

Enrolled
Senate Bill 735

Sponsored by COMMITTEE ON ENVIRONMENT AND LAND USE

CHAPTER

AN ACT

Relating to small scale local energy projects; creating new provisions; amending ORS 470.050, 470.060, 470.065, 470.090, 470.210, 470.220, 470.230, 470.240, 470.270, 470.280 and 470.300; and repealing ORS 470.250 and 470.260.

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

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 470.220 to 470.290.

SECTION 2. Bonds described in ORS 470.220 to 470.290 shall be issued in accordance with the applicable provisions of ORS chapters 286 and 288. The bonds may be sold at a public sale or at a private, negotiated sale in accordance with ORS 286.710.

SECTION 3. ORS 470.050 is amended to read:

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

[(1)(a)] (1) "Alternative fuel project" means:

(a) A fleet of vehicles that are modified or acquired directly from a factory and that:

(A) Use an alternative fuel including electricity, ethanol, gasohol with at least 10 percent de-natured 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) Produce lower or equivalent exhaust emissions or are more energy efficient than vehicles fueled by gasoline[.]; **and**

(b) [*Alternative fuel project may include*] A facility, including a fueling station, necessary to operate an alternative fuel vehicle fleet.

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

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

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

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

(6) "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 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 energy project to generate electricity for sale.

(7) "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.

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

(9) "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.

(10) "Loan fund" means the Small Scale Local Energy Project Loan Fund created by Article XI-J of the Oregon Constitution.

(11) "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.

(12) "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.

(13) "Recycling project" means a facility or equipment that converts [solid] waste[, as defined in ORS 459.005,] into a new and usable product.

(14) "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.

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

(16)[(a)] "Small scale local energy project" means:

[(A)] (a) [Any] 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)] (b) [Any] 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)] (c) A recycling project;

[(D)] (d) An alternative fuel project;

[(E)] (e) An improvement that increases the production or efficiency [of], 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[. *No improvement that is a hydroelectric project shall exceed five megawatts of electric generating capacity; or*];

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

[(F)] (g) [Any project that falls within the items described in subparagraphs (A) to (E) of this paragraph that is added to, or becomes part of, an existing project that falls within the items described in subparagraphs (A) to (E) of this paragraph] **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.

[(b)] **(h)** A *[small scale local energy]* project **described in paragraphs (a) to (g) of this subsection that** *[may conserve]* **conserves** energy or *[produce]* **produces** energy by generation or by processing or collection of a renewable resource.

SECTION 4. ORS 470.060 is amended to read:

470.060. (1) Any individual who is a resident of Oregon, an Oregon business, a nonprofit or public cooperative, a nonprofit corporation, an eligible federal agency, an eligible state agency, a public corporation created by the state, **an intergovernmental entity created pursuant to an intergovernmental agreement under ORS 190.003 to 190.130**, or a municipal corporation may file with the State Department of Energy an application to obtain loan funds for a small scale local energy project as provided in this chapter.

(2) Applications to obtain funds 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 funds for repayment of the loan applied for.

(3) 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.

SECTION 5. ORS 470.065 is amended to read:

470.065. (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; *[and]*

(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.

SECTION 6. ORS 470.090 is amended to read:

470.090. (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;

(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 [*or any component of a project*] for which the projected economic value of the energy savings of the project [*or the component*] during the first year the project [*or component*] is implemented is equal to or greater than the cost of the project [*or component*]; and

(j) The loan will not preclude individuals and small businesses from access to loan funds.

(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.

SECTION 7. ORS 470.210 is amended to read:

470.210. (1) Notwithstanding any other provision of law, a municipal corporation may enter into a loan contract [*for financing*] **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 [*obligation*] **obligations** or revenue [*evidence of indebtedness*] **obligations**, including but not limited to [*a bond, note, certificate of participation, warrant or lease purchase agreement issued by the municipal corporation to finance the small scale local energy project*] **bonds, notes, certificates of participation, warrants or lease purchase agreements**.

[*(3) A project may be financed under subsection (1) of this section only if the director finds:*]

[*(a) The municipal corporation complies with the requirements of this chapter regarding a small scale local energy project loan; and*]

[*(b) The instrument evidencing the indebtedness complies with the requirements of ORS 470.150.*]

[*(4) Notwithstanding subsection (2) of this section, a loan obtained from the State Department of Energy by a county to finance a small scale local energy project shall be secured solely by the small scale local energy project and revenues derived from the project and shall not constitute a general ob-*]

ligation of the county. A county may repay any portion of a loan incurred under this chapter from any funds available to it.]

SECTION 8. ORS 470.220 is amended to read:

470.220. In order to provide funds for the purposes specified in Article XI-J of the Oregon Constitution, bonds may be issued [*in accordance with the provisions of ORS 286.031 to 286.061*] **as provided in ORS 470.220 to 470.290.**

SECTION 9. ORS 470.230 is amended to read:

470.230. Except as provided in ORS 470.270, all moneys obtained from the sale of bonds under ORS 470.220 to 470.290 shall be credited by the State Treasurer to the loan fund. Those moneys shall be used only for the purposes stated in Article XI-J of the Oregon Constitution and ORS 470.050 to 470.120, 470.140 (1) and 470.150 to 470.210[. *Those moneys may be used to make*], **including payment of the costs of issuing the bonds and of obtaining credit enhancement for the bonds, and making** payments of interest [*of*] **on** bonds issued pursuant to the provisions of ORS 470.220 to 470.290 if there are insufficient funds in the 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.

SECTION 10. ORS 470.240 is amended to read:

470.240. All bonds issued under ORS 470.220 to 470.290 shall contain a direct promise of the State of Oregon to pay the [*face value thereof, with interest thereon at a rate or rates, payable semi-annually, as the Director of the State Department of Energy, with the approval of the State Treasurer considers appropriate.*] **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 sinking fund.

SECTION 11. ORS 470.270 is amended to read:

470.270. (1) After consultation with the State Treasurer, the Director of the State Department of Energy may issue refunding bonds for the purpose of refunding outstanding bonds issued under ORS 470.220 to 470.290. 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 sinking fund. The issuance of the refunding bonds, the maturity date, and other details thereof, the rights of the holders thereof, and the duties of the Governor, Secretary of State and State Treasurer with respect thereto, shall be governed by the [*other*] provisions of ORS 470.220 to 470.290[, *insofar as those provisions are applicable*]. 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 [*shall*] **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 intends to prepay the borrower's loan.**

SECTION 12. ORS 470.280 is amended to read:

470.280. (1) The State Treasurer shall make payment of the principal of and the interest **and redemption premium, if any**, on any bond issued under ORS 470.220 to 470.290 from the 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, the amount of principal, [and] interest [which] **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.

SECTION 13. ORS 470.300 is amended to read:

470.300. (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 under this chapter, 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, [and] interest **and redemption premium, if any**, of all bonds issued pursuant to the provisions of ORS 470.220 to 470.290.

(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 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 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 Small Scale Local Energy Project Loan Fund.

(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.

SECTION 14. ORS 470.250 and 470.260 are repealed.

Passed by Senate March 15, 2005

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Secretary of Senate

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President of Senate

Passed by House May 25, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

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Secretary of State