregon Laws 1999. [1999 c.1093 §33; 2001 c.966 §7; 2009 c.762 §89; 2011 c.637 §290; 2015 c.366 §98; 2015 c.767 §209]

SERVICE QUALITY STANDARDS AND PROHIBITED ACTS

759.450 Minimum service quality standards; rules; customer impact indices; factors; wholesale services; improvement plan; penalties; exceptions. (1) It is the intent of the Legislative Assembly that every telecommunications carrier and those telecommunications utilities and competitive telecommunications providers that provide wholesale services meet minimum service quality standards on a nondiscriminatory basis.

(2) The Public Utility Commission shall determine minimum service quality standards that relate to the provision of retail telecommunications services to ensure safe and adequate service. Except as provided in subsections (8) and (9) of this section, minimum service quality standards adopted under this section shall apply to all telecommunications carriers. The commission by rule shall review and revise the minimum service quality standards as necessary to ensure safe and adequate retail telecommunications services.

(3) The minimum service quality standards for providing retail telecommunications services adopted by the commission shall relate directly to specific customer impact indices including but not limited to held orders, trouble reports, repair intervals and carrier inquiry response times. In adopting minimum service quality standards, the commission shall, for each standard adopted, consider the following:

(a) General industry practice and achievement;

(b) National data for similar standards;

(c) Normal operating conditions;

(d) The historic purpose for which the telecommunications network was constructed;

(e) Technological improvements and trends; and

(f) Other factors as determined by the commission.

(4) Consistent with the federal Telecommunications Act of 1996 (Public Law 104-104), as amended and in effect on September 1, 1999, the commission may establish minimum service quality standards related to providing wholesale, interconnection, transport and termination services provided by a telecommunications carrier and those telecommunications utilities and competitive telecommunications providers that provide wholesale telecommunications services.

(5) The commission shall require a telecommunications carrier, telecommunications utility or competitive telecommunications provider that is not meeting the minimum service quality standards to submit a plan for improving performance to meet the standards. The commission shall review and approve or disapprove the plan. If the carrier, utility or provider does not meet the goals of its improvement plan within six months or if the plan is disapproved by the commission, penalties may be assessed against the carrier, utility or provider on the basis of the carrier's, utility's or provider's service quality measured against the minimum service quality standards and, if assessed, shall be assessed according to the provisions of ORS 759.990.

(6) Prior to commencing an action under this section and ORS 759.990, the commission shall allow a telecommunications carrier, telecommunications utility or competitive telecommunications provider an opportunity to demonstrate that a violation of a minimum service quality standard is the result of the failure of a person providing telecommunications interconnection service to meet the person's interconnection obligations.

(7) Total annual penalties imposed on a telecommunications utility under this section shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services for the calendar year preceding the year in which the penalties are assessed. Total annual penalties imposed on a competitive telecommunications provider under this section shall not exceed two percent of the provider's gross revenue from the sale of telecommunications services in this state for the calendar year preceding the year in which the penalties are imposed.

(8) The provisions of this section do not apply to:

(a) Radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) Telecommunications utilities and groups of affiliated telecommunications utilities that serve fewer than 50,000 access lines in Oregon are exempt from any minimum service quality standard adopted under this section that would require the utility or group to measure carrier inquiry response time. [1999 c.1093 §29; 2001 c.95 §1]

759.455 Prohibited acts; commission action on allegation of violation; penalties; judicial review. (1) Unless exempt from compliance under section 251(f) of the federal Telecommunications Act of 1996 (47 U.S.C. 251(f)), a telecommunications utility shall not:

(a) Discriminate against another provider of retail telecommunications services by unreasonably refusing or delaying access to the telecommunications utility's local exchange services.

(b) Discriminate against another provider of retail telecommunications services by providing access to required facilities on terms or conditions less favorable than those the telecommunications utility provides to itself and its affiliates. A telecommunications facility, feature or function is a required facility if:

(A) Access to a proprietary facility, feature or function is necessary; and

(B) Failure to provide access to the facility, feature or function would impair a telecommunications carrier seeking access from providing the services the carrier is seeking to provide.

(c) Unreasonably degrade or impair the speed, quality or efficiency of access or any other service, product or facility provided to another provider of telecommunications services.

(d) Fail to disclose in a timely and uniform manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, services or software that will meet the specifications of the telecommunications utility's local exchange network.

(e) Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider of telecommunications services.

(f) Use basic exchange services rates, directly or indirectly, to subsidize or offset the cost of other products or services offered by the telecommunications utility.

(g) Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

(h) Fail to provide a service, product or facility in accordance with applicable contracts, and tariffs and rules of the Public Utility Commission.

(i) Impose unreasonable or discriminatory restrictions on network elements or the resale of its services, except that:

(A) The telecommunications utility may require that residential service not be resold as a different class of service; and

(B) The commission may prohibit the resale of services the commission has approved for provision to a not-for-profit entity at rates below those offered to the general public.

(j) Provide telephone service to a person acting as a telecommunications provider if the commission has ordered the telecommunications utility to discontinue telephone service to the person.

(2) A complaint alleging a violation of subsection (1) of this section shall be heard by the Public Utility Commission or, at the commission's discretion, by an Administrative Law Judge designated by the commission. A hearing under this subsection shall be conducted in an expedited manner consistent with the following:

(a) The complaint shall be served upon the telecommunications carrier and filed with the commission.

(b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than 10 days after receipt of the complaint. Copies of the answer or responsive pleading shall be served upon the complainant and upon the commission.

(c) A prehearing conference shall be held not later than 15 days after the complaint is filed. Hearing on the complaint shall commence not later than 30 days after the complaint is filed. Within 45 days after the complaint is filed, the commission shall either prepare a final decision or approve as final the decision of the Administrative Law Judge. The final decision shall be issued as an order of the commission in the manner provided under ORS 756.558.

(3) If the commission or Administrative Law Judge finds that a violation of this section has occurred, the commission shall, within five business days, order the telecommunications utility to remedy the violation within a specified period of time. The commission may prescribe specific action to be taken by the utility, including but not limited to submitting a plan for preventing future violations. If the violation continues beyond the time period specified in the commission's order, the commission on its own motion or upon the motion of an interested party may seek penalties as provided in ORS 759.990 or otherwise may seek enforcement under ORS 756.160 or 756.180, or both.

(4) Total annual penalties imposed on a telecommunications utility under this section and ORS 759.450 shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services for the year preceding the year in which the violation occurred.

(5) An order of the commission under this section is subject to judicial review in the manner provided by ORS 756.610.

(6) The Court of Appeals shall give proceedings brought before the court under this section priority over all other matters before the court. [1999 c.1093 §38; 2005 c.638 §17; 2017 c.312 §11]

ALLOCATION OF TERRITORIES

(Generally)

759.500 Definitions for ORS 759.500 to 759.570. As used in ORS 759.500 to 759.570, unless the context requires otherwise:

(1) "Allocated territory" means a geographic area for which the Public Utility Commission has allocated to no more than one person the authority to provide local exchange telecommunications service, the boundaries of which are set forth on an exchange map filed with and approved by the commission.

(2) "Person" includes:

(a) An individual, firm, partnership, corporation, association, cooperative or municipality; or

(b) The agent, lessee, trustee or referee of an individual or entity listed in paragraph (a) of this subsection.

(3) "Local exchange telecommunications service" has the meaning given that term in ORS 759.005, except that "local exchange telecommunications service" does not include service provided through or by the use of any equipment, plant or facilities:

(a) For the provision of telecommunications services that pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar telecommunications service;

(b) For the provision of local exchange telecommunications service, as defined in ORS 759.005, commonly known as "private lines" or "farmer lines"; or

(c) For the provision of shared telecommunications service. [1987 c.447 §53; 2005 c.232 §24; 2007 c.825 §2]

759.505 [1987 c.447 §54; repealed by 2005 c.232 §32]

759.506 Purpose of allocated territory laws; carrier of last resort obligations; exemptions from obligations; reinstatement of obligations. (1) The purpose of establishing allocated territories under ORS 759.500 to 759.570 is to ensure that telecommunications utilities, cooperative corporations and municipalities certified by the Public Utility Commission to provide local exchange telecommunications service:

(a) Provide adequate and safe service to the customers of this state; and

(b) Serve all customers in an adequate and nondiscriminatory manner.

(2) The obligations described in this section may be referenced as carrier of last resort obligations.

(3) The commission, upon petition from a telecommunications utility, cooperative corporation or municipality, may exempt the telecommunications utility, cooperative corporation or municipality from the obligations described in this section if the commission finds, for a property with four or more single-family dwellings, that the owner or developer of the property, or a person acting on behalf of the owner or developer:

(a) Permits an alternative service provider to install its facilities or equipment used to provide local telecommunications service based on a condition of exclusion of the telecommunications utility, cooperative corporation or municipality during the construction phase of the real property;

(b) Accepts or agrees to accept incentives or rewards from an alternative service provider that are contingent upon the provision of any or all local telecommunications services by one or more alternative service providers to the exclusion of the telecommunications utility, cooperative corporation or municipality; or

(c) Collects from the occupants or residents of the property mandatory charges for the provision of any local telecommunications service provided to the occupants or residents by an alternative service provider in any manner, including, but not limited to, collection through rent, fees or dues.

(4) If the commission, upon petition from any interested person located within the property for which the commission has waived the carrier of last resort obligations under subsection (3) of this section, finds that the existing public convenience and necessity requires reinstatement of the carrier of last resort obligations, then the commission has the power to assign the obligations to a telecommunications utility, cooperative corporation or municipality after a public hearing. The commission shall determine how the costs of serving the customers are allocated so that the telecommunications utility, cooperative corporation or municipality will be allowed an opportunity to recover reasonable and prudent costs that exceed the costs that would have been incurred to initially construct or acquire facilities to serve customers of the territory. The determination of cost allocation by the commission must also divide the costs allowed equitably among all customers of the territory to which service is being reinstated. [2005 c.232 §26; 2009 c.124 §1]

759.510 [1987 c.447 §55; repealed by 2005 c.232 §32]

759.515 [1987 c.447 §56; repealed by 2005 c.232 §32]

759.520 [1987 c.447 §57; repealed by 2005 c.232 §32]

759.525 [1987 c.447 §58; 2005 c.22 §509; repealed by 2005 c.232 §32]

759.530 [1987 c.447 §59; repealed by 2005 c.232 §32]

759.535 Application to serve unserved territory; hearing; notice. (1) A telecommunications utility, cooperative corporation or municipality that desires to provide local exchange telecommunications service in a territory that is not served by another person providing a similar local exchange telecommunications service may apply to the Public Utility Commission for an order allocating the territory to the applicant. The application shall include an exchange map that shows the unserved territory that the applicant is requesting to serve.

(2) The commission shall within 30 days after the filing of the application give notice of the filing. If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of the hearing within 30 days of the request. The notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice of the filing shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks. Written notice of the filing shall be given to providers of similar local exchange telecommunications service in adjacent territory. [1987 c.447 §60; 2005 c.232 §28]

759.540 [1987 c.447 §61; repealed by 2005 c.232 §32]

759.545 [1987 c.447 §62; repealed by 2005 c.232 §32]

759.550 [1987 c.447 §63; repealed by 2005 c.232 §32]

759.555 [1987 c.447 §64; repealed by 2005 c.232 §32]

759.560 Assignment or transfer of allocated territory; rules. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a

finding that the assignment or transfer is not contrary to the public interest.

(2) The commission may approve a transfer of territory previously allocated only upon receipt of an application for allocation that is jointly filed by the transferor and the transferee. The application shall include exchange maps that show how the applicants want the commission to allocate the territory. The commission shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of fact supporting the order.

(3)(a) An order approving an allocation of territory may not be construed to confer any property right.

(b) Notwithstanding paragraph (a) of this subsection, upon the death of an individual to whom territory was allocated or who was an applicant under an approved order, the executor or administrator of the estate of the individual shall continue the operation of local exchange telecommunications service for the purpose of transferring territorial allocation rights. The executor or administrator shall continue the operation for a period not to exceed two years from the date of death.

(4) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making the allocation.

(5) The commission may by rule establish requirements for notice to affected persons of the assignment or transfer of allocated territory. [1987 c.447 §65; 2005 c.232 §29]

759.565 Injunction against unauthorized provision of service. In the event an allocated territory is served by a person that is not authorized by the Public Utility Commission to provide local exchange telecommunications service in the territory, an aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in the unauthorized provision of service, for an injunction against the alleged unauthorized provision of service. The trial of the action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the circuit court's judgment, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [1987 c.447 §66; 2003 c.576 §562; 2005 c.232 §30]

759.570 Application of law to local government. (1) ORS 759.500 to 759.570 may not be construed or applied to restrict the powers granted to cities to issue franchises or to restrict the exercise of the power of condemnation by a municipality. If a municipality condemns or otherwise acquires equipment, plant or facilities from another person for rendering local exchange telecommunications service, the municipality acquires all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 759.500 to 759.570 may not be construed to restrict the right of a municipality to provide local exchange telecommunications service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 759.500 to 759.570 may not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities. [1987 c.447 §67; 2005 c.232 §31]

759.575 [1987 c.447 §68; repealed by 1993 c.204 §5]

(Unserved Territory)

759.580 Power of commission to require service to unserved territory. The Public Utility Commission has power to require any telecommunications utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and service. However, no such extension of service shall be required until the telecommunications utility has been granted such reasonable franchises as may be necessary for the extension of service and unless the conditions are such as to reasonably justify the necessary investment by the telecommunications utility in extending its line, plant or system into such locality and furnishing such service. [1987 c.447 §4]

759.585 Definitions for ORS 759.585 to 759.595. As used in ORS 759.585 to 759.595, "unserved person" means a person:

(1) Who does not have local exchange telecommunications service;

(2) Who is applying for residential service or business service with five or fewer lines; and

(3) Who, for the initiation of such service, would be required to pay line extension charges. [1989 c.574 §2; 1991 c.307 §1]

759.590 Application for service by unserved person; rules. (1) An unserved person may file an application with the Public Utility Commission for an order directing another telecommunications utility to provide local exchange service to the unserved person.

(2) The commission shall adopt rules which prescribe the form of an application filed under subsection (1) of this section and which provide for reasonable notice and op-

portunity for hearing to all telecommunications utilities affected by an application. [1989 c.574 §3; 1991 c.307 §2]

759.595 Criteria for granting application for service; effect on other territorial allocation. (1) The Public Utility Commission shall grant an application filed under ORS 759.590 if the commission finds that:

(a) The telecommunications utility in whose territory the unserved person is located has declined to serve without line extension charges;

(b) Another telecommunications utility has agreed to provide local exchange telecommunications service to the unserved person with no line extension charge or with line extension charges lower than those offered by the telecommunications utility in whose territory the unserved person is located; and

(c) Approval of the application is not contrary to the public interest.

(2) Any order of the commission issued under subsection (1) of this section shall not have the effect of changing any territory allocated under ORS 758.400 to 758.475 that is being provided with local exchange telecommunications service. [1989 c.574 §4; 1991 c.307 §3]

759.600 [1989 c.574 §5; repealed by 1991 c.307 §4]

ATTACHMENT REGULATION

759.650 Definitions for ORS 759.650 to 759.675. As used in ORS 759.650 to 759.675, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or people's utility district.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association which is authorized to construct attachments upon, along, under or across the public ways.

(3) "People's utility district" means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

(4) "Public utility" has the meaning for that term provided in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

(5) "Telecommunications utility" means any telecommunications utility as defined in ORS 759.005 and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government. [1987 c.447 §22; 1989 c.5 §18]

759.655 Authority of commission to regulate attachments. The Public Utility Commission of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of telecommunications utilities. All rates, terms and conditions made, demanded or received by any telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1987 c.447 §23]

759.660 Fixing charges or rates; criteria; costs of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee or people's utility district or a telecommunications utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the telecommunications utility or people's utility district which owns the facility upon which the attachment is made.

(2) When the order applies to a people's utility district, the order also shall provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable. [1987 c.414 §166d; 1987 c.447 §24; 1989 c.5 §19]

759.665 Considerations in determining just and reasonable rate. A just and reasonable rate shall assure the telecommunications utility or people's utility district the recovery from the licensee of not less than all the additional costs of providing and

maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the telecommunications utility or people's utility district attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities and uses which remain available to the owner or owners of the subject facilities. [1987 c.447 §25]

759.670 Presumption of reasonableness of rates set by agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable unless the Public Utility Commission finds upon complaint by a telecommunications utility, people's utility district or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1987 c.447 §26; 1989 c.5 §20]

759.675 Regulatory procedure. The procedures of the Public Utility Commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the commission. [1987 c.447 §27; 1989 c.5 §21]

OPERATOR SERVICE PROVIDERS

759.680 Operator service provider duties to service users; rules. (1) As used in this section:

(a) "Call aggregator" means a person who furnishes a telephone for use by the public, including but not limited to hotels, hospitals, colleges, airports, public pay station owners and pay station agents.

(b) "Contract" means an agreement between an operator service provider and a call aggregator to automatically connect users of telephones to the operator service provider when certain operator-assisted long distance calls are made.

(c) "Operator service" includes but is not limited to billing or completion of third-number, person-to-person, collect or credit card calls.

(d) "Operator service provider" means a person who furnishes operator service under contract with a call aggregator.

(2) Each operator service provider shall:

(a) Notify all callers at the beginning of the call of the provider's name.

(b) Disclose rate and service information to the caller when requested.

(c) Maintain a current list of emergency numbers for each service territory it serves.

(d) Transfer an emergency call to the appropriate emergency number when requested.

(e) Transfer a call to, or instruct the caller how to reach, the originating local exchange company's operator service upon request of the caller, free of charge.

(f) Not transfer a call to another operator service provider without the caller's notification and consent.

(g) Not bill or collect for calls not completed to the caller's destination. Where technical limitations of the network prevent the identification of incomplete calls, each operator service provider shall issue credits for such calls upon the request of the caller.

(3) Each call aggregator who has a contract with an operator service provider shall post in the immediate vicinity of each telephone available to the public the name of the operator service provider, a toll-free customer service number, a statement that rate quotes are available upon request and instructions on how the caller may access other operator service providers.

(4) Neither the operator service provider nor the call aggregator shall block or prevent a telephone user's access to the user's operator service provider of choice. In order to prevent fraudulent use of its services, an operator service provider or a call aggregator may block access if the provider obtains a waiver for such purpose from the Public Utility Commission.

(5) The provisions of this section shall be carried out in such manner as the commission, by rule, may prescribe. [Formerly 759.690]

RESIDENTIAL SERVICE PROTECTION FUND

(Generally)

759.685 Surcharge assessed on retail telecommunications subscribers; rules. (1)(a) In order to fund the program described in ORS 759.693 to 759.698, the Public Utility Commission shall develop and implement a system for assessing a surcharge in an amount not to exceed 35 cents per month against each paying retail subscriber who has telecommunications service, or who has interconnected voice over internet protocol service, with access to a telecommunications relay service. The commission shall apply the surcharge on a telecommunications circuit designated for a particular subscriber. One subscriber line must be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit. For

providers of central office based services, the surcharge must be applied to each line that has unrestricted connection to the telecommunications relay service or, for lines that have restricted access to the telecommunications relay service, on the basis of software design. For cellular, wireless or other radio common carriers, the surcharge must be applied on a per instrument basis and only to subscribers whose place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

(b) For purposes of this subsection, the commission shall adopt by rule the definition for "interconnected voice over internet protocol service." The rule defining "interconnected voice over internet protocol service" must be consistent with the definition for "interconnected VoIP service" in 47 C.F.R. 9.3.

(2) The surcharge imposed by subsection (1) of this section does not apply to:

(a) Services upon which the state is prohibited from imposing the surcharge by the Constitution or laws of the United States or the Constitution or laws of the State of Oregon.

(b) Interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications services providers certified under ORS 759.020, radio common carriers and interexchange carriers.

(3) The commission annually shall review the surcharge and the balance in the Residential Service Protection Fund established under ORS 759.687 and may make adjustments to the amount of the surcharge to ensure that the fund has adequate resources, provided that the fund balance does not exceed six months of projected expenses.

(4) Moneys collected pursuant to the surcharge may not be considered in any proceeding to establish rates for telecommunication service.

(5) The commission shall direct telecommunications public utilities to identify separately in bills to customers for service the surcharge imposed under this section.

(6) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose information received under ORS 403.200 to 403.230 to the commission to carry out the provisions of ORS 759.693 to 759.698.

(7) The commission may disclose information obtained pursuant to ORS 759.693 to 759.698 to the department to administer the tax imposed under ORS 403.200 to 403.230. [1987 c.290 §7; 1991 c.622 §2; 1991 c.872 §8; 1993 c.231 §1; 1995 c.79 §387; 1995 c.451 §1; 2001 c.408 §2; 2011 c.78 §1; 2017 c.237 §1; 2017 c.434 §3]

759.687 Residential Service Protection Fund. The Residential Service Protection Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by moneys in the fund shall be credited to the fund. All moneys in the fund are appropriated to the Public Utility Commission to carry out the provisions of chapter 290, Oregon Laws 1987. [1987 c.290 §8; 1989 c.966 §74; 1991 c.622 §3; 1991 c.872 §1; 1993 c.231 §2]

(Residential Service Protection)

Note: Sections 2 to 6 and 16, chapter 290, Oregon Laws 1987, provide:

Sec. 2. The Legislative Assembly declares that it is the policy of this state to assure that adequate, affordable residential telecommunication service is available to all citizens of this state. [1987 c.290 §2]

Sec. 3. In carrying out the provisions of section 2 of this 1987 Act, the Public Utility Commission may require telecommunications public utilities to assure that time payment plans for deposits and installation charges or such other options as may be appropriate for a particular telecommunications public utility are made available. [1987 c.290 §3]

Sec. 4. In carrying out the provisions of section 2 of this 1987 Act the Public Utility Commission may:

(1) Notwithstanding ORS 757.310, approve a different rate for local exchange residential telecommunication service for low income customers than the rate charged to other residential customers. However, any such rate is subject to all other provisions of this chapter [ORS chapter 759].

(2) Establish plans, or require telecommunications public utilities to establish plans, to educate customers regarding the options available for obtaining telecommunication services. [1987 c.290 §4]

Sec. 5. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall establish rules to prohibit the termination of local exchange residential service when such termination would significantly endanger the physical health of the residential customer.

(2) The commission shall provide by rule a method for determining when the termination of local exchange residential service would significantly endanger the physical health of the residential customer.

(3)(a) The commission shall require that each telecommunications public utility:

(A) Accept medical statements by licensed physicians, naturopathic physicians and licensed nurse practitioners as sufficient evidence of significant endangerment of health; and

(B) Establish procedures for submitting and receiving such medical statements.

(b) A medical statement submitted under this subsection shall be valid for such period as the commission, by rule, may prescribe.

(4) Rules adopted by the commission pursuant to this section shall not apply to telecommunication service other than local exchange residential service.

(5) A customer submitting a medical certificate as provided in this section is not excused from paying for telecommunication service. Customers are required to enter into a time payment agreement with the utility if an overdue balance exists. Local exchange service is subject to termination if a customer refuses to enter into or fails to abide by terms of a payment agreement.

(6) Nothing in this section prevents the termination of local exchange residential service if the telecommunications public utility providing the service does not

have the technical ability to terminate toll telecommunication service without also terminating local exchange telecommunication service. [1987 c.290 §5; 2017 c.356 §104]

Sec. 6. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, and to support broadband internet access service, the Public Utility Commission shall establish a plan to provide assistance to low income customers through differential rates or otherwise. The plan of assistance may be in addition to the available funding offered by the Federal Communications Commission. The plan established by the Public Utility Commission shall prescribe the amount of assistance to be provided and the time and manner of payment.

(2) For the purpose of establishing a plan to provide assistance to low income customers under this section, the commission shall require all public utilities, cooperative corporations and unincorporated associations providing local exchange telecommunication service to participate in the plan, except as provided in subsection (3) of this section.

(3) In lieu of participation in the commission's plan to assist low income customers, a public utility, cooperative corporation or unincorporated association providing local exchange telecommunication service may apply to the commission to establish an alternative plan for the purposes of carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, and supporting broadband internet access service for its own customers. The commission shall adopt standards for determining the adequacy of alternative plans.

(4) The commission may contract with any governmental agency to assist the commission in the administration of any assistance plan adopted pursuant to this section.

(5) As used in sections 2 to 6, chapter 290, Oregon Laws 1987, "low income customer" has the meaning given that term by the commission by rule. [1987 c.290 §6; 1991 c.622 §1; 2007 c.29 §1; 2009 c.599 §25; 2011 c.77 §1; 2013 c.29 §1; 2019 c.91 §1; 2021 c.66 §1]

Sec. 16. (1) Sections 1, 2, 3, 4 and 15, chapter 290, Oregon Laws 1987, are repealed on January 1, 2030.

(2) Section 5, chapter 290, Oregon Laws 1987, as amended by section 104, chapter 356, Oregon Laws 2017, is repealed on January 1, 2030.

(3) Section 6, chapter 290, Oregon Laws 1987, as amended by section 1, chapter 622, Oregon Laws 1991, section 1, chapter 29, Oregon Laws 2007, section 25, chapter 599, Oregon Laws 2009, section 1, chapter 77, Oregon Laws 2011, section 1, chapter 29, Oregon Laws 2013, section 1, chapter 91, Oregon Laws 2019, and section 1 of this 2021 Act, is repealed on January 1, 2030.

(4) Section 2, chapter 204, Oregon Laws 2005, as amended by section 359, chapter 70, Oregon Laws 2007, is repealed on January 1, 2030. [1987 c.290 §16; 1991 c.622 §4; 1997 c.481 §1; 2001 c.408 §1; 2009 c.544 §1; 2017 c.434 §4; 2021 c.66 §2]

Note: Sections 1 and 2, chapter 204, Oregon Laws 2005, provide:

Sec. 1. Section 2 of this 2005 Act is added to and made a part of sections 2 to 6, chapter 290, Oregon Laws 1987. [2005 c.204 §1]

Sec. 2. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall adopt rules to prohibit the termination of local exchange residential service if the termination would significantly endanger a customer, or a person in the household of the customer, who is:

(a) At risk of domestic violence, as defined in ORS 135.230;

(b) At risk of unwanted sexual contact, as defined in ORS 163.305;

(c) A person with a disability, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005 (1)(a), (d) or (e);

(d) An elderly person, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005 (1)(a), (d) or (e); or

(e) A victim of stalking, as described in ORS 163.732.

(2) A customer may establish that termination of local exchange residential service would significantly endanger the customer, or a person in the household of the customer, by providing a telecommunications public utility with an affidavit signed by the customer stating that termination would place the customer, or a person in the household of the customer, at significant risk of domestic violence, as defined in ORS 135.230, or of unwanted sexual contact, as defined in ORS 163.305. The customer must attach to the affidavit a copy of an order issued under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040 or 163.738 that restrains another person from contact with the customer, or a person in the household of the customer, or a copy of any other court order that restrains another person from contact with the customer, or a person in the household of the customer, by reason of a risk described in subsection (1) of this section or by reason of stalking.

(3) The commission shall require that each telecommunications public utility establish procedures for submitting and receiving affidavits under subsection (2) of this section.

(4) This section does not apply to termination of any telecommunication service other than local exchange residential service.

(5) A customer submitting an affidavit as provided by subsection (2) of this section is not excused from paying for telecommunication service. Customers are required to enter into a reasonable payment agreement with the telecommunications public utility if an overdue balance exists. Local exchange residential service may be terminated if a customer refuses to enter into or fails to abide by the terms of a reasonable payment agreement.

(6) Nothing in this section prevents the termination of local exchange residential service if the telecommunications public utility providing the service does not have the technical ability to terminate toll telecommunication service without also terminating local exchange residential service. [2005 c.204 §2; 2007 c.70 §359]

759.688 Oregon Telephone Assistance Program Advisory Committee; duties; members; rules. (1) As used in this section, "the plan of assistance" means the plan of assistance established by the Public Utility Commission under section 6, chapter 290, Oregon Laws 1987.

(2) The Oregon Telephone Assistance Program Advisory Committee is established as an advisory committee to the commission for the purposes described in subsection (4) of this section.

(3) The committee consists of the following nine members appointed by the Governor:

(a) A person who represents the Public Utility Commission who is knowledgeable about telecommunications;

(b) A person who represents the Citizens' Utility Board;

(c) A person who represents the Oregon Health Authority;

(d) A person who represents telecommunications carriers, including cellular phone carriers;

(e) A person who represents coordinated care organizations, as defined in ORS 414.025;

(f) A person who represents individuals who are homeless;

(g) A person who represents individuals who are deaf, deaf-blind or hard of hearing;

(h) A person who is a low income customer who receives assistance under section 6, chapter 290, Oregon Laws 1987; and

(i) A resident of this state with a background in marketing and outreach.

(4) The committee shall:

(a) Establish goals for participation by low income customers in the plan of assistance;

(b) Advise the commission on the eligibility process for participating in the plan of assistance;

(c) Advise the commission on the regulation of the plan of assistance, including:

(A) Advice on streamlining eligibility processes;

(B) Advice on improving handset activations;

(C) Advice on use of Social Security numbers and other identifying documents; and

(D) Advice on use of a comprehensive human services outreach approach to encourage participation in the plan of assistance;

(d) Review the participation rates in programs offered by other states that are similar to the plan of assistance, particularly programs that have a higher participation rate than the plan of assistance;

(e) Develop a strategic plan to increase the participation rate in the plan of assistance;

(f) Annually review the participation rate in the plan of assistance and any annual increase in the participation rate in the plan of assistance; and

(g) Make recommendations as to the use of available funds for the following activities:

(A) Marketing and outreach;

(B) Developing partnerships with low income constituency groups; and

(C) Coordinating with state agencies that serve the low income customers eligible to participate in the plan of assistance.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Official action by the committee requires the approval of a majority of the members of the committee.

(7) The committee shall elect one of its members to serve as chairperson.

(8) The term of office of each member of the committee is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 1 of the following year. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(9) The committee shall meet at times and places specified by the call of the chairperson or of a majority of the members of the committee.

(10) The committee shall adopt rules necessary for the operation of the committee.

(11) Members of the committee are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the commission for purposes of the committee.

(12) The commission shall provide staff support and perform other services for the committee as is necessary for the effective operation of the committee. [2017 c.434 §1]

Note: 759.688 and 759.689 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 759 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

759.689 Use of surcharge for marketing and outreach to increase participation rate in plan of assistance. (1) From moneys collected as a surcharge under ORS 759.685, the Public Utility Commission shall expend moneys on marketing and outreach activities as is necessary to increase the participation rate in the plan of assistance established by the commission under section 6, chapter 290, Oregon Laws 1987.

(2) The Oregon Telephone Assistance Program Advisory Committee established under ORS 759.688 will annually review use of moneys collected as a surcharge under ORS 759.685 and make recommendations to the commission on the amount of moneys to expend on marketing and outreach activities.

(3) Notwithstanding subsections (1) and (2) of this section, moneys expended on marketing and outreach activities under this section may not exceed 15 percent of moneys collected as a surcharge under ORS 759.685.

(4) A coordinated care organization, as defined in ORS 414.025, may not directly receive moneys expended under this section. [2017 c.434 §2]

Note: See note under 759.688.

759.690 [1989 c.623 §2; renumbered 759.680 in 2017]

(Telecommunication Devices Access Program)

759.693 Definitions. As used in ORS 759.693 to 759.698, unless the context requires otherwise:

(1) "Adaptive equipment" means equipment that permits a person with a disability, other than a person who is hard of hearing or speech impaired, to communicate effectively on the telephone.

(2) "Applicant" means a person who applies for an assistive telecommunication device, adaptive equipment or a signal device.

(3) "Assistive telecommunication device" means a device that utilizes a keyboard, acoustic coupler, display screen, Braille display, speakerphone or amplifier to enable people who are deaf, deaf-blind, hard of hearing or speech impaired to communicate effectively on the telephone.

(4) "Audiologist" means a person who has a master's or doctoral degree in audiology and a Certificate of Clinical Competence in audiology from the American Speech-Language-Hearing Association.

(5) "Communication facilitator" means a person who provides professional, in-person assistive services that are necessary to help a person communicate effectively via a telecommunication device, with or without the use of an assistive telecommunication device or a telecommunications relay service, if the person receiving the services is:

(a) Deaf-blind;

(b) Deaf and has a physical disability that limits the person's expressive communication; or

(c) Hard of hearing and has a physical disability that limits the person's expressive communication.

(6) "Deaf" means a profound hearing loss, as determined by an audiologist, licensed physician, physician assistant, nurse practitioner, hearing aid specialist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(7) "Deaf-blind" means a hearing loss and a visual impairment that require use of an assistive telecommunication device to communicate effectively on the telephone. For purposes of this subsection:

(a) A hearing loss must be determined by an audiologist, licensed physician, physician assistant, nurse practitioner, hearing aid specialist or vocational rehabilitation counselor of the Department of Human Services.

(b) A visual impairment must be determined by a licensed physician, physician assistant, nurse practitioner, vocational rehabilitation counselor of the Department of Human Services or rehabilitation instructor for persons who are blind.

(8) "Disability" means a physical condition, as determined by a licensed physician, physician assistant, nurse practitioner or vocational rehabilitation counselor of the Department of Human Services, other than hearing or speech impairment that requires use of adaptive equipment to utilize the telephone.

(9) "Hard of hearing" means a hearing loss, as determined by an audiologist, licensed physician, physician assistant, nurse practitioner, hearing aid specialist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(10) "Hearing aid specialist" means a person licensed to deal in hearing aids under ORS chapter 694.

(11) "Nurse practitioner" has the meaning given that term in ORS 678.010.

(12) "Physician" means an applicant's primary care physician or a medical specialist who is able to determine an applicant's disability and to whom the applicant was referred by the primary care physician.

(13) "Physician assistant" has the meaning given that term in ORS 677.495.

(14) "Recipient" means a person who receives adaptive equipment, an assistive telecommunication device or a signal device.

(15) "Rehabilitation instructor for persons who are blind" means an employee of the Commission for the Blind who:

(a) Meets the minimum qualifications set by the commission to assess adult clients referred for services;

(b) Develops individualized training programs; and

(c) Instructs and counsels clients of the commission on adapting to sight loss.

(16) "Signal device" means a mechanical device that alerts a person who is deaf, deaf-blind or hard of hearing of an incoming telephone call.

(17) "Speech impaired" means a speech disability, as determined by a licensed physician, physician assistant, nurse practitioner, speech-language pathologist or vocational re-

habilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(18) "Speech-language pathologist" means a person who has a master's degree or equivalency in speech-language pathology and a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

(19) "Telecommunications relay center" means a facility authorized by the Public Utility Commission to provide telecommunications relay service.

(20) "Telecommunications relay service" means a telephone transmission service that provides the ability for an individual who is deaf, deaf-blind, hard of hearing or speech impaired to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. "Telecommunications relay service" includes, but is not limited to:

(a) Services that enable two-way communication between an individual using a text telephone or other nonvoice terminal device and an individual not using such a device;

(b) Speech-to-speech services; and

(c) Non-English relay services. [1987 c.290 §9; 1991 c.872 §2; 1995 c.280 §32; 1995 c.451 §2; 1999 c.384 §1; 2007 c.28 §1; 2007 c.70 §353; 2011 c.78 §2; 2011 c.264 §1; 2014 c.45 §83; 2019 c.113 §1; 2023 c.159 §1]

759.694 Legislative recognition of need. It is recognized that a large number of people in this state, through no fault of their own, are unable to utilize telecommunication equipment due to the inability to hear or speak well enough or due to other disabilities. It is also recognized that present technology and services are available, but at significant cost, that would allow these people to utilize telecommunication equipment in their daily activities. There is, therefore, a need to make available the technology and services in the form of assistive telecommunication devices, a telecommunications relay service and communication facilitators for people who are deaf, deaf-blind, hard of hearing or speech impaired or adaptive equipment for people with disabilities at no additional cost beyond normal telephone service. The provision of assistive telecommunication devices, a telecommunications relay service, communication facilitators or adaptive equipment would allow those formerly unable to use telecommunication systems to more fully participate in the activities and programs offered by government and other community agencies, as well as in their family and social activities. The assistive telecommunication devices or adaptive equipment would be provided on a loan basis to each recipient, to be returned if the recipient moves out of the state. [1987 c.290 §10; 1991 c.872 §3; 1999 c.384 §2; 2007 c.70 §354; 2011 c.264 §2; 2019 c.113 §2]

759.695 Program for assistive telecommunication devices and communication facilitator services; program for adaptive equipment. (1) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to:

(a) Purchase and distribute assistive telecommunication devices to persons who are deaf, deaf-blind, hard of hearing or speech impaired and establish a telecommunications relay service; and

(b) Provide communication facilitator services to persons who are deaf-blind when the services are necessary.

(2) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute adaptive equipment to make telephone service generally available to persons with physical disabilities. [1987 c.290 §11; 1991 c.872 §4; 1999 c.384 §3; 2007 c.70 §355; 2011 c.78 §3; 2011 c.264 §3; 2019 c.113 §3]

759.696 Telecommunication Devices Access Program Advisory Committee; duties; members. (1) A Telecommunication Devices Access Program Advisory Committee is established to advise the Public Utility Commission on the general development, implementation and administration of the Telecommunication Devices Access Program.

(2) The Telecommunication Devices Access Program Advisory Committee shall include:

(a) Five consumers as follows:

(A) Three who are deaf or hard of hearing;

(B) One who is speech impaired or who has a disability; and

(C) One who is visually impaired or deaf-blind;

(b) One professional in the field of speech impairment, visual impairment, hearing impairment or deafness or disability; and

(c) One representative from those telephone companies interested in providing telecommunication devices access relay services. [1987 c.290 §12; 1991 c.872 §5; 2007 c.70 §356; 2017 c.443 §1]

759.697 Program coordinator; program administration. (1) The Public Utility Commission shall employ a coordinator for the Telecommunication Devices Access Program, who shall be primarily responsible for:

(a) The distribution and maintenance of assistive telecommunication devices and adaptive equipment;

(b) The provision of telecommunications relay services and monitoring of those service providers;

(c) The provision of communication facilitator services; and

(d) Community outreach to locate potential beneficiaries of the Telecommunication Devices Access Program.

(2) The commission may contract with any governmental agency, or other entity the commission considers to be qualified, to assist the commission in the provision of communication facilitator services or the administration of ORS 759.693 to 759.698. [1987 c.290 §13; 1991 c.872 §6; 1999 c.384 §4; 2019 c.113 §4]

759.698 Eligibility. (1)(a) In order to be eligible to receive assistive telecommunication devices, adaptive equipment or communication facilitator services, individuals must be certified as deaf, deaf-blind, hard of hearing or speech impaired by a licensed physician, physician assistant, nurse practitioner, audiologist, hearing aid specialist, speech-language pathologist, rehabilitation instructor for persons who are blind or vocational rehabilitation counselor of the Department of Human Services. Certification implies that the individual cannot use the telephone for expressive or receptive communication.

(b) No more than one assistive telecommunication device or adaptive equipment device may be provided to a household. However, two assistive telecommunication devices or adaptive equipment devices may be provided to a household if more than one eligible person permanently resides in the household. Households without any assistive telecommunication devices or adaptive equipment shall be given priority over households with one assistive telecommunication device or adaptive equipment device when such devices are distributed.

(c) ORS 759.693 to 759.698 do not require a telecommunications utility to provide an assistive telecommunication device to any person in violation of ORS 646.730.

(2)(a) In order to be eligible to receive adaptive equipment, individuals must be certified to have the required disability by a person or agency designated by the Public Utility Commission to make such certifications. Certification implies that the individual is unable to use the telephone.

(b) ORS 759.693 to 759.698 do not require a telecommunications utility to provide adaptive equipment to any person in violation of ORS 646.730. [1987 c.290 §14; 1989 c.115 §1; 1991 c.872 §7; 1995 c.280 §33; 1999 c.384 §5; 2007 c.28 §2; 2007 c.70 §357; 2011 c.264 §4; 2014 c.45 §84; 2019 c.113 §5]

INFORMATION SERVICE PROVIDERS

759.700 Definitions for ORS 759.700 to 759.720. As used in ORS 759.700 to 759.720:

(1) "Information provider" means any person, company or corporation that operates an information delivery service on a pay-per-call basis.

(2) "Information delivery service" means any telephone-recorded messages, interactive programs or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code. Where a preexisting written contract exists between the customer and the information provider, this definition does not apply. [1991 c.672 §7]

759.705 Program message preamble; information to be included. (1) An information provider that does business in this state shall include a preamble in its program messages.

(2) The preamble must:

(a) Describe the service that the program provides.

(b) Advise the caller of the price per call, including:

(A) Any per minute charge;

(B) Any flat rate charge;

(C) Any minimum charge;

(D) The maximum charge possible for the service as determined from multiplying maximum duration in minutes by the cost per minute, unless the call has a possible indefinite duration, in which case the charge for one hour of use shall be stated;

(E) Whether calls that may last more than 20 minutes are interactive or have a possible indefinite duration; and

(F) The maximum possible charges for any pay-per-call numbers to which the caller may be referred by the information provider.

(c) Advise that the billing will begin shortly after the end of the preamble. A reasonable length of time shall be allotted after the preamble to give consumers an opportunity to disconnect before the program message starts.

(3) All preambles must be clearly articulated in the language used in advertisements for the telephone number and the

language used within the body of the program. The language in the preamble shall be spoken in a normal cadence and at a volume equal to that of the program message.

(4) When an information provider's program message consists only of a polling application that permits the caller to register an opinion or to vote on a matter by completing a call, or results in a flat charge of $2 or less, this section does not apply. [1991 c.672 §2]

759.710 Pay-per-call information; disclosure. (1) An information provider that advertises pay-per-call services that are broadcast by radio or television, contained in home videos or that appear on movie screens must include an announcement that accurately represents the price of the service being advertised. The announcement must be clearly articulated in the language used in the body of the program or any other language spoken in the advertisement. These price disclosures shall be spoken in a normal cadence and at a volume equal to that used to announce the telephone number in the advertisement. The advertisement must state the price of the service each time the telephone number of the information provider appears in the advertisement.

(2) An information provider that advertises pay-per-call services that are broadcast by television, contained in home videos or that appear on movie screens must include, in clearly visible letters and numbers set against a contrasting background, the cost of calling the advertised number. Visual disclosure of the cost of the call must be displayed adjacent to the advertised telephone number each time the number appears in the advertisement. The lettering of the visual disclosure of the cost of the call must be the same size and typeface as that of the advertised telephone number.

(3) Except as provided in subsection (5) of this section, an information provider that advertises pay-per-call services that appear in printed material must include, in clearly visible letters and numbers set against a contrasting background, the cost of calling the advertised telephone number. The printed disclosure of the cost of the call must be displayed adjacent to the advertised number each time the number appears in the advertisement. The lettering of the visual disclosure of the cost of the call must be the same size and typeface as that of the advertised telephone number.

(4) Except as provided in subsection (5) of this section, an information provider that advertises pay-per-call services must include the price or cost, including:

(a) Any per minute charge;

(b) Any flat rate charge;

(c) Any minimum charge;

(d) The maximum charge possible for the service as determined by multiplying maximum duration in minutes by the cost per minute, unless the call has a possible indefinite duration, in which case the charge for one hour of use shall be stated;

(e) An indication whether calls are interactive or have a possible indefinite duration; and

(f) The maximum possible charges for all pay-per-call numbers to which the caller will be referred by the telephone number being advertised.

(5) An information provider that advertises pay-per-call services in telephone directory classified advertising must include a conspicuous disclosure in the advertisement that the call is a pay-per-call service. [1991 c.672 §3]

759.715 Information service blocking; suspension or termination of telephone service for nonpayment of information service charges; rules. (1) Local exchange carriers shall make information delivery service blocking available to all customers as soon as such a system becomes technically available to local exchange carriers. Local exchange carriers shall notify customers of such a blocking service when available.

(2) A customer's local or long distance service shall not be suspended or terminated for nonpayment of information delivery service charges. The Public Utility Commission through orders and rules shall require telephone utilities providing billing services for information providers to adequately inform consumers of their rights concerning information providers. [1991 c.672 §§5,6]

759.720 Action against information provider for failure to comply with law; remedies; customer liability for charges. (1) Any customer, telecommunications utility or local exchange carrier who suffers damages from a violation of ORS 646.608, 646.639 and 759.700 to 759.720 by an information provider has a cause of action against such information provider. The court may award the greater of three times the actual damages or $500, or order an injunction or restitution. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) When an information provider has failed to comply with any provision of ORS 646.608, 646.639 and 759.700 to 759.720, any obligation by a customer that may have arisen from the dialing of a pay-per-call telephone number is void and unenforceable.

(4) Any obligation that may have arisen from the dialing of a pay-per-call telephone number is void and unenforceable if made by:

(a) An unemancipated child under 18 years of age; or

(b) A person whose physician or naturopathic physician substantiates that:

(A) The person has a mental or emotional disorder generally recognized in the medical or psychological community that makes the person incapable of rational judgments and comprehending the consequences of the person's action; and

(B) The disorder was diagnosed before the obligation was incurred.

(5) Upon written notification to the information provider or the billing agent for the information provider that a bill for information delivery services is void and unenforceable under subsection (2) or (4) of this section, no further billing or collection activities shall be undertaken in regard to that obligation.

(6) The telecommunications utility or local exchange carrier may require the customer to take pay-per-call telephone blocking service after the initial obligation has been voided. [1991 c.672 §4; 1993 c.513 §1; 1995 c.696 §49; 2017 c.356 §102]

UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS CARRIERS

759.730 Unauthorized changes in telecommunications carriers ("slamming"); rules. (1) The Public Utility Commission may by rule assume primary responsibility for resolving consumer complaints relating to changes in a consumer's telecommunications carrier, as defined in ORS 759.400, in violation of federal laws, federal regulations or Federal Communications Commission orders.

(2) If the Public Utility Commission assumes primary responsibility for resolving consumer complaints relating to changes in a consumer's telecommunications carrier under this section, the commission shall by rule:

(a) Establish a complaint process for consumers who have had changes in telecommunications carriers;

(b) Establish a process for investigating complaints under this section; and

(c) Establish appropriate remedies for consumers who have had changes in telecommunications carriers in violation of federal laws, federal regulations or Federal Communications Commission orders.

(3) Rules adopted by the Public Utility Commission under this section must be consistent with federal laws, federal regulations and Federal Communications Commission orders relating to resolution of consumer complaints arising out of changes in telecommunications carriers, and may not impose more stringent conditions or penalties for changes in telecommunications carriers than the conditions and penalties imposed by federal laws, federal regulations or Federal Communications Commission orders for changes in telecommunications carriers.

(4) The Public Utility Commission may not adopt rules under this section that are applicable to radio common carriers.

(5) Nothing in this section affects the ability of the Attorney General to seek remedies under ORS 336.184 and 646.605 to 646.652 to the extent that an unauthorized change in telecommunications carriers constitutes an unlawful practice under ORS 336.184 and 646.605 to 646.652. [2003 c.642 §2]

DAMAGES

759.900 Liability of utility; effect on other remedies; liability for personal injury or property damage. (1) Any telecommunications utility which does, or causes or permits to be done, any matter, act or thing prohibited by this chapter or ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(4) This section does not apply with respect to the liability of any telecommunications utility for personal injury or property damage. [1989 c.827 §4; 1995 c.696 §51]

PENALTIES

759.990 Penalties. (1) Any telecommunications utility violating ORS 759.260 commits a Class A violation. Violation of ORS 759.260 by an officer or agent of a telecommunications utility is a Class D violation.

(2) Violation of ORS 759.275 is a specific fine violation punishable by a fine of not more than $10,000.

(3) Violation of ORS 759.280 is a Class A violation.

(4) Violation of ORS 759.355 is a specific fine violation punishable by a fine of not more than $20,000.

(5) Violation of ORS 759.360 is a Class C felony.

(6) A telecommunications carrier, as defined in ORS 759.400, shall forfeit a sum of not less than $100 nor more than $50,000 for each time that the carrier:

(a) Violates any statute administered by the Public Utility Commission;

(b) Commits any prohibited act, or fails to perform any duty enjoined upon the carrier by the commission;

(c) Fails to obey any lawful requirement or order made by the commission; or

(d) Fails to obey any judgment made by any court upon the application of the commission.

(7) In construing and enforcing subsection (6) of this section, the act, omission or failure of any officer, agent or other person acting on behalf of or employed by a telecommunications carrier and acting within the scope of the person's employment shall in every case be deemed to be the act, omission or failure of such telecommunications carrier.

(8) Except when provided by law that a penalty, forfeiture or other sum be paid to the aggrieved party, all penalties, forfeitures or other sums collected or paid under subsection (6) of this section shall be paid into the General Fund and credited to the Public Utility Commission Account. [1987 c.447 §52; 1999 c.1051 §225; 1999 c.1093 §39; 2003 c.576 §563; 2011 c.597 §94]

Chapter 772

2023 EDITION

Rights of Way for Public Uses

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CONDEMNATION OF PROPERTY BY PRIVATE CORPORATIONS GENERALLY

772.010 Right of entry for survey of proposed right of way; notice required. (1) A corporation organized for the construction of a railway, sewer or canal or of any ditch or flume for the conducting of water for irrigation or domestic purposes, or for the purpose of selling water to the public for general purposes for public use, or for conducting potable or waste water by means of pipe laid upon or under the surface of the ground; or desiring to use electrical power in the operation of any railway, shall have a right to enter upon any land, between the termini thereof or elsewhere, for the purpose of examining, locating or surveying the lines of such electric or other railway, sewer, canal, ditch, flume or pipeline, for the purpose of surveying or measuring any lands or rights appurtenant thereto needed for such purposes, doing no unnecessary damage thereby.

(2) Prior to entering upon private land under this section, a person who intends to enter upon the land shall first provide written notice by first class mail to the record owner of the private property of such intent to enter. [Amended by 1971 c.655 §232; 1999 c.629 §1]

772.015 Condemnation of lands for rights of way and necessary facilities. Any corporation mentioned in ORS 772.010 may condemn so much land as may be necessary for the lines of such railway, sewer, canal, ditch, flume or pipeline, not exceeding 100 feet in width, besides a sufficient quantity of land for toolhouses, workshops, materials for construction, timber excepted, and a right through such adjacent land to enable such corporation to construct and repair its lines, poles, towers, wires, underground wires, supports and necessary equipment, railway, sewer, canal, ditch, flume or other pipeline, and to make proper drains. [Amended by 1971 c.655 §233; 1999 c.629 §2]

772.020 Condemnation of additional land for railway purposes. (1) Any railway corporation mentioned in ORS 772.010 may condemn a sufficient quantity of land in addition to that specified in ORS 772.015, for necessary sidetracks, spur tracks and laterals reasonably necessary for manufacturing establishments, also for depot and water stations, cuttings and embankments, and for the proper construction, security and convenient operation of its road.

(2) Any such railway corporation may cross, intersect, join and unite its railway with any other railway at any point in its route, and upon the grounds of such other railway corporation, and make the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of its connection and may condemn to make such crossings. The railway which is or may be intersected by new railways, may unite with the owners of such new railways in forming the intersection and connection, and grant the facilities mentioned in this subsection.

772.025 Approval of railroad crossing, intersection or connection. (1) Whenever any railroad corporation, authorized by ORS 772.020 to condemn the right to cross or connect with any other right of way or constructed line of railroad, is unable to agree with the owner of the line which it desires to cross, it may apply to the Department of Transportation in the manner provided by ORS 824.228 to 824.232.

(2) Upon such application and upon notice and hearing as provided in ORS chapter 183 for contested cases, the department shall determine the right to crossing, intersection or connection, the mode and manner thereof and the compensation to be paid therefor.

(3) No agreement for the crossing of one railroad by another shall be valid without the approval of the department. [Amended by 1971 c.655 §234; 1995 c.733 §97; 1997 c.275 §23]

772.030 Condemnation of right of way through canyon or pass for joint use by railroads. (1) Any railroad company whose right of way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its railroad in common with the railroad first located.

(2) Any railroad company authorized by law to condemn property for right of way or any other corporate purpose, may commence an action for condemnation of a right of way through any canyon, pass or defile for the purpose of its railroad, where right of way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its railroad.

(3) Thereupon like proceedings shall be had as are provided by the laws of this state for the condemnation of land for right of way and other railroad purposes. At the time of rendering judgment for damages, the court or judge thereof shall enter a judgment authorizing the railroad to occupy and use the right of way, roadbed and track, if necessary, in common with the railroad company already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [Amended by 2003 c.576 §564]

772.035 Acquisition of water rights by corporations for canal, irrigation, domestic or stock purposes. Any corporation organized in whole or in part for the construction of a canal for navigating or manufacturing purposes or of any ditch or flume for the purpose of conveying water for irrigating, domestic or stock purposes may condemn such waterways, water rights or privileges, or otherwise acquire established water rights or privileges, or those initiated by performing any acts required, provided or permitted by law, as may be necessary or convenient for the purpose of supplying, operating, constructing or maintaining the same.

772.040 Condemnation rights of pipe corporations. Except in cities, any corporation organized for conducting water by means of pipe laid upon or under the surface of the ground may, so far as may be necessary for the laying and keeping in repair its water pipes, condemn the use of so much land as may be necessary, and may make whatever cuts and excavations as soon as practicable after condemnation.

772.045 Right to cut timber and build aqueducts. Any railway corporation mentioned in ORS 772.010 may cut down any standing timber in danger of falling upon its line or railway, making compensation therefor as provided in ORS 772.055 for lands taken for the use of the corporation. [Amended by 1971 c.655 §235]

772.050 Condemnation of riparian rights and for reservoirs. Any corporation mentioned in ORS 772.010 may also condemn:

(1) The rights of riparian proprietors in any lake or stream, to enable such corporation to develop, manufacture or furnish electrical energy for the operation of any railway in this state.

(2) Lands for the sites of reservoirs for storing water for future use, and for rights of way for feeders carrying water to reservoirs, and for ditches, canals, flumes or pipelines carrying the same away. [Amended by 1971 c.655 §236]

772.055 Condemnation procedure. No condemnation of private property shall be made under ORS 772.010 to 772.020 or 772.030 to 772.050 until compensation is made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner provided in ORS chapter 35.

772.060 Condemnation rights for change of grade or location of railway, canal or pipes. Any corporation may change the grade or location of its railway, canal or pipes for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes. For the accomplishment of such change it has the same right to enter upon, examine, survey and appropriate the necessary lands and materials as in the original location and construction of such railway, canal or water pipes. [Amended by 1971 c.655 §237]

772.065 Appropriation of county road or property in lieu thereof by agreement with county court. (1) Whenever it is necessary for any corporation mentioned in ORS 772.010 to appropriate all or part of any county road or highway for right of way, the corporation may appropriate so much of the road as may be necessary, and in lieu thereof may condemn or otherwise acquire property contiguous to or as near adjacent to the road as possible in an amount equal to the property to be appropriated.

(2) Upon construction by the corporation of a county road or highway on the property so acquired in a manner conformable in the material character of the construction of said highways appropriated and upon the same grade or such other grade as may be agreed upon by the corporation and the county court or board of county commissioners of the county in which the road is located, and upon the acceptance by the county court or board of such newly constructed road, and on the conveyance of same to the county, the corporation shall then become the owner and entitled to the possession of so much of the county road or highway so appropriated.

(3) ORS 772.065 and 772.070 do not apply to roads or streets within any platted or incorporated city or town, or any addition thereto.

772.070 Procedure on dispute between county and corporation. (1) If the county court or board of county commissioners and corporation cannot agree upon the matters of appropriation under ORS 772.065, the dispute shall be referred to the Public Utility Commission.

(2) The commission, after notice and hearing, shall by order determine the terms and conditions upon which the corporation may appropriate the county road or highway. [Amended by 1971 c.655 §238]

772.100 [Repealed by 1971 c.655 §250]

APPROPRIATION OF PUBLIC LANDS FOR RAILROADS

772.105 Authority to appropriate. (1) When it is necessary or convenient in the location of any railway to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of a municipal corporation, the county court of

the county wherein such road, street, alley or public grounds is located, may agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation. If the parties are unable to agree, the corporation may appropriate so much thereof as is necessary and convenient in the location and construction of the road.

(2) Whenever a private corporation is authorized to appropriate any public highway or grounds as mentioned in subsection (1) of this section, within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, alley or public grounds, within such town as the local authorities designate. If the local authorities fail to make such designation within a reasonable time when requested, the corporation may make such appropriation without reference thereto. [Amended by 1971 c.655 §239]

772.110 [Repealed by 1971 c.655 §250]

772.115 [Repealed by 1971 c.655 §250]

772.120 [Repealed by 1971 c.655 §250]

772.125 [Amended by 1953 c.160 §3; repealed by 1971 c.655 §250]

772.130 [Repealed by 1971 c.655 §250]

772.135 [Repealed by 1971 c.655 §250]

772.140 [Repealed by 1971 c.655 §250]

772.145 [Repealed by 1971 c.655 §250]

772.150 [Repealed by 1971 c.655 §250]

772.155 [Repealed by 1971 c.655 §250]

772.160 [Repealed by 1971 c.655 §250]

CONDEMNATION BY PUBLIC UTILITIES AND ELECTRICAL COOPERATIVE ASSOCIATIONS

772.205 Definitions for ORS 772.210 and 772.215. As used in ORS 772.210 and 772.215, unless the context requires otherwise:

(1) "Electrical cooperative association" means a cooperative association which is subject to a tax on gross revenue derived from the use or operation of transmission and distribution lines pursuant to ORS 308.805 to 308.820.

(2) "Public utility" has the meaning given that term in ORS 757.005.

(3) "Service facilities" include any line, wire, pipe, conduit, main, pump, pole, tower, fixture, structure, shop, office or building for any use or purpose reasonably necessary and incident to the conduct of the business of a public utility.

(4) "Transmission company" has the meaning given that term in ORS 758.015. [Amended by 1971 c.655 §240; 1977 c.225 §1; 2001 c.913 §8]

772.210 Right of entry and condemnation of lands for construction of service facilities. (1) Any public utility, electrical cooperative association or transmission company may:

(a) Enter upon lands within this state in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities. If the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, any public utility or transmission company organized for the purpose of building, maintaining and operating a line of poles and wires for the transmission of electricity for lighting or power purposes may condemn such trees for a width not exceeding 300 feet, as may be necessary or convenient for such purpose.

(2) Notwithstanding subsection (1) of this section, any public utility, electrical cooperative association or transmission company may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, such public utility or transmission company may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) Notwithstanding subsection (1) of this section, a water or gas public utility may condemn such lands, not exceeding 50 feet in width, as may be necessary or convenient for purposes of constructing, laying, maintaining and operating its lines, including necessary equipment therefor.

(4) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. [Amended by 1963 c.138 §1; 1971 c.655 §241; 1977 c.225 §2; 2001 c.913 §9; 2003 c.477 §10]

772.215 Appropriation of public lands. When it is necessary or convenient, in the location of any poles or lines mentioned in ORS 772.210, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any municipal corporation, the county court or board of county commissioners of the county within which such road, street, alley or public grounds is located, may agree with the public utility or electrical cooperative association upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation. If such parties are unable to agree, the public utility or electrical cooperative association may condemn so much thereof as is necessary and convenient in the location and construction of the poles or lines. The provisions of ORS chapter 35 are applicable to condemnations under this section. [Amended by 1971 c.655 §242; 1971 c.741 §24; 1977 c.225 §3]

772.220 [Repealed by 1971 c.655 §250]

CONDEMNATION FOR DRAINAGE OR IRRIGATION

772.305 Condemnation of right of way for drainage or irrigation. (1) The United States, the state, or any person, firm, cooperative, association or corporation, shall have the right of way across and upon public, private and corporate lands or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines or other means of securing, storing and conveying water for irrigation or for drainage, or any other beneficial purpose, upon payment of just compensation therefor.

(2) But such right of way shall in all cases be so constructed, obtained, located and exercised in a manner consistent with proper and economical and engineering construction, so as not to unnecessarily impair practical use of any other right of way, highway or public or private road, nor to unnecessarily injure any public or private property.

(3) Such right of way may be acquired in the manner provided by law for the taking of private property for public use. If a water right permit is required under the applicable provisions of ORS chapter 537 in order to use, store or convey water within the right of way, a person, firm, cooperative, association or corporation may not acquire a right of way under this subsection before obtaining a water right permit or obtaining a final order of the Water Resources Department approving an application for a water right permit.

(4) In determining just compensation under subsection (1) of this section for a right of way across forestlands, consideration shall be given, but not limited to, the effect of the right of way on:

(a) Access to the whole of the affected parcel;

(b) Ease and method of timber harvesting or other commercial uses of the affected parcel; and

(c) Any agricultural or silvicultural activities on the affected parcel, including but not limited to application of chemicals, cultivation or harvesting activities and movement of equipment associated with any of the above activities. [Amended by 1989 c.509 §1; 1995 c.365 §8]

772.310 Right to enlarge existing irrigation system. (1) When the United States, the state, or any person, firm or corporation desires to convey water for irrigation, drainage or for any other beneficial purpose, and there is a canal or ditch already constructed that can be enlarged to convey the required quantity of water, then the United States, the state, or any such person, firm or corporation, or the owner or owners of the land through which a new canal or ditch would have to be constructed to convey the quantity of water necessary, may enlarge the canal or ditch already constructed, by compensating the owner of the canal or ditch to be enlarged for the damages, if any, caused by the enlargement.

(2) The enlargement may be made at any time between October 1 and March 1, but not any other times, unless upon agreement in writing with the owner or owners of the canal or ditch.

(3) If a water right permit is required under the applicable provisions of ORS chapter 537 in order to use, store or convey water within the enlargement, a person, firm, cooperative, association or corporation may not acquire an enlargement under this section before obtaining a water right permit or obtaining a final order of the Water Resources Department approving an application for a water right permit. [Amended by 1989 c.509 §2; 1995 c.365 §9]

772.315 [Repealed by 1971 c.655 §250]

CONDEMNATION BY CORPORATIONS FOR REDUCTION OF ORES, MINING, QUARRIES, LUMBERING AND TRANSPORTATION OF MINING PRODUCTS

772.405 Condemnation by corporations for reduction of ores. (1) Every corporation organized for the construction and operation of mills, smelters and other works for the reduction of ores authorized to do business

within the state may condemn lands and property for the discharge and natural distribution of smoke, fumes and dust from such works in the manner provided by ORS chapter 35.

(2) The use of lands by such corporation for the purpose of the discharge and natural distribution of smoke, fumes and dust from any such mill, smelter or other works for the reduction of ores, under the conditions prescribed in this section hereby is declared to be a public use.

(3) The right of eminent domain shall not be exercised by such corporation:

(a) Beyond a radius of four miles from such mill, smelter or other works for the reduction of ores.

(b) On any land situated within a radius of five miles of the corporate limits of any city in the state.

(c) Until after such corporation has acquired the right to use 50 percent of the area of the lands within a radius of four miles from the mill, smelter or other works for the reduction of ores.

772.410 Right of entry and condemnation by mining, quarrying and lumber corporations. Any corporation organized for the purpose of opening or operating any gold, silver, or copper vein or lode, or any coal or other mine, or any marble, stone or other quarry, or for cutting or transporting timber, lumber, or cordwood, or for the manufacture of lumber:

(1) May construct and operate railroads, skid roads, tramways, chutes, pipelines and flumes between such points as may be indicated in their articles of incorporation.

(2) May enter upon any land between such points in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line of such railroads, skid roads, tramways, chutes, pipelines and flumes, doing no unnecessary damage thereby.

(3) May condemn so much of said land as may be necessary for the purposes of this section, not exceeding 60 feet in width by a condemnation action as prescribed by ORS chapter 35. [Amended by 1953 c.559 §3; 2003 c.477 §11]

772.415 Public benefit and use of facilities constructed under ORS 772.410. (1) Railroads, skid roads, tramways, chutes, pipelines or flumes constructed under ORS 772.410 shall be deemed to be for public benefit.

(2) Such railroad shall afford to all persons equal facilities for the transportation of freight upon payment or tender of reasonable compensation therefor, but shall not be required to carry passengers.

(3) Such skidway, tramway, chute, pipeline or flume shall afford to all persons equal facilities in the use thereof for the purpose to which they are adapted, upon tender or payment of the reasonable compensation for such use. [Amended by 1953 c.559 §3]

772.420 Condemnation for transportation of minerals; conditions of reversion. (1) Any person requiring land for a right of way for the transportation of the products of mines located in this state may acquire such land for such purposes in the manner and subject to the rights, privileges and liabilities under ORS 376.505 to 376.540.

(2) Lands acquired under this section shall not revert to the original owner, the heirs and assigns of the original owner, until their use as contemplated in this section has ceased for a period of five years.

CONDEMNATION BY PIPELINE AND GAS COMPANIES

772.505 Definitions for ORS 772.505 to 772.520. As used in ORS 772.505 to 772.520, unless the context otherwise requires:

(1) "Pipeline" includes pipes, lines, natural gas mains or lines and their appurtenances, including but not limited to pumps and pumping stations, used in transporting or distributing fluids, including petroleum and petroleum products or natural gases.

(2) "Pipeline company" includes any corporation, partnership or limited partnership, transporting, selling or distributing fluids, including petroleum products, or natural gases and those organized for constructing, laying, maintaining or operating pipelines, which are engaged, or which propose to engage in, the transportation of such fluids or natural gases. [Amended by 1971 c.655 §242a; 1989 c.821 §1]

772.510 Right of entry and condemnation by pipeline companies. (1) Any pipeline company that is a common carrier and that is regulated as to its rates or practices by the United States or any agency thereof, may enter in the manner provided by ORS 35.220 upon lands within this state outside the boundaries of incorporated cities.

(2) This right may be exercised for the purpose of examining, surveying and locating a route for any pipeline, but it shall not be done so as to create unnecessary damage.

(3) These pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their pipeline company purposes, by proceedings for condemnation as prescribed by ORS

chapter 35. [Amended by 1971 c.655 §243; 1989 c.821 §2; 2003 c.477 §12]

772.515 Regulation concerning location of facilities. (1) Whenever such pipelines are laid along a public road, they shall be placed as closely as practicable to the extreme outside edge of the right of way of such road.

(2) With the exception of pumping, compressor, regulator or meter station buildings, no pipes or pipelines shall pass under any building in this state. Such pipes or pipelines shall not pass through or under any cemetery except by the consent of the owner thereof.

(3) When cultivated lands are appropriated under ORS 772.510, such pipes and pipelines shall be well buried under ground, in conformance with federal pipeline safety regulations in effect at the time of construction, and such surface shall be properly and promptly restored by such pipeline company unless otherwise consented to by the owner of such land.

(4) When unimproved lands of another are appropriated under ORS 772.510 and such lands thereafter become cultivated or improved, such pipes or pipelines shall be buried by the pipeline company as provided in subsection (3) of this section, within a reasonable time after notice by the owner of such lands, or the agent of the owner, to the pipeline company or its agent. [Amended by 1989 c.821 §3]

772.520 Resolution showing route and termini of pipeline. (1) Prior to the filing of any condemnation action under ORS 772.510, the pipeline company shall adopt a resolution showing the approximate route and termini of the proposed pipeline, or the extension or branch of any existing pipeline.

(2) A copy of this resolution, certified by the pipeline company, shall be filed in the office of the Secretary of State, in the office of each county clerk of those counties where such pipeline, extension or branch of an existing pipeline is proposed to be constructed, and also in the office of the Public Utility Commission. [Amended by 1989 c.821 §4]

772.525 [Repealed by 1971 c.655 §250]

772.555 [Repealed by 1971 c.655 §250]

772.560 [Repealed by 1971 c.655 §250]

772.605 [Repealed by 1971 c.655 §250]

CONDEMNATION FOR UNDERGROUND NATURAL GAS STORAGE

772.610 Definitions for ORS 772.610 to 772.625. As used in ORS 772.610 to 772.625, unless the context otherwise requires:

(1) "Natural gas company" means every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution or underground storage of natural gas.

(2) "Pipeline" has the meaning given that term in ORS 772.505 (1).

(3) "Underground reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom, but excluding a "pool."

(4) "Underground storage" means the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir. [1977 c.296 §8; 1989 c.821 §5]

772.615 Condemnation for underground reservoirs; applicability of ORS chapter 35. Any natural gas company may condemn for its use for the underground reservoir, as well as other property or interests in property which may be necessary to adequately maintain and utilize the underground reservoir for the underground storage of natural gas, including easements and rights of way for access to and egress from the underground storage reservoir. The provisions of ORS chapter 35 and ORS 520.340 and 520.350 are applicable to any condemnation action brought under this section. [1977 c.296 §9]

772.620 Placement of pipeline facilities. (1) Whenever a pipeline or appurtenance used in conjunction with the underground storage of natural gas in an underground reservoir is laid along a public road, it shall be placed as closely as practicable to the extreme outside edge of the right of way of the road.

(2) Such pipeline or appurtenance shall not be located under or pass through or under any cemetery, church, college, schoolhouse, residence, business or storehouse, or through or under any building in this state, except by the consent of the owner thereof.

(3) When cultivated lands are appropriated under ORS 772.615, such pipelines shall be well buried underground, at least 20 inches under the surface, which shall be properly and promptly restored by the natural gas company unless otherwise consented to by the owner of the land.

(4) When unimproved lands are appropriated under ORS 772.615 and thereafter become cultivated or improved, such pipelines shall be buried by the natural gas company as provided in subsection (3) of this section, within a reasonable time after notice by the owner of such lands, or the agent of the

owner, to the natural gas company or its agent. [1977 c.296 §10]

772.625 Resolution showing proposed route and termini of pipeline. (1) Prior to the filing of any condemnation action under ORS 772.615, the natural gas company shall adopt a resolution showing the approximate route and termini of any proposed pipeline, or the extension or branch of any existing pipeline, to be used in conjunction with the underground storage of natural gas, and showing the location and formation of any underground reservoir to be used for the underground storage of natural gas.

(2) A copy of this resolution shall be filed in the office of the Secretary of State, and also in the office of the county clerk of each county or counties where such pipeline, extension or branch of an existing pipeline, or underground reservoir is proposed to be constructed or utilized for the underground storage of natural gas, and also published in a newspaper of general circulation in each county. [1977 c.296 §11]

Chapter 774

2023 EDITION

Citizens' Utility Board

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774.010 Definitions. As used in this chapter, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Board" means the Citizens' Utility Board of Governors.

(2) "Consumer" or "utility consumer" means any natural person 18 years of age or older who is a resident of the State of Oregon.

(3) "District" means an electoral district for members of the Citizens' Utility Board of Governors.

(4) "Member" means a member of the Citizens' Utility Board.

(5) "Utility" means any utility regulated by the Public Utility Commission pursuant to ORS chapters 757 and 759, which furnishes electric, telephone, gas or heating service. However, "utility" does not include any municipality, cooperative, or people's utility district. [1985 c.1 §2; 1987 c.447 §102]

774.020 Policy. The people of the State of Oregon hereby find that utility consumers need an effective advocate to assure that public policies affecting the quality and price of utility services reflect their needs and interests, that utility consumers have the right to form an organization which will represent their interests before legislative, administrative and judicial bodies, and that utility consumers need a convenient manner of contributing to the funding of such an organization so that it can advocate forcefully and vigorously on their behalf concerning all matters of public policy affecting their health, welfare and economic well-being. [1985 c.1 §1]

774.030 Citizens' Utility Board; powers. (1) The Citizens' Utility Board is hereby created as an independent nonprofit public corporation and is authorized to carry out the provisions of this chapter.

(2) The Citizens' Utility Board has perpetual succession and it may sue and be sued, and may in its own name purchase and dispose of any interest in real and personal property, and shall have such other powers as are granted to corporations by ORS 65.077. No part of its net earnings shall inure to the benefit of any individual or member of the Citizens' Utility Board.

(3) The Citizens' Utility Board shall have all rights and powers necessary to represent and protect the interests of utility consumers, including but not limited to the following powers:

(a) To conduct, fund or contract for research, studies, plans, investigations, demonstration projects and surveys.

(b) To represent the interests of utility consumers before legislative, administrative and judicial bodies.

(c) To accept grants, contributions and appropriations from any source, and to contract for services.

(d) To adopt and modify bylaws governing the activities of the Citizens' Utility Board. [1985 c.1 §3; 1989 c.1010 §179]

774.040 Membership on board. (1) All consumers are eligible for membership in the Citizens' Utility Board. A consumer shall become a member of the Citizens' Utility Board upon contribution of at least $5 but not more than $100 per year to the Citizens' Utility Board. Each member shall be entitled to cast one vote for the election of the Citizens' Utility Board of Governors. The board shall establish a method whereby economically disadvantaged individuals may become members of the Citizens' Utility Board without full payment of the yearly contribution.

(2) Each year the Citizens' Utility Board shall cause to be prepared, by a certified public accountant authorized to do business in this state, an audit of its financial affairs. The audit is a public record subject to inspection in the manner provided in ORS 192.311 to 192.478. [1985 c.1 §9]

774.060 Board of Governors; duties; executive committee. The Citizens' Utility Board of Governors shall manage the affairs of the Citizens' Utility Board. The board may delegate to an executive committee composed of not fewer than five members of the board the authority as would be allowed by ORS 65.354. [1985 c.1 §4; 1989 c.1010 §180]

774.070 Election of board; term; qualifications; statement of financial interest; disqualification of candidate; recall; vacancies. (1) The Citizens' Utility Board of Governors shall be composed of three persons elected from each congressional district of this state by a majority of the votes cast by members residing in that district. The election shall be conducted by mail ballot in such manner as the Citizens' Utility Board of Governors may prescribe.

(2) The term of office of a member of the Citizens' Utility Board of Governors is four years. A person may not serve more than two consecutive terms on the Citizens' Utility Board of Governors.

(3) Each candidate and each member of the Citizens' Utility Board of Governors must be a member of the Citizens' Utility Board and must be a resident of the district from which the candidate seeks to be or is elected.

(4) At least 45 days before an election, each candidate shall file with the Citizens'

Utility Board of Governors a statement of financial interests, which shall contain the information in such form as the Citizens' Utility Board of Governors shall determine. Each candidate shall maintain a complete record of contributions received and expenditures made with regard to an election campaign. Each candidate shall make the records available for public inspection at such reasonable times as the Citizens' Utility Board of Governors considers appropriate.

(5) A member who is employed by a utility is not eligible for appointment or election to the Citizens' Utility Board of Governors, and a member of the Citizens' Utility Board of Governors who obtains employment by a utility may not maintain a position on the Citizens' Utility Board of Governors. While on the board, a director elected under this section may not hold elective public office, be a candidate for any elective public office or be a state public official. A person who owns or controls, either singly or in combination with any immediate family member, utility stocks or bonds of a total value in excess of $3,000 is not eligible to serve as an elected member of the Citizens' Utility Board of Governors.

(6) The Citizens' Utility Board of Governors may disqualify any candidate or member of the Citizens' Utility Board of Governors for any violation of this chapter or of the bylaws of the Citizens' Utility Board.

(7) Upon petition signed by 20 percent of the members in a district for the recall of a member of the Citizens' Utility Board of Governors elected from the district, the Citizens' Utility Board of Governors shall mail ballots to each member in the district, submitting the question whether the member of the Citizens' Utility Board of Governors shall be recalled. If a majority of the members voting at the election vote in favor of the recall, then the member of the Citizens' Utility Board of Governors shall be recalled. Elections and recall proceedings shall be conducted in a manner as the Citizens' Utility Board of Governors may prescribe. Ballots for all election and recall proceedings shall be counted at a regular meeting of the Citizens' Utility Board of Governors.

(8) The remaining members of the Citizens' Utility Board of Governors shall have the power to fill vacancies on the Citizens' Utility Board of Governors. [1985 c.1 §6; 1997 c.249 §222; 2013 c.1 §94]

774.110 Meetings. All meetings of the Citizens' Utility Board of Governors shall be open to the public, except under the same circumstances in which a public agency would be allowed to hold executive meetings under ORS 192.660. [1985 c.1 §8]

774.120 Inclusion of information in utility billings; frequency; notice; duty of utility to forward board mail. (1) Upon request by the Citizens' Utility Board pursuant to this section, each utility shall include in billings to a utility consumer materials prepared and furnished by the Citizens' Utility Board, not exceeding in folded size the dimensions of the envelope customarily used by such utility to send billings to its customers.

(2) The Citizens' Utility Board shall not intentionally make any false material statement in any material submitted to a utility for inclusion with a billing. If the utility believes that the Citizens' Utility Board has intentionally made false material statements in an enclosure, it may file a complaint with the Public Utility Commission of Oregon within five days of receipt. The Public Utility Commission of Oregon must review the complaint within 10 days, and if the commission determines that the Citizens' Utility Board has intentionally made false material statements, the commission shall give the Citizens' Utility Board of Governors written notification that specifies any false material statements made and the reasons why the commission determines the statements to be false.

(3) No utility shall be required to enclose Citizens' Utility Board material with a billing more than six times in any calendar year.

(4) The Citizens' Utility Board shall notify a utility of its intention to include under the provisions of this chapter any material in any specified periodic billing or billings not fewer than 30 calendar days prior to the mailing of the periodic billings and shall supply the utility with the material not fewer than 20 calendar days prior to the mailing of the periodic billings.

(5) All material submitted by the Citizens' Utility Board for inclusion in a utility billing must include the return address of the Citizens' Utility Board. A utility is not required to deliver or forward to the Citizens' Utility Board material intended for the Citizens' Utility Board mistakenly sent to the utility. However, a utility shall retain such materials for a period of 60 days from the date of receipt. The utility shall notify the Citizens' Utility Board that such materials have been received and make these materials available to the Citizens' Utility Board on demand. [1985 c.1 §10]

774.130 Mailing costs; reimbursement. (1) The Citizens' Utility Board shall not be required to pay any postage charges for materials submitted by the Citizens' Utility Board for inclusion in a utility billing if such materials weigh four-tenths of one ounce avoirdupois or less. If the materials submit-

ted weigh over four-tenths of one ounce avoirdupois, then the Citizens' Utility Board shall reimburse the utility for a portion of the postage costs which is equal to that portion of the Citizens' Utility Board material over four-tenths of one ounce avoirdupois in proportion to the total weight of the billing. In addition to postage costs, the Citizens' Utility Board shall reimburse such other reasonable costs, as determined by the Public Utility Commission of Oregon, incurred by a utility in complying with ORS 774.120.

(2) Reimbursement of a utility by the Citizens' Utility Board shall be made within 60 days of the date the utility submits to the Citizens' Utility Board an itemized statement of the costs incurred by the utility. In no event shall such reimbursement exceed the fair market value for the services provided by the utility. [1985 c.1 §11]

774.140 Interference with mailings or contributions. (1) No utility, nor any of its employees, officers, members of the board of directors, agents, contractors or assignees, shall in any manner interfere with, delay, alter or otherwise discourage the distribution of any material or statement authorized by the provisions of this chapter for inclusion in periodic utility billings, nor in any manner interfere with, hamper, hinder or otherwise infringe upon a utility consumer's right to contribute to Citizens' Utility Board, nor in any manner hamper, hinder, harass, penalize or retaliate against any utility consumer because of the consumer's contribution to, or participation in, any activities of the Citizens' Utility Board.

(2) No utility may change its mailing, accounting, or billing procedures if such change will hamper, hinder, or otherwise interfere with the ability of the Citizens' Utility Board to distribute materials or statements authorized by this chapter. [1985 c.1 §12]

774.160 Disposition of complaints. Citizens' Utility Board may submit to the appropriate agency any complaint it receives regarding a utility company. Public agencies shall periodically inform Citizens' Utility Board of any action taken on complaints received pursuant to this section. [1985 c.1 §13]

774.180 Intervention in agency proceedings affecting utility consumers; standing to obtain judicial or administrative review. Notwithstanding any other provision of law:

(1) Whenever the board determines that any agency proceeding may affect the interests of utility consumers, Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.

(2) Citizens' Utility Board shall have standing to obtain judicial or administrative review of any agency action, and may intervene as of right as a party or otherwise participate in any proceeding which involves the review or enforcement of any action by an agency, if the board determines that the action may affect the interests of utility consumers. [1985 c.1 §14]

774.190 Applicability of certain laws to board; protection from liability. (1) ORS 279.835 to 279.855 and 283.085 to 283.092 and ORS chapters 278, 279A, 279B, 279C, 282, 283, 291, 292, 293, 295 and 297 do not apply to Citizens' Utility Board or to the administration and enforcement of this chapter. An employee of Citizens' Utility Board is not considered an "employee" as the term is defined in the public employees retirement laws. Citizens' Utility Board and its employees are exempt from the provisions of the State Personnel Relations Law.

(2) ORS chapter 183 does not apply to determinations and actions by the board.

(3) The board, and any of the officers, employees, agents or members of Citizens' Utility Board shall be provided the same protections from liability as the board, officers, employees, agents, or members of any nonprofit corporation of the State of Oregon. [1985 c.1 §15; 2003 c.794 §330; 2012 c.107 §71]

774.210 Remedies; attorney fees. (1) Any utility, and any of its employees, officers, members of the board of directors, agents, contractors or assignees which does, or causes or permits to be done, any matter, act or other thing prohibited by this chapter, or omits to do any act, matter or other thing required to be done by this chapter, is liable for any injury to Citizens' Utility Board and to any other person in the amount of damages sustained in consequence of such violation. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) Citizens' Utility Board may obtain equitable relief, without bond, to enjoin any violation of this chapter.

(3) Any recovery or enforcement obtained under this section shall be in addition to any other recovery or enforcement under this section or under any statute or common law. Any recovery under this section shall be in addition to recovery by the state of the penalty or fine prescribed for such violation by this chapter. The rights and remedies provided by this chapter shall be in addition to all other rights and remedies available under law. [1985 c.1 §16; 1995 c.618 §136]

774.250 Severability. If any section, portion, clause or phrase of this chapter is for any reason held to be invalid or unconstitu-

tional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this chapter are severable. [1985 c.1 §18]

774.990 Penalty. Willful violation of ORS 774.120 (1) or (5) or 774.140 is a Class A misdemeanor. [1985 c.1 §17]

CHAPTER 775

[Reserved for expansion]

TITLE 58

SHIPPING AND NAVIGATION

Chapter 776. Maritime Pilots and Pilotage
777. Ports Generally
778. Port of Portland
780. Improvement and Use of Navigable Streams
783. Liabilities and Offenses Connected With Shipping and Navigation; Shipbreaking; Ballast Water

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Chapter 776

2023 EDITION

Maritime Pilots and Pilotage

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GENERAL PROVISIONS

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

(1) "Board" means the Oregon Board of Maritime Pilots.

(2) "Licensee" means an individual licensed under ORS 776.115.

(3) "Organization of pilots" means any legal entity or association to which licensees belong as members, or with which licensees are associated, that is formed for cooperative performance of functions including, but not limited to, the dispatching of licensees and trainees, collection of pilotage fees, ownership and operation of pilot boats, distribution of earnings of licensees and trainees, and education and training so as to facilitate the rendition of pilotage services by individual licensees and trainees.

(4) "Pilotage," "piloting" or "to pilot" means the actions of a licensee or trainee in assisting the master of a vessel under ORS 776.405 while the vessel is on, approaching or departing a pilotage ground, and the associated communication with the vessel.

(5) "Trainee" means a person the board has licensed under ORS 776.300 and who has met the requirements of ORS 776.540. [1957 c.448 §1; 1981 c.88 §2; 1983 c.330 §1; 1993 c.741 §110; 1993 c.796 §1; 2001 c.403 §1]

776.020 [Repealed by 1957 c.448 §27]

776.025 Description of bar and river pilotage grounds. Except as may be established by the Oregon Board of Maritime Pilots under ORS 776.115 (3), bar and river pilotage grounds shall be as follows:

(1) The Columbia River bar pilotage ground extends from a line across the Columbia River along 123° 44′ 00″ west longitude, then downstream to the open ocean at the entrance to the Columbia River, and includes the navigable waters encompassed by the following boundaries: Beginning at the ocean shore at a point that is 46° 19′ 06″ north latitude, 124° 04′ 06″ west longitude; then proceeding due west a distance of five miles to a point that is 46° 19′ 06″ north latitude, 124° 11′ 42″ west longitude; then proceeding on an arc in a southerly and southeasterly direction that is two miles west of and parallel to the Three Nautical Mile Line, as determined by the National Oceanic and Atmospheric Administration's Office of Coast Survey, to a southernmost point that is 46° 09′ 06″ north latitude, 124° 05′ 36″ west longitude; then due east to shore.

(2) The Columbia and Willamette River pilotage ground extends from the head of navigation on the Columbia and Willamette Rivers and their tributaries; then downstream to the line across the Columbia River 123° 55′ 00″ west longitude.

(3) The Coos Bay bar pilotage ground extends from the head of navigation on Coos Bay and its tributaries; then downstream to the open ocean at the entrance to Coos Bay and includes the navigable ocean area encompassed by the following boundaries: Beginning at the ocean shore; then west along the line of latitude 43° 24′ 00″ north to the intersection with the line of longitude 124° 22′ 00″ west; then southwest on a line to the point that is 43° 22′ 00″ north latitude, 124° 24′ 00″ west longitude; then southeast on a line to the point that is 43° 20′ 00″ north latitude, 124° 22′ 00″ west longitude.

(4) The Yaquina Bay bar pilotage ground extends from the head of navigation on Yaquina Bay and its tributaries; then downstream to the open ocean at the entrance to Yaquina Bay and includes the navigable ocean area encompassed by the following boundaries: Beginning at the ocean shore; then west along the line of latitude 44° 39′ 00″ north to the intersection with the line of longitude 124° 08′ 00″ west; then south along the line of longitude 124° 08′ 00″ west to the intersection with the line of latitude 44° 35′ 00″ north; then east along the line of latitude 44° 35′ 00″ north to the ocean shore. [1957 c.448 §2; 1993 c.741 §112b; 1993 c.796 §1a; 2011 c.157 §1]

776.028 Columbia River bar precautionary zone. The Columbia River bar precautionary zone is established. The Columbia River bar precautionary zone extends seaward of the Columbia River bar pilotage ground, lying between the western boundary of the Columbia River bar pilotage ground, and the line drawn as follows: Beginning on shore at a point that is 46° 26′ 00″ north latitude, 124° 03′ 24″ west longitude; then proceeding due west to a point that is 46° 26′ 00″ north latitude, 124° 20′ 48″ west longitude; then proceeding southwesterly and then southeasterly along the United States 12 nautical mile territorial sea boundary line to a point on that boundary that is 46° 04′ 18″ north latitude, 124° 14′ 06″ west longitude; then due east to shore. [2011 c.157 §3]

776.030 [Repealed by 1957 c.448 §27]

776.035 Findings. The Legislative Assembly finds that:

(1) In order to implement the policies described and inherent in ORS 196.420, 273.553, 465.205, 466.010 and 468B.015 and ORS chap-

ter 274, it is necessary to establish precautionary measures.

(2) Only individuals who have experience and can demonstrate knowledge of currents, tides, soundings, bearings and distances of the shoals, rocks, bars, points of landings, lights and fog signals should direct a large vessel on certain waters of this state. [1991 c.234 §2; 1997 c.16 §2]

776.040 [Repealed by 1957 c.448 §27]

776.045 Deck officer requirements. (1) All vessels required by ORS 776.405 (1) to engage a licensee under this chapter shall, at all times while underway upon any of the pilotage grounds established under ORS 776.025 or 776.115, have at least two licensed deck officers on the navigation bridge of the vessel, one of whom meets the requirements of ORS 776.405 (1).

(2) The only duties of the licensed deck officer required under ORS 776.405 (1) shall be to monitor and direct safe navigation of the vessel during transit on the waters of this state. [1991 c.234 §4; 1993 c.796 §2]

776.050 [Repealed by 1957 c.448 §27]

776.060 [Repealed by 1957 c.448 §27]

776.070 [Repealed by 1957 c.448 §27]

776.080 [Repealed by 1957 c.448 §27]

776.090 [Repealed by 1957 c.448 §27]

776.100 [Repealed by 1957 c.448 §27]

OREGON BOARD OF MARITIME PILOTS

776.105 Oregon Board of Maritime Pilots; term; qualifications; appointment; quorum. (1) The Oregon Board of Maritime Pilots is established within the Public Utility Commission of Oregon, and shall consist of nine members appointed by the Governor for terms of four years. The appointments of members of the board are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) Three members of the board shall be public members, one of whom shall act as chairperson of the board. The public members of the board may not:

(a) During the preceding five years or during their terms of office, have any interest in the ownership, operation or management of any tugs, cargo or passenger vessels or in the carriage of freight or passengers by vessel;

(b) During the preceding five years or during their terms of office, have any interest in any association or organization represented under subsection (4) of this section or principally comprised of persons engaged in commercial pursuits in the maritime industry as described in paragraph (a) of this subsection in any capacity; or

(c) Hold or have held a maritime pilot license issued by any state or federal authority.

(3) Three members shall be licensees under this chapter. One member shall be a Columbia River bar licensee, one member shall be a Columbia River licensee and one member shall be a Coos Bay or Yaquina Bay licensee. A licensee member shall:

(a) Have been licensed for more than three years under this chapter;

(b) Be actively engaged in piloting; and

(c) Be a resident of this state.

(4) Except as provided in subsection (5) of this section, three members of the board shall, for at least three years immediately preceding their appointment, have been and during their terms of office be engaged in the activities of a person, as defined in ORS 174.100, that operates or represents commercial oceangoing vessels.

(5) The Governor may appoint a past or present employee or commissioner of a port to serve on the board in lieu of one of the operators or representatives of a commercial oceangoing vessel under subsection (4) of this section.

(6)(a) The majority of members shall constitute a quorum for the transaction of all business if at least one member of each group, as described in subsections (2), (3) and (4) of this section, is present.

(b) Notwithstanding paragraph (a) of this subsection, when the board fixes pilotage fees under ORS 776.115 (5) a quorum shall consist of seven members.

(c) Notwithstanding paragraph (a) of this subsection, for purposes of ORS 192.610 to 192.705 a quorum shall consist of five members.

(7) The commission may appoint a member of the commission, or a designee, as a nonvoting, ex officio member of the board.

(8)(a) The commission is responsible for the administrative oversight of the board. The responsibilities of the commission include, but are not limited to:

(A) Budgeting;

(B) Financial management;

(C) Record keeping;

(D) Staffing;

(E) Purchasing and contracting;

(F) Collecting fees; and

(G) Compliance with rulemaking procedures set forth in ORS chapter 183.

(b) In consultation with the board, the commission shall:

(A) Fix the qualifications of and appoint an executive director and an administrative officer for the board; and

(B) Subject to the State Personnel Relations Law, fix the compensation of the executive director and the administrative officer. [1957 c.448 §3; 1963 c.580 §93; 1967 c.401 §8; 1969 c.314 §102; 1971 c.753 §41; 1981 c.88 §3; 1987 c.414 §89; 1987 c.775 §4; 1993 c.741 §111; 1993 c.796 §3; 2005 c.508 §1; 2007 c.768 §63; 2013 c.539 §1]

776.110 [Repealed by 1957 c.448 §27]

776.115 Powers and duties of board; rules; fees. The Oregon Board of Maritime Pilots shall:

(1) Fix the manner of calling and fixing the places of meetings and hold at least one meeting each calendar year.

(2) Provide for efficient and competent pilotage service on all pilotage grounds, and regulate and limit the number of licensees and trainees under this chapter, such number of licensees and trainees to be regulated and limited to the number found by the board to be required to render efficient and competent pilotage service. The primary consideration of the board is public safety. If a proposed rule would result in the significant limitation of competition among licensees or pilot organizations that exist in this state on January 1, 1991, the board shall first make a determination that the proposed rule is essential to protect the safety of the public.

(3) Establish and fix the boundaries of pilotage grounds not described in ORS 776.025.

(4) In accordance with the applicable provisions of ORS chapter 183, establish by rule a licensing system for persons licensed to pilot, for persons licensed as trainees and for pilot organizations who train persons to pilot, including but not limited to provisions prescribing:

(a) The form and content of and the times and procedures for submitting an application for license issuance and renewal. The pendency of an investigation shall not affect the renewal process.

(b) The term of license of a pilot and the annual license fee, subject to the maximum annual license fee established pursuant to ORS 776.357.

(c) The requirements for and the manner of testing competency of license applicants.

(d) Those actions or circumstances that constitute failure to achieve or maintain competency or that otherwise constitute a danger to public health and safety and for which the board may refuse to issue or renew a license, may suspend or revoke a license or may reprimand a licensee.

(e) Classes of licenses that specify the size of vessels the licensee is authorized to be trained to pilot or to pilot on those river pilotage grounds for which the trainee or pilot is licensed.

(5)(a) Fix, at reasonable and just rates, pilotage fees, extra fees for vessels in distress, fees for extraordinary pilotage services, fees for a licensee or trainee being carried to sea unwillingly and reimbursement for the return to station or for the detention of a licensee or trainee, except that pilotage fees shall not be less inbound or outbound on vessels, propelled in whole or in part by their own power, than the following:

(A) Between Astoria and Portland or Vancouver, $2.50 per foot draft and 2 cents per net ton;

(B) Between Astoria or Knappton and the sea, $3 per foot draft and 2 cents per net ton;

(C) Between Yaquina Bay and the sea, $3 per foot draft and 2 cents per ton; and

(D) Between Coos Bay and the sea, $2.50 per foot draft and 2 cents per ton.

(b) In fixing fees pursuant to paragraph (a) of this subsection, the board shall give due regard to the following factors:

(A) The length and net tonnage of the vessels to be piloted.

(B) The difficulty and inconvenience of the particular service and the skill required to render it.

(C) The supply of and demand for pilotage services.

(D) The public interest in maintaining efficient, economical and reliable pilotage service.

(E) Other factors relevant to the determination of reasonable and just rates.

(6) Conduct or authorize the holding of hearings. In so doing the board or the administrative law judge may issue subpoenas pursuant to ORS 776.123, conduct investigations pursuant to ORS 776.126, administer oaths, take depositions and fix the fees and mileage of witnesses.

(7) Adopt any rule or make any order, as set forth in ORS chapter 183, for the effective administration and enforcement of this chapter.

(8) Establish rates pursuant to subsection (5) of this section, for a period of not less than two years, that continue in effect until a subsequent hearing process. Rates may include automatic adjustment provisions to reflect changing economic conditions. [1957 c.448 §4; 1981 c.88 §5; 1983 c.313 §5; 1987 c.158 §157; 1987 c.775 §3; 1991 c.234 §8; 1993 c.741 §112; 1993 c.796 §4; 2003 c.75 §110; 2003 c.619 §1; 2007 c.621 §1; 2009 c.280 §4]

776.118 Additional authority of board. In addition to its authority under ORS 776.115, the Oregon Board of Maritime Pilots may:

(1) Establish pilotage requirements for all single boiler or single engine and single screw tank vessels carrying oil in pilotage grounds;

(2) Review and, if appropriate, reduce deadweight tonnage specifications for pilotage service for vessels carrying oil;

(3) Establish regional speed limits, based on escort vehicle limitations, for all tank vessels in inland navigable waters and critical approaches to inland navigable waters; and

(4) Establish a program for a near-miss reporting system. [1991 c.651 §21; 1993 c.796 §5]

776.120 [Repealed by 1957 c.448 §27]

776.123 Subpoenas. (1) The Oregon Board of Maritime Pilots may issue subpoenas to compel the attendance of witnesses and the production of records, documents, books, papers, memoranda or other information necessary to conduct an investigation under ORS 776.115, 776.375 or 776.405.

(2) If a person fails to comply with a subpoena issued under this section, a judge of the circuit court, on the application of the board, shall compel obedience by instituting proceedings for contempt in the same manner that the court would institute proceedings for contempt when a person fails to comply with a subpoena in a civil action. [2009 c.280 §2]

776.125 [1957 c.448 §5; repealed by 1993 c.796 §23]

776.126 Inspection of premises, ship or facility. (1) When conducting an investigation under ORS 776.115, 776.375 or 776.405, the Oregon Board of Maritime Pilots or its authorized representative may enter and investigate a premises, ship or facility.

(2) When conducting an investigation under subsection (1) of this section, the board or its authorized representative may:

(a) Examine the records, documents, books, papers, memoranda or other information kept at the premises, ship or facility.

(b) Examine under oath an officer, agent or employee of the premises, ship or facility.

(3) If the board or its authorized representative is inspecting a premises, ship or facility that is not open to the public, the board or the representative shall present credentials to the owner or occupant of the premises, ship or facility and obtain the consent of the owner or occupant before conducting the inspection. If the owner or occupant denies entry to the premises, ship or facility, the board or the representative must obtain a warrant to conduct the inspection.

(4) The board or its authorized representative may use information obtained during an investigation only to fulfill the board's duties under ORS 776.115, 776.375 or 776.405. [2009 c.280 §3]

776.129 Administrative law judge for rate hearings; recommendations from other agencies; assessing costs and expenses of hearing. (1) When the Oregon Board of Maritime Pilots establishes rates described in ORS 776.115 (5), the board shall contract with and compensate the Public Utility Commission of Oregon for the use of administrative law judges assigned by the commission to conduct the rate proceeding. Notwithstanding ORS 183.413 to 183.470, an administrative law judge shall conduct the proceeding in compliance with procedures adopted by the board by rule. The administrative law judge and the board may receive and consider recommendations made by the Oregon Business Development Department and the Port of Portland.

(2) The board may defray the costs and expenses of the hearing by assessing, in its final order, all or a portion of the costs and expenses of the hearing to a party to the hearing. [1987 c.775 §2; 1989 c.171 §85; 1989 c.293 §1; 1993 c.741 §112a; 1993 c.796 §6; 1999 c.849 §§178,179; 2003 c.75 §63; 2003 c.619 §2; 2007 c.288 §17]

776.130 [Repealed by 1957 c.448 §27]

776.135 [Subsection (1) enacted as part of 1957 c.448 §5; subsection (2) enacted as 1957 c.448 §24; 1971 c.734 §184; 1983 c.313 §1; repealed by 1993 c.796 §23]

776.140 [Repealed by 1957 c.448 §27]

776.145 [1957 c.448 §6; repealed by 1971 c.734 §21]

776.150 [Repealed by 1957 c.448 §27]

776.155 [1957 c.448 §7; repealed by 1971 c.734 §21]

776.160 [Repealed by 1957 c.448 §27]

776.165 [1957 c.448 §8; repealed by 1971 c.734 §21]

776.170 [Repealed by 1957 c.448 §27]

776.175 [1957 c.448 §9; repealed by 1971 c.734 §21]

776.185 [1957 c.448 §10; repealed by 1971 c.734 §21]

776.195 [1957 c.448 §11; repealed by 1971 c.734 §21]

776.205 [1957 c.448 §12; repealed by 1971 c.734 §21]

LICENSING; COMPENSATION; LIABILITY

776.300 Trainee license; qualifications; assignment for training; rules. (1) No person shall be licensed as a trainee under this chapter unless the person meets the experience and educational requirements established by the Oregon Board of Maritime Pilots by rule including provisions pursuant to a program to carry out ORS 243.305 and 776.115 (2).

(2) The board shall assign trainees to organizations of pilots licensed under ORS 776.311. Trainees shall be trained to become

licensees by one or more organizations of pilots. The board may adopt by rule training requirements. [1981 c.88 §7; 1993 c.796 §7]

776.305 [1957 c.448 §13; 1985 c.34 §1; repealed by 1993 c.796 §23]

776.310 [Repealed by 1957 c.448 §27]

776.311 Organizations licensed to train pilots. (1) No organization of pilots shall be licensed to train persons to be pilots under this chapter unless the organization:

(a) Has members who are licensed to pilot under ORS 776.325; and

(b) Meets other requirements established by the Oregon Board of Maritime Pilots.

(2) The board shall license at least one pilot organization on each pilotage ground.

(3) Organizations of pilots shall train only persons who are licensed as trainees and have been assigned for training by the board under ORS 776.300. [1993 c.796 §8b]

776.315 [1957 c.448 §14; 1985 c.32 §1; repealed by 1993 c.796 §23]

776.320 [Amended by 1953 c.140 §2; repealed by 1957 c.448 §27]

776.325 Qualifications of licensees. (1) No person shall be licensed to pilot under this chapter unless the person:

(a) Was licensed as a trainee or licensee prior to submitting an application to be licensed to pilot and has met the training requirements established by the Oregon Board of Maritime Pilots; and

(b) Possesses the requisite skill and the experience as a navigator and pilot, as demonstrated by satisfactory performance on such written examinations as the board may prescribe, together with practical knowledge of the currents, tides, soundings, bearings and distances of the several shoals, rocks, bars, points of landings, lights and fog signals of or pertaining to the navigation of the pilotage ground for which application is made for a license to pilot.

(2) An applicant for a license over any river pilotage ground must have at least six months' continuous experience, as determined by the board, as a trainee on vessels subject to ORS 776.405 piloting oceangoing vessels over the pilotage ground for which application is made, prior to making application for a license, and must have had the necessary experience in handling oceangoing vessels through the bridges, under varying conditions with and without towboats.

(3) An applicant for a license on bar pilotage grounds shall satisfy the board that the applicant has means available for boarding and leaving vessels which the applicant may be called upon to pilot. [1957 c.448 §15; 1973 c.827 §82; 1981 c.88 §8; 1983 c.313 §2; 1985 c.32 §2; 1993 c.796 §8]

776.330 [Repealed by 1957 c.448 §27]

776.335 [1957 c.448 §16; repealed by 1993 c.796 §23]

776.340 [Repealed by 1953 c.297 §2]

776.345 [1957 c.448 §17; 1981 c.88 §13; 1983 c.313 §3; 1985 c.34 §2; repealed by 1993 c.796 §23]

776.350 [Repealed by 1957 c.448 §27]

776.355 License fees; rules. (1) Except as provided in subsection (2) of this section, each licensee under this chapter shall pay an annual license fee to the Oregon Board of Maritime Pilots not to exceed the amount established under ORS 776.115. Subject to prior approval of the Oregon Department of Administrative Services, the amount of the fee shall be adjusted by the Oregon Board of Maritime Pilots to finance costs as defined by the legislatively approved budget, as it may be modified by the Emergency Board.

(2) The Oregon Board of Maritime Pilots by rule may establish reduced license fees for those individuals who engage in pilotage activities on less than a full-time basis. However, in no event shall the fee be less than $50. [1957 c.448 §22; 1963 c.105 §2; 1973 c.832 §68; 1977 c.40 §2; 1979 c.11 §2; 1981 c.88 §9; 1983 c.313 §4; 1985 c.271 §2; 1989 c.293 §2; 1991 c.466 §1; 1991 c.703 §41; 1993 c.796 §9; 2023 c.602 §31]

776.357 Maximum maritime pilot license fee. (1) The maximum annual license fee for a maritime pilot is $2,500 for the biennium beginning July 1, 2007.

(2) The Oregon Board of Maritime Pilots shall adjust the amount of the maximum annual license fee for a maritime pilot for each subsequent biennium by a proportional amount equal to the percentage change in the 24-month period prior to the beginning of the biennium in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. [2007 c.621 §2; 2019 c.57 §34]

Note: 776.357 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 776 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

776.360 [Repealed by 1957 c.448 §27]

776.365 Pilot Account; uses. The Pilot Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Oregon Board of Maritime Pilots under this chapter shall be deposited in the account. All moneys in the account are continuously appropriated to the board and the board may use the moneys only to carry out the duties, functions and powers of the board, for the administration and enforcement of this chapter and for expenses incurred by the Public Utility Commission in its oversight of the board. [1957 c.448 §23; 1983 c.740 §256; 2007 c.768 §68; 2013 c.539 §5]

776.370 [Repealed by 1957 c.448 §27]

776.375 Disciplinary proceedings; administrative procedures; judicial review. (1) Where the Oregon Board of Maritime Pilots proposes to refuse to issue or renew a license to pilot, or proposes to revoke or suspend a license or proposes to issue a written reprimand, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS chapter 183. Contested case hearings shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. [1971 c.734 §186; 1981 c.88 §14; 1993 c.796 §10; 1999 c.849 §§181,182; 2003 c.75 §64]

776.380 [Repealed by 1957 c.448 §27]

776.390 [Repealed by 1957 c.448 §27]

776.400 [Repealed by 1957 c.448 §27]

776.405 License required; exemptions. (1)(a) Except as set forth in paragraph (c) of this subsection, a person may not pilot any vessel upon any of the pilotage grounds established under ORS 776.025 or 776.115 without being a licensee under this chapter or a trainee under the onboard supervision of a licensee under this chapter.

(b) Except as set forth in paragraph (c) of this subsection, a person may not pilot any vessel in the Columbia River bar precautionary zone, either to enter or depart the Columbia River bar pilotage ground, except pursuant to instructions from a licensee under this chapter for the Columbia River bar pilotage ground, provided however that the master of a vessel transiting the Columbia River bar precautionary zone remains at all times in full command of the vessel and is responsible to take all reasonable steps to safely navigate the Columbia River bar precautionary zone.

(c) Paragraphs (a) and (b) of this subsection do not apply to:

(A) The master of a vessel under fishery, recreational or coastwise endorsement provided under 46 U.S.C. chapter 121;

(B) A vessel registered with the State Marine Board or a similar licensing agency of another state;

(C) The master of a foreign registered fishing or recreational vessel, exempted by the Oregon Board of Maritime Pilots, of not more than 100 feet in length or 250 gross tons international; or

(D) United States flag towing vessels under 200 gross tons domestic and their towed barges of 10,000 gross tons domestic or less, excluding tank vessels as defined by ORS 468B.300, that are engaged in the foreign trade between British Columbia and the Coos Bay bar pilotage ground established by ORS 776.025 (3), provided that the towing vessel is under the navigational control of a person holding the federal mariner license required for the towing vessel when operating under a coastwise endorsement.

(2) A licensee under this chapter is at all times the servant of the vessel being piloted and its owners and operators. [1957 c.448 §25(1); 1973 c.650 §1; 1983 c.330 §3; 1985 c.34 §3; 1991 c.234 §3; 1993 c.796 §11; 2001 c.104 §296; 2011 c.157 §4; 2017 c.292 §1]

776.410 [Amended by 1955 c.558 §1; repealed by 1957 c.448 §27]

776.415 Compensation of licensees determined by law. No licensee shall demand or receive any greater, lesser or different compensation for piloting a vessel upon any of the pilotage grounds than is allowed by law. [1957 c.448 §25(2); 1993 c.796 §12]

776.420 [Amended by 1953 c.141 §2; 1953 c.142 §2; 1955 c.698 §1; repealed by 1957 c.448 §27]

776.425 Authority of licensees generally; compensation. Within the scope of the license, a licensee may pilot any vessel and demand and receive therefor the compensation allowed by law. [1957 c.448 §20(1); 1973 c.650 §2; 1985 c.32 §3; 1993 c.796 §13]

776.430 [Repealed by 1957 c.448 §27]

776.435 Refusing services of licensee; liability for pilotage fee. The master or person in charge of any vessel may refuse to accept the services of any particular licensee and shall call for another licensee, in which case the vessel and the owners, operators and agents of the vessel are liable only for the services of the licensee employed. [1957 c.448 §20(2); 1983 c.330 §2; 1991 c.234 §5; 1993 c.796 §14]

776.440 [Repealed by 1957 c.448 §27]

776.445 Liability of certain persons for licensee's compensation. In addition to the lien of the licensee upon the vessel for any sum due for piloting, the master, owner and consignee or agent are jointly and severally liable to the licensee therefor. [1957 c.448 §21; 1993 c.796 §15]

776.450 [Repealed by 1957 c.448 §27]

776.455 Exhibition of license on boarding vessel. On boarding a vessel and if required by the master thereof, a licensee shall exhibit the license before the licensee is authorized to perform a piloting assignment. [1957 c.448 §19; 1993 c.796 §16]

776.460 [Repealed by 1957 c.448 §27]

776.465 [1957 c.448 §18; repealed by 1993 c.796 §23]

776.470 [Repealed by 1957 c.448 §27]

776.480 [Repealed by 1957 c.448 §27]

776.490 [Repealed by 1957 c.448 §27]

776.500 [Repealed by 1957 c.448 §27]

776.510 Declaration of legislative intent relating to liability of licensees, trainees and organizations. (1) The stimulation and preservation of maritime commerce on the bar and river pilotage grounds of this state are declared to be affected with the public interest and the limitation and regulation of liability of licensees, trainees and organizations of pilots are necessary to such stimulation and preservation of maritime commerce and are deemed to be in the public interest.

(2) To accomplish the stimulation and preservation of maritime commerce it is necessary to establish an optional rate system whereby vessels and persons engaging the services of a licensee have the option of:

(a) Agreeing not to assert any personal liability against any licensee, trainee and organization of pilots to which the licensee or trainee belongs, and to defend, indemnify and save harmless the licensee, trainee and organization of pilots against all claims and demands arising from acts or omissions of the licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of the vessel; or

(b) Directing licensees in writing and in sufficient time for insurance to be procured by them, on a "trip" basis, insuring such licensees, trainees and organizations of pilots to which they belong against all claims or demands arising from or relating to, directly or indirectly, pilotage of the vessel, the premium or cost of such insurance to be included in the charges for pilotage services and paid on demand by the vessel.

(3) The Legislative Assembly hereby declares that to effect the ends and purposes listed in this section, and to maintain pilotage fees at reasonable levels on the bar and river pilotage grounds of this state, ORS 776.520, 776.530 and 776.540 are adopted. [1959 c.404 §2; 1983 c.330 §4; 1993 c.796 §17]

776.520 Tariffs limiting liability of licensees, trainees or organizations. Licensees and trainees are authorized to limit their liability and the liability of any organization of pilots to which they belong by tariffs approved by the Oregon Board of Maritime Pilots containing substantially the terms and provisions of the following form:

The provisions of ORS 776.510 and 776.540 hereby are incorporated into and made a part of this tariff. By reason of the option granted by ORS 776.510, the rates and charges named in this tariff do not include the cost of marine insurance insuring the licensee, trainee and any organization of pilots to which the licensee or trainee belongs, the vessel, its owners, agents or operators from the consequences of negligence or errors in judgment of the licensees, trainees or organizations of pilots.

However, upon reasonable notice to the licensees in writing from the vessel, its master, owners, agents or operators, the licensees parties hereto will procure such insurance on a "trip" basis in an amount equal to the value of the vessel and its cargo, or such other amount as may be agreed upon between the licensees and the vessel, its master, owners, agents or operators, insuring the licensees and the organizations of pilots to which they belong against all claims or demands arising from or based upon, directly or indirectly, pilotage of the vessel. The premium for such insurance shall be assessed in addition to the rates and charges specified herein.

The election of the vessel, its master, owners, agents or operators not to request licensees parties hereto to procure such insurance and thereby to elect to have the licensees parties hereto perform services on the rates and charges specified herein shall constitute a binding and irrevocable agreement on the part of the vessel, its master, owners, agents or operators to the terms and conditions of the following:

It is understood and agreed, and is the essence of the contract under which services of the licensee are tendered to and accepted by the vessel, its master, operators and owners, that:

(1) The services rendered hereunder are rendered by a licensee;

(2) The services of any individual licensee have been voluntarily accepted and are voluntarily rendered pursuant to the election authorized by ORS 776.510;

(3) Such services are advisory in nature only, the master of the vessel remaining at all times in full command of the vessel and empowered to relieve the licensee of duties;

(4) The services of the licensee and, if applicable, trainee are accepted on the express understanding that when the licensee and trainee go aboard the vessel the licensee and trainee become the servants of the vessel and its owners and operators. Except as to such personal liability and rights over as may arise by reason of the willful misconduct or gross negligence of the licensee or trainee, the master, owners and operators of the vessel expressly covenant and agree:

(a) Not to assert directly or indirectly, any personal liability against the licensee, trainee, any organization of pilots to which the licensee or trainee belongs, and any members of such organization;

(b) Not to respond in damage (including any rights over) arising out of or connected with, directly or indirectly, any damage, loss or expense sustained by the vessel, its master, owners, operators and crew, and any third parties (including cargo), even though resulting from acts or omissions of any organization of pilots to which the licensee or trainee belongs, from acts or omissions of its members, or any acts or omissions of the licensee or trainee; and

(c) To defend, indemnify and hold harmless the licensee, trainee, any organization of pilots to which the licensee or trainee belongs, and any members of such organization, from any claims whatsoever for damages, loss or expense arising out of, or connected with any acts or omissions of the licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of the vessel;

(5) The master, owners and operators of the vessel shall not be liable to indemnify and hold harmless the licensee, trainee and any organization of pilots to an extent greater than the amount to which the liability of the vessel, its owners and operators, is limited by reason of contract, bill of lading or statute, including but not limited to, the Limitation of Liability Act (46 U.S.C. 181-189), the Harter Act (46 U.S.C. 190-195), the Carriage of Goods by Sea Act (46 U.S.C. 1300-1315), and the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(6) The fees charged for the services rendered by the licensee and trainee have been computed and are assessed in accordance with and based upon the above stipulations.

[1959 c.404 §3; 1973 c.650 §3; 1983 c.330 §5; 1993 c.796 §18]

776.530 Licensees, trainees and organizations not liable for certain acts or omissions. An organization of pilots shall not be liable for any claims arising from acts or omissions of a licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of a vessel. A licensee or trainee shall not be liable either directly or as a member or associate of an organization of pilots for any claims arising from acts or omissions of any other licensee, trainee or any organization of pilots which relate, directly or indirectly, to pilotage of a vessel. This section does not apply to acts or omissions relating to the ownership and operation of pilot boats or the transportation of licensees and trainees to and from the vessel being piloted. [1983 c.330 §8; 1993 c.796 §19]

776.540 Security required of licensees and trainees; conditions of bond; limitation of liability. (1) Each licensee and trainee shall procure and furnish to the Oregon Board of Maritime Pilots a security in the sum of $250 as a surety bond or an irrevocable letter of credit, in a form approved by the board and underwritten by a surety company authorized to engage in business in the State of Oregon or issued by an insured institution, as defined in ORS 706.008, or as a cash deposit in a form approved by the board. The cash deposit, letter of credit or bond shall be conditioned so as to pay the sum to any person, firm, corporation or other legal entity who or which shall suffer any loss or damage by reason of any negligent act or omission of the licensee or trainee which relates, directly or indirectly, to pilotage of the vessel. No licensee or trainee shall be liable for any such act or omission beyond the amount of the security. However, this limitation of liability shall not apply:

(a) To willful misconduct on the part of the licensee or trainee;

(b) To the extent to which insurance is procured pursuant to the option granted by ORS 776.510 and 776.520; or

(c) To acts or omissions relating to the ownership and operation of pilot boats or the transportation of licensees and trainees to and from the vessel being piloted.

(2) When any suit or action is brought in any court against a licensee or trainee for any such act or omission in respect of which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, upon payment by the licensee or trainee of the amount of the security into the court in which such suit or action is brought, the court shall distribute that amount rateably among the several claimants and shall dismiss the proceedings as to the licensee or trainee. [1983 c.330 §7; 1985 c.29 §1; 1991 c.331 §138; 1993 c.796 §20; 1997 c.631 §553]

776.600 Restrictions on licensee's or trainee's financial interest in boat or equipment assisting vessel piloted by licensee or trainee. (1)(a) Except as provided in paragraph (b) of this subsection, a licensee or trainee may not pilot a vessel on the Coos Bay bar pilotage ground or the Yaquina Bay bar pilotage ground if the licensee or trainee, or an immediate family member of the licensee or trainee, has any financial interest in a boat or equipment assisting the vessel in entering or exiting the bay.

(b) The Oregon Board of Maritime Pilots shall adopt rules allowing a licensee or trainee who is prohibited from piloting a vessel under paragraph (a) of this subsection to pilot the vessel in an emergency, and fixing rates for pilotage under this paragraph.

(2) This section does not prohibit a licensee or trainee from piloting a vessel if the licensee or trainee, or an immediate family member of the licensee or trainee, owns stock in a corporation registered on a national securities exchange that owns boats or equipment assisting ships on the Coos Bay bar pilotage ground or the Yaquina Bay bar pilotage ground. [2012 c.55 §5]

BOARD OPERATIONS FEE

776.800 Collection of fee; remittance. (1) Except as provided in subsection (2) of this section, each licensee under this chapter shall collect a board operations fee from each vessel using the services of a licensee. The purpose of the fee is to allow the Oregon Board of Maritime Pilots to carry out its duties, functions and powers under this chapter. The fee may not exceed the amount described in ORS 776.810.

(2) The fee described in subsection (1) of this section shall be collected in the following manner:

(a) For vessels entering or leaving the Columbia River, licensees for the Columbia River bar pilotage ground shall collect the fee from inbound vessels and licensees for the Columbia and Willamette River pilotage ground shall collect the fee from outbound vessels.

(b) For vessels entering or leaving Coos Bay or Yaquina Bay, licensees for the Coos Bay or Yaquina Bay pilotage ground shall collect the fee from inbound and outbound vessels.

(3) The board shall prescribe the procedures for collecting and remitting the fee imposed under this section.

(4) Each quarter the board shall review the amount of the fee. If the board determines that the fee should be adjusted, then the board may adjust the fee subject to prior approval of the Oregon Department of Administrative Services. [2013 c.539 §3; 2023 c.602 §32]

776.810 Maximum amount of fee; adjustment of fee. (1) Subject to subsection (2) of this section, the maximum board operations fee for a vessel is $100.

(2) The Oregon Board of Maritime Pilots shall adjust the amount of the maximum board operations fee for a vessel each biennium beginning July 1, 2015, by a proportional amount equal to the percentage change in the 24-month period prior to the beginning of the biennium in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. [2013 c.539 §4; 2019 c.57 §35]

PENALTIES

776.880 Civil penalties. (1) In addition to any other penalty provided by law, any licensee or trainee who commits any act for which the Oregon Board of Maritime Pilots could revoke, suspend or refuse to issue or renew a license is subject to a civil penalty in an amount determined by the board of not more than $250 for each offense.

(2) Any person who violates the provisions of ORS 776.405 (1)(a) is subject to a civil penalty in an amount as determined by the board of not less than $5,000 and not more than $50,000.

(3) Any person who violates the provisions of ORS 776.405 (1)(b) is subject to a civil penalty in an amount as determined by the board of not more than $5,000 for each offense.

(4) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(5) All amounts recovered under this section are subject to ORS 776.365. [1981 c.88 §11; 1991 c.234 §6; 1991 c.734 §102; 1993 c.796 §21; 2011 c.157 §5]

776.990 [Repealed by 1957 c.448 §27]

776.991 Criminal penalties. Violation of any of the provisions of this chapter is a Class B misdemeanor. Notwithstanding ORS 137.286 and 161.635, the minimum fine for a violation of ORS 776.405 (1)(a) is $5,000 and the maximum fine is $50,000. [1957 c.448 §26; 1991 c.234 §7; 2011 c.597 §300]