

Chapter 469

1979 REPLACEMENT PART

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POLICY

469.010 Legislative findings. The Legislative Assembly finds and declares that:

(1) Continued growth in demand for non-renewable 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]

Note: Chapter 329, Oregon Laws 1979, provides:

Sec. 1. As used in this Act, unless the context requires otherwise:

(1) "Commission" means the Alternate Energy Development Commission created under section 2 of this Act

(2) "Department" means the Department of Energy created under ORS 469.030.

Sec. 2. (1) There is hereby established an Alternate Energy Development Commission consisting of nine members to prepare a comprehensive alternate resources plan for the State of Oregon.

(2) Members of the commission shall be appointed by and serve at the pleasure of the Governor, but membership shall include one member from each of the six task forces described in section 3 of this Act, and three citizens broadly representing those interested in development of alternate energy resources.

(3) Commission members shall be entitled to compensation and expenses as provided in ORS 292.495.

Sec. 3. (1) There are hereby established task forces in each of the following areas:

(a) Solar;

(b) Wind;

(c) Geothermal;

(d) Forest and agricultural residue and other solid waste;

(e) Water power; and

(f) Gasohol.

(2) Members of each task force shall be appointed by and serve at the pleasure of the Director of the Department of Energy. Membership of each task force shall include the technological expertise necessary to prepare a plan for the particular resource that is the subject of the task force.

(3) Members of the task forces appointed under subsection (2) 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.

Sec. 4. (1) The task forces created in section 3 of this Act shall present resource specific alternate energy development plans together with the comments of the Energy Policy Review Committee concerning those plans to the Alternate Energy Development Commission on or before June 30, 1980

(2) The commission shall present a comprehensive alternate energy development plan to the Governor and the Legislative Assembly on or before January 15, 1981. The plan shall include, where appropriate, specific items of legislation proposed to be enacted by the Legislative Assembly.

Sec. 5. This Act is repealed June 30, 1981.

DEPARTMENT OF ENERGY

469.020 Definitions for ORS 176.810, 469.010 to 469.225, 469.990, 469.992, 757.710 and 757.720. As used in ORS 176.810, 469.010 to 469.225, 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 Department of Energy created under ORS 469.030.

(6) "Director" means the Director of the Department of Energy.

(7) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of more than 25,000 kilowatts, including but not limited to a thermal power plant or hydropower plant.

(b) A nuclear installation as defined in ORS 469.300.

(c) A high voltage transmission line of more than 10 miles in length with a capacity in excess of 230,000 volts, to be constructed in more than one political subdivision in this

state; but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230,000 volts.

(d) A solar collecting facility using more than 100 acres of land, or providing more than 25,000 kilowatts of power.

(e) A pipeline that is:

(A) Six inches or greater in diameter, and five miles or longer in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource.

(B) Sixteen inches or greater in diameter, and five miles or longer in length, used for the transportation of natural or synthetic gas.

(8) "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.

(9) "Petroleum supplier" means a petroleum refiner in this state, or any person engaged in the wholesale distribution of more than 5 million gallons of crude petroleum or derivative thereof or 2 million gallons of propane annually in this state.

(10) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structure, road and rail access, pipeline basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility.

(11) "Site" means a proposed location of an energy facility, and its related or supporting facilities.

(12) "Thermal power plant" has the meaning given that term by ORS 469.300.

(13) "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]

469.030 Department of Energy; creation; duties. (1) There is created the Department of Energy.

(2) The department 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 department 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 176.810, 192.500, 192.690, 469.010 to 469.580, 469.533, 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; and

(i) Collect, compile and analyze energy statistics, data and information. [1975 c.606 §4]

Note: Chapter 722, Oregon Laws 1979, provides:

Sec. 1. The Department of Energy shall compile existing data on the possible health hazards resulting from overhead high voltage transmission lines and shall prepare a report for submission to the 1981 Legislative Assembly concerning any possible dangers to the citizens of the State of Oregon from overhead high voltage lines.

Sec. 2. (1) The Department of Energy may solicit contributions for the conduct of the study required by section 1 of this Act through public service announcements. The department may apply for and receive federal funds and qualify for, accept and utilize any private or public funds made available to it for the study.

(2) If the Director of the Department of Energy determines that sufficient funds will not be forthcoming from the sources identified in subsection (1) of this section for the department to conduct the study required by section 1 of this Act, the director may request authorization from the Emergency Board to pay for the study with moneys previously appropriated to the department.

(3) If funds acquired from other sources are not adequate, and if the Emergency Board does not authorize the Director of the Department of Energy to expend funds appropriated to the department for the study required by section 1 of this Act, the department is not required to make the study.

Sec. 3. Moneys received by the Department of Energy under subsection (1) of section 2 of this Act are appropriated to the department for the study required by section 1 of this Act.

469.040 Director; duties; appointment. (1) The department shall be under the supervision of the director who shall:

(a) Supervise the day-to-day functions of the department;

(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 department and prescribe their duties and fix their compensation, subject to the State Merit System Law; and

(d) Adopt rules and issue orders to carry out his duties and those of the department in accordance with ORS 183.310 to 183.500 and the policy stated in ORS 469.010.

(2) The director shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The director shall serve at the pleasure of the Governor. [1975 c.606 §5]

469.050 Limitations on employment of past director; sanctions. (1) A person who has been director shall not, within two years after he ceases to be the director, be an employe 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 paragraph (a) or (b) of subsection (1) 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]

469.060 Report to Governor and Legislative Assembly; energy pricing structures research. (1) Beginning January 1, 1977, and every year thereafter, the department shall transmit to the Governor and the Legislative Assembly a comprehensive report including comments on the energy forecasts of the utilities and on the department's independent analysis and evaluation. The report shall be designed to identify emerging trends related to energy supply, need and conservation and public health and safety factors, to estimate the level of state-wide energy need for each year in the forthcoming 5-year period and for the 10th and 20th year following issuance of the report.

(2) Notwithstanding paragraph (c) of subsection (2) of ORS 469.030, the department shall conduct research into all energy pricing structures, relating price to consumption and considering the interchangeability of the various energy forms. In conducting the research, the department shall consider matters including, but not limited to, price elasticity, cross elasticity of demand and energy rate structures, as well as the rate structure studies of the Public Utility Commissioner. This research shall be submitted annually to the Legislative Assembly and the Governor as a part of the report described in subsection (1) of this section. [1975 c.606 §8]

469.070 Energy forecast; contents; energy forecast by industry. (1) The department shall annually issue a forecast on the energy situation as it affects Oregon. The forecast shall include, but not be limited to, an estimate of:

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

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

(2) The forecast shall include summary forecasts for:

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

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

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

(4) (a) Except as provided in paragraph (b) of this subsection, by May 1 of each year, utilities, petroleum suppliers and coal suppliers shall submit to the department an energy forecast in a manner to be prescribed by the director. Any person required to submit an energy forecast under this subsection may file a single forecast on behalf of more than one operation owned or otherwise controlled by him.

(b) Any petroleum supplier who is a wholesale distributor and who is solely supplied by one or more persons who are also required to submit a forecast under this subsection shall be exempt from the requirements of this subsection upon written proof of such source of supply to the director.

(5) The department, by July 1 of each year, shall issue a statement setting forth the methodology and assumptions it intends to employ in preparing the forthcoming forecast, any changes in the forecast issued on the preceding January 1, and an outline of the contents of the annual report to be published by the department on the following January 1, and not later than the 45th day thereafter, commence public hearings thereon.

(6) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the director believes have an interest in the subject or who have applied to the director therefor, shall be supplied a copy of the statement issued by the department on July 1 of each year. The director may charge a reasonable fee for a copy of this statement not to exceed the cost thereof.

(7) After the public hearings required by subsection (5) of this section, but not later than January 1 following the issuance of its statement, the department shall issue the forecast required by subsection (1) of this section.

(8) The forecast shall be included within the report provided for in subsection (1) of ORS 469.060. [1975 c.606 §9; 1977 c.794 §3]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The director 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 176.810, 192.500, 192.690, 469.010 to 469.580, 469.533, 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 176.810, 192.500, 192.690, 469.010 to 469.580, 469.533, 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]

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 Department of Energy to certify producers of gasohol for tax exemption purposes. The department shall provide the certifications required by ORS 307.705, 316.145 and 317.098. As soon as is practicable, the department shall adopt the procedures and rules it considers necessary to provide such certifications. [1979 c.561 §9]

Note: 469.095 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 469 but was not added to and made a part of any specific series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

469.100 Agency consideration of legislative policy; report to Energy Policy Review Committee. (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.

(3) (a) On July 1, 1976, and annually thereafter, each state agency shall submit to the Energy Policy Review Committee created under ORS 469.130 a report that identifies the rules and policies of the agency that are consistent and inconsistent with the policy stated in ORS 469.010 and that indicates the reasons for the inconsistencies. The report shall be submitted in such form as the committee may require.

(b) As used in this subsection, "state 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. [1975 c.606 §3]

469.110 Dealings with Federal Government; intervention by department in agency action. (1) As to any matter involving the Federal Government, its departments or agencies, which is within the scope of the power and duties of the department, the department may represent its interest or, upon request, may represent the interest of any county, city, state agency, special district or owner or operator of any energy facility.

(2) 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]

469.120 Energy Department Account; appropriation; record of moneys. (1) The Energy Department Account is established.

(2) All funds received by the department pursuant to law shall be paid into the State Treasury and credited to the Energy Department Account. All moneys in the account are continuously appropriated to the department for payment of expenses of the department.

(3) The department shall keep a record of all moneys deposited in the Energy Department Account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. [1975 c.606 §13]

469.130 Energy Policy Review Committee; appointment; term; vacancy; duties; compensation; recommendations to Legislative Assembly. (1) There is created the Energy Policy Review Committee. The committee shall be composed of nine members appointed in the following manner:

(a) The Governor shall appoint three public members, except that the Governor shall not appoint employes of the Executive Department or members of the Legislative Assembly.

(b) The President of the Senate shall appoint three members of the Senate, including at least one member recommended by the Minority Leader. If the President of the Senate is a member, he may designate from time to time an alternate from among the members of the Senate to exercise his powers as a member of the committee except that the alternate shall not preside if the President is chairperson.

(c) The Speaker of the House of Representatives shall appoint three members of the House, including at least one member recom-

mended by the Minority Leader. If the Speaker of the House of Representatives is a member, he may designate from time to time an alternate from among the members of the House to exercise his powers as a member of the committee except that the alternate shall not preside if the Speaker is chairperson.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection, the term of office of each member is two years. Before the expiration of the term of any public member, the Governor shall appoint a successor whose term begins on July 1 next following.

(b) The term of office of a legislative member expires upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. Before the expiration of the term of any legislative member, the appointing authority shall appoint a successor.

(c) No member shall serve more than two terms.

(d) A vacancy shall be filled by the appointing authority in the manner provided for the original appointment.

(3) The committee shall:

(a) Represent to the director public concerns on contingency or curtailment planning;

(b) Review for the director conservation programs and recommend public information policy thereon;

(c) Advise the director on areas of needed research and development;

(d) Comment upon the statement and the forecast prepared pursuant to ORS 469.070;

(e) Review statutes and rules of agencies for consistency with the policy set forth in ORS 469.010, review reports submitted to it pursuant to paragraph (a) of subsection (3) of ORS 469.100; and

(f) Before January 1 of each odd-numbered year, submit a report containing the results of its review, including any proposed legislation, and recommended policy changes to the Legislative Assembly.

(4) Committee members shall be entitled to compensation and expenses as provided in ORS 292.495.

(5) (a) The committee shall select one of its members as chairman and another member as vice chairman for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of

the committee shall act as the chairman of the committee in the absence of the chairman.

(b) The committee shall meet at least quarterly at the time and place determined by the chairman.

(6) The committee shall recommend to the Legislative Assembly changes in the state's energy policy and other energy-related legislation. [1975 c.606 §47; 1977 c 794 §5; 1977 c.891 §10]

469.140 [1975 c.606 §48; repealed by 1977 c 794 §6]

469.150 Energy suppliers to provide conservation services and information. (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 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]

ALTERNATIVE ENERGY DEVICES

469.160 Definitions for ORS 469.160 to 469.180. As used in ORS 469.160 to 469.180:

(1) "Alternative energy device" means any system, mechanism or series of mechanisms which uses solar radiation, water, wind or geothermal resource as a source for space heating, water heating, cooling, electrical energy or any combination thereof for one or more dwellings which source meets or exceeds 10 percent of the total energy requirements for the dwelling or dwellings. "Alternative energy device" includes any system which uses solar radiation for domestic water heating and which meets or exceeds 50 percent of the energy requirements for domestic water heating in the dwelling or dwellings.

(2) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state, and includes an individual unit within multiple unit residential housing. [1977 c.196 §2; 1979 c.670 §3]

Note: Section 7 chapter 670, Oregon Laws 1979, provides.

Sec. 7. (1) The amendments to ORS 307.175 by section 1 of this Act first apply to assessment years beginning on or after January 1, 1980.

(2) The amendments to ORS 316.116, 469.160, 469.170, 469.175 and 469.180 by sections 2 to 6 of this Act first apply to alternative energy devices constructed, installed and operated in tax years beginning on or after January 1, 1979.

469.165 Rules; federal standards. (1) For the purposes of carrying out the provisions of ORS 469.160 to 469.180, the Department of Energy shall adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings.

(2) The department, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act of 1974). [1977 c.196 §3]

469.170 Application for tax credit for alternative energy devices in dwellings; eligibility; contents; waiving of application. (1) Any person may apply to the department for certification under ORS 469.175 of an alternative energy device if that person intends to pay all or a portion of the costs of an alternative energy device for a dwelling or dwellings.

(2) Applications for certification shall be made in writing on a form provided by the department and shall contain:

(a) A statement that the applicant intends to pay all or a portion of the costs of an alternative energy device for a dwelling or dwellings;

(b) A description of the alternative energy device, including but not limited to, the materials incorporated therein, equipment and mechanism made a part thereof and the operational procedure thereof;

(c) The actual amount the applicant intends to invest in the alternative energy device;

(d) The actual total cost of the alternative energy device;

(e) The names and addresses of all other persons investing in the alternative energy device; and

(f) For existing dwellings, energy consumption records for the preceding 12-month period.

(3) The director may require such further information as the director considers necessary prior to issuance of a certificate.

(4) The director may waive the requirement that an application described in this section be filed before a person invests in an alternative energy device for a dwelling or dwellings, if the director finds the requirement of prior filing inappropriate because special circumstances render the requirement unreasonable, and if the director finds that an alternative energy device would otherwise qualify for certification under ORS 469.160 to 469.180. [1977 c.196 §4; 1979 c.670 §4]

Note: See note under 469.160.

469.175 Certification of alternative energy devices; appeal; tax relief; transfer. (1) Within 30 days of the receipt of an application for certification filed pursuant to ORS 469.170, the director may require the submission of plans and specifications and, after examination thereof, may request corrections and revisions of the plans and specifications necessary to bring the alternative energy device into compliance with the standards of performance criteria adopted by the department pursuant to ORS 469.165.

(2) The director shall act on an application for certification before the 120th day after filing of the application under ORS 469.170. The action of the director shall include certification of the actual cost and the applicant's portion of the cost of the alternative energy device. Under extraordinary circumstances, an additional 30-day period may be allowed for the director to act on an application in which case the director shall so notify the applicant. Such notice shall include a finding setting forth the extraordinary circumstances.

(3) If the director rejects an application for certification, or certifies a lesser actual cost or portion of the cost of the alternative energy device than was claimed in the application, the director shall cause written notice of the action, together with a statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant. Fail-

ure of the director to act constitutes approval of the application.

(4) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the alternative energy device, or if the applicant is dissatisfied with the certification of actual cost, then, within 60 days of the date of mailing of the notice under subsection (3) of this section, the applicant may appeal the rejection pursuant to the provisions of ORS 183.310 to 183.500 governing contested cases.

(5) If the director approves an application for certification of an alternative device, the director shall certify such device.

(6) A certificate issued under this section shall be effective for purposes of tax relief in accordance with ORS 316.116.

(7) A certificate for an approved alternative energy device may be transferred by an applicant who does not qualify for tax relief under ORS 316.116, to the first purchaser of a dwelling who intends to use it as a principal or secondary residence. [1977 c.196 §5; 1979 c.670 §5]

Note: See note under 469.160.

469.180 Revocation of certificate; forfeiture of tax credits; collection. (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.500, the director may order the revocation of the certificate issued under ORS 469.175 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The alternative energy device for which a certificate has been issued has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the certificate.

(2) As soon as the order of revocation under this section becomes final, the director shall give notice thereof to the Department of Revenue.

(3) If the certification of an alternative energy device is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of the certificate by virtue of such certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credit relief under ORS 316.116. No additional assessment of such taxes shall be neces-

sary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certification of an alternative energy device is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further tax credit relief under ORS 316.116.

[1977 c.196 §6; 1979 c.670 §6]

Note: See note under 469.160.

RENEWABLE ENERGY RESOURCES

469.185 Definitions for ORS 469.185 to 469.225. As used in ORS 469.185 to 469.225:

(1) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of an energy conservation facility.

(2) "Energy conservation facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

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

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

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for use in the trade or business; or

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005.

(3) "Person" means any individual or legal entity except an entity whose principal business activity is directly or indirectly the production, transportation or distribution of electricity, petroleum or natural gas for wholesale or retail use.

(4) "Renewable energy resource" includes, but is not limited to straw, forest slash, wood waste or other wastes from farm or forest land, industrial or municipal waste, solar

energy, wind power, water power or geothermal energy. [1979 c.512 §3]

469.190 Policy. In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [1979 c.512 §2]

469.195 Priority given to certain projects; criteria. In determining the eligibility of energy conservation facilities for tax credits, preference shall be given to those projects which:

(1) Are not routinely used in a commercial or industrial trade or business;

(2) Have the potential, if developed at other suitable locations, for making a significant contribution to meeting the energy needs of the state; or

(3) Are not reasonably expected, in the absence of the tax credit granted under ORS 316.140 to 316.142, 317.104 and 469.185 to 469.225, to be cost effective within five years of erection, construction or installation. [1979 c.512 §4]

469.200 Annual limits to costs of facilities in granting tax credits. (1) The total of all costs of energy conservation facilities certified by the director for tax credits in any calendar year shall not exceed \$30 million. If the applications exceed the \$30 million limit, the director, in his discretion, shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225.

(2) Not less than \$5 million of the \$30 million annual certification limit shall be allocated to facilities having a certified cost of \$100,000 or less for any facility.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any facility shall not exceed \$10 million. However, if the applications certified in any calendar year do not total \$25 million, the director, in his discretion, may increase the certified costs above the \$10 million maximum for previously certified facilities. Such increases shall be allocated according to the director's determination of how the previously certified facilities meet the criteria of ORS 469.185 to 469.225. The increased allocation

to previously certified facilities under this subsection shall not include any of the \$5 million reserved under subsection (2) of this section. [1979 c.512 §5]

469.205 Application for renewable energy resource facility tax credit; eligibility; contents; waiving of application. (1) Prior to erection, construction or installation of a proposed facility any person may apply to the department for preliminary certification under ORS 469.210 if:

(a) The erection, construction or installation of the facility is to be commenced on or after October 3, 1979, and before December 31, 1983;

(b) The facility complies with the standards or rules adopted by the director; and

(c) The applicant is the owner or contract purchaser of a trade or business that plans to utilize an energy conservation facility in connection with Oregon property or a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes the facility in connection with Oregon property.

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

(a) A statement that the applicant is using or would have used an energy source that uses electricity, petroleum or natural gas and that the applicant:

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

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

(C) Plans to use a renewable energy resource in the generation of electricity that will replace an existing or proposed use of an existing source of electricity.

(b) A detailed description of the proposed facility and its operation and information showing that the facility will operate as represented in the application.

(c) Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant will be reduced as the result of using the facility.

(d) The projected cost of the facility.

(e) Any other information the director deems necessary to determine whether the proposed facility is in accordance with the

provisions of ORS 469.185 to 469.225, and any applicable rules or standards adopted by the director.

(3) The director may waive the filing of the preliminary application if he finds the filing inappropriate because special circumstances render the filing unreasonable, and if he finds such facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225. [1979 c.512 §6]

469.210 Submission of plans and specifications; preliminary certification; request for hearing upon denial. (1) The director may require the submission of plans and specifications and, after examination thereof, may request corrections and revisions of the plans and specifications.

(2) If the director determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the acquisition, erection, construction or installation of the facility. If the director determines that the acquisition, erection, construction or installation does not comply with the provisions of ORS 469.185 to 469.225 and applicable rules and standards, the director shall issue an order denying certification.

(3) If within 120 days of the receipt of an application for preliminary certification, the director fails to issue a preliminary certificate of approval or an order denying certification, the preliminary certificate shall be considered to have been denied.

(4) Within 60 days from the date of mailing of the order under subsection (2) of this section or from a denial under subsection (3) of this section, any person whose preliminary application has been denied may request a hearing. The request shall be in writing, shall state the grounds for hearing and shall be mailed to the director. The hearing shall be conducted in accordance with the provisions of ORS 183.310 to 183.500 applicable to contested cases. [1979 c 512 §7]

469.215 Final certification; eligibility; application; content; appeal. (1) No certification shall be issued by the director under this section unless the facility was acquired,

erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210, except where the filing of a preliminary application has been waived under ORS 469.205, and in accordance with the applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the director.

(2) Any person may apply to the department for final certification of a facility:

(a) Unless filing has been waived, after having obtained preliminary certification for the facility under ORS 469.210; and

(b) After completion of erection, construction or installation of the proposed facility.

(3) Applications shall be made in writing on a form prepared by the department and shall contain:

(a) Unless filing has been waived, a statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the facility certified to by a certified public accountant who is not an employe of the applicant;

(c) A statement that the facility is in operation or, if not in operation, that the applicant has made every reasonable effort to make the facility operable; and

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

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The action of the director shall include certification of the actual cost of the facility. However, in no event shall the director certify an amount for tax credit purposes which is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

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

(6) If the application is rejected for any reason, or if the applicant is dissatisfied with the certification of cost, then, within 60 days

of the date of mailing of the notice under subsection (5) of this section or from a denial under subsection (5) of this section, the applicant may request a hearing to appeal the rejection under the provisions of ORS 183.310 to 183.500 governing contested cases.

(7) Upon approval of an application for final certification of a facility, the director shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the director may certify the operational unit under one certificate. [1979 c.512 §8]

469.220 Certificate required for tax credits; certification not to exceed five years. A certificate issued under ORS 469.215 is required for purposes of obtaining tax credits in accordance with ORS 316.140 and 317.104. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which a certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the election of the applicant. [1979 c.512 §9]

469.225 Revocation of certificate; forfeiture of tax credits; collection. (1) Under the procedures for a contested case under ORS 183.310 to 183.500, the director may order the revocation of the certificate issued under ORS 469.215 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to construct or to make every reasonable effort to operate the facility in compliance with the plans, specifications and procedures in such certificate.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue of such order.

(3) If the certificate is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax credits provided to the holder of the certificate by virtue of such certificate shall be forfeited and upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under ORS 316.140 or 317.104. The Department of Revenue shall

have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certificate is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief under ORS 316.140 or 317.104 in connection with such facility from and after the date that the order of revocation becomes final. [1979 c.512 §10]

REGULATION OF ENERGY FACILITIES (General Provisions)

469.300 Definitions for ORS 469.300 to 469.570 and 469.992. As used in ORS 469.300 to 469.570 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 469.570 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 469.570 and 469.992.

(3) "Associated transmission lines" means new transmission lines constructed to connect a thermal power plant 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) "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.

(5) "Construction" means onsite work and construction, the cost of which exceeds \$250,000, excluding exploratory work.

(6) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(7) "Department" means the Department of Energy created under ORS 469.030.

(8) "Director" means the Director of the Department of Energy.

(9) "Electric utility" means individuals, 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, transmitting or distributing electric energy. "Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption.

(10) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of more than 25,000 kilowatts, including but not limited to thermal power, hydropower, geothermal power, or combustion turbine 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 in excess of 230,000 volts, to be constructed in more than one political subdivision in this state; but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230,000 volts.

(d) A solar collecting facility using more than 100 acres of land, or providing more than 25,000 kilowatts of power.

(e) A pipeline that is:

(A) Six inches or greater in diameter, and five miles or longer in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource.

(B) Sixteen inches or greater in diameter, and five miles or longer in length, used for the transportation of natural or synthetic gas.

(11) "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 which are part of a thermal power plant.

(12) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service com-

pany, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(13) (a) "Radioactive waste" means radioactive material which is discarded, unwanted or has no present lawful economic use, including 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. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include 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.

(14) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility.

(15) "Site" means any proposed location of an energy facility and related or supporting facilities.

(16) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate an energy facility on an approved site, incorporating all conditions imposed by the state on the applicant and all warranties given by the applicant to the state.

(17) "Thermal power plant" means an electrical or any other facility using any source of thermal energy with a nominal electric generating capacity of more than 25,000 kilowatts, 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.

(18) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived

from any thermal power plant or nuclear installation, or the delivery of such material to a carrier for transportation.

(19) "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.

(20) "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. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1]

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 469.570 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. [Formerly 453.315]

(Siting)

469.320 Site certificate required; exceptions. (1) After July 2, 1975, no energy 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 469.570 and 469.992, but no site certificate shall be required for an existing industrial or energy facility if the facility is merely modified to increase the electric capacity and not expanded. No energy facility shall operate except in conformity with the requirements of ORS 469.300 to 469.570 and 469.992.

(2) Notwithstanding subsection (1) of this section, no site certificate shall be required for construction or expansion of any interstate natural gas pipeline authorized by and subject to the continuing regulation of the Federal Power Commission or successor agency.

(3) Notwithstanding subsection (1) of this section, no site certificate shall be required for a facility which generates electricity from heat produced as a by-product of the normal industrial processes at an existing industrial facility. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8]

469.330 Notice of intent to file application for site certificate; public notice. (1) Each applicant for a site certificate for a nuclear installation, or for a thermal power plant with a nominal electric generating capacity of more than 200,000 kilowatts except combustion turbine power plants and geothermal-fueled power plants, must file with the council a notice of intent to file an application for a site certificate. The notice of intent must describe the proposed site with sufficient detail to enable the council to identify the proposed site.

(2) The council shall cause public notice to be given whenever a notice of intent is filed and provide a description of the proposed site in sufficient detail to inform the public of its location.

(3) A new notice of intent shall not be required as a condition precedent to the filing of an application for a site certificate for a site which was previously recommended against by the council, vetoed by the Governor or withdrawn by the applicant. [Formerly 453.335; 1977 c.794 §9]

469.340 Geothermal resources for geothermal electric power plant; site application. Any person desiring to utilize geothermal resources from a completed geother-

mal well as described in ORS 522.185 in a geothermal power plant for the purpose of producing electric power shall file with the council a site application. [1975 c.552 §37; 1975 c.606 §26a]

469.350 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the council on a form prescribed by the council and accompanied by the fee required by ORS 469.420. When a notice of intent is required by ORS 469.330 the application may be filed not sooner than 120 days after filing of the notice of intent.

(2) Proposed use of a site within an area designated by the council pursuant to ORS 469.470 as suitable for location of a particular type of energy facility does not preclude the necessity of the applicant obtaining a site certificate for the specific site.

(3) 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 Policy Review Board, the State Fish and Wildlife Commission, the Health Division, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commissioner of Oregon, the State Department of Agriculture, the Department of Transportation, the Department of Land Conservation and Development, the Economic Development Department and any city or county affected by the application. [Formerly 453.345; 1977 c.794 §10]

469.360 Study of site applications; costs; payment by applicant. The council shall study each site application and may commission an independent study of any aspect of the proposed energy facility. The full cost of the study shall be paid from the applicant's fee paid under subsection (2) of ORS 469.420. However, if costs of the study exceed the fee paid under ORS 469.420, the applicant must agree to pay any excess costs before they are incurred and must pay such costs after they are incurred. If the costs are less than the fee paid, the excess shall be refunded to the applicant. Expenses incurred for site studies, other than those incurred for studies authorized by this section, are the sole responsibility of the applicant. [Formerly 453.355]

Note: Chapter 510, Oregon Laws 1979, provides:

Sec. 1. The Department of Energy shall conduct a study of the incident which occurred at the Three Mile Island Nuclear Plant in the State of Pennsylvania on or about March 30, 1979, to ascertain what action, if any, should be taken by the State of Oregon to prevent or avoid similar problems from occurring in this state. The department shall also include in the study, an examination of the availability of long-term storage for radioactive wastes generated by nuclear-fueled thermal power plants and the costs of such long-term storage.

Sec. 2. The Department of Energy shall file its findings relating to the Three Mile Island incident and its recommendations regarding the same with the Energy Facility Siting Council no later than July 1, 1980. An appropriate extension of the foregoing time limit may be granted by the Energy Facility Siting Council for good cause shown.

Sec. 3. The findings and recommendations of the Department of Energy shall be made a part of all proceedings now pending before the Energy Facility Siting Council for site certificates for nuclear installations and nuclear-fueled thermal power plants subject to the right of any participant in such proceeding to rebut such findings and recommendations by cross-examination or other testimony. The council as part of any final order on any pending or subsequent application for a site certificate for a nuclear installation or nuclear-fueled thermal power plant shall make as a part of its findings a determination that there will be an available and adequate repository for the terminal storage of radioactive waste generated by nuclear-fueled thermal power plants and that the economic cost of such terminal storage is known and reasonable.

Sec. 4. The provisions of section 3 of this Act do not apply to any nuclear-fueled thermal power plant for which a site certificate was granted before the effective date of this Act [July 21, 1979]

Sec. 5. Notwithstanding the provisions of subsection (3) of ORS 469.370, no pending or subsequent application for a site certificate for a nuclear installation or a nuclear-fueled power plant shall be approved by the Energy Facility Siting Council before November 15, 1980, and until the provisions of sections 1 to 3 of this Act have been satisfied. Nothing in this section shall prevent the Energy Facility Siting Council from making appropriate findings on other issues before it pending receipt of the study required under section 1 of this Act.

Sec. 6. The cost of the study required under section 1 of this Act shall be paid from the fee required of the applicant under subsection (2) of ORS 469.420.

Sec. 7. Sections 1 to 6 of this Act are repealed on July 1, 1981.

469.370 Hearings on site application; approval or rejection by council. (1) The council shall hold public hearings in the affected area and elsewhere, as it deems necessary, on the application for a site certificate. At the conclusion of its hearings the council shall either approve or reject the application. The council must make its decision by the affirmative vote of at least four members,

approving or rejecting any application for a certificate.

(2) 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 subsection (1) of ORS 469.400.

(3) 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 name plate 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 25,000 and 50,000 kilowatts;

(C) To add generating capacity to an existing dam; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1]

Note: Sections 3 to 6, chapter 723, Oregon Laws 1979, provide:

Sec. 3. The provisions of this Act shall not apply for any energy facility site certificate application under consideration under ORS 469.300 to 469.570 on the effective date of this Act [July 24, 1979].

Sec. 4. The Department of Energy and the Energy Facility Siting Council shall insure the compatibility of their rules and regulations with the policies expressed in ORS 469.010.

Sec. 5. The Department of Energy shall, in cooperation with units of local government, make available to units of local government information pertaining to procedures for considering cost-effectiveness under the provisions of this Act.

Sec. 6. Sections 3 to 5 of this Act are repealed on July 1, 1983.

469.375 Required findings for radioactive waste disposal facility certificate. The council shall not issue a site certifi-

cate for a waste disposal facility for uranium mill tailings, mill wastes and mill by-product material 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 suitable for disposal of such wastes, and the amount thereof, intended for disposal at the site;

(2) It is necessary to dispose of such wastes, and the amount thereof, at the site in Oregon to protect the environment, and the health, safety and welfare of the people of the state from such wastes;

(3) There is no available, economically feasible alternative for disposal of such wastes, and the amount thereof, inside or outside of the state;

(4) The disposal of such wastes, and the amount thereof, at the site will be compatible with the regulatory programs of the Federal Government for disposal of such wastes; and

(5) The disposal of such wastes, and the amount thereof, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes. [Formerly 459.625; 1979 c.283 §3]

469.380 Conduct of hearings. (1) Any person may appear personally or by counsel to present testimony in any hearing before the council on any application for a site certificate.

(2) The council may, by proper order, permit any person to become a party in support of or in opposition to the application by intervention who appears to have an interest in the results of the hearing or who represents a public interest in such results. However, the request for intervention must be made before the final taking of evidence in the hearing.

(3) Any person authorized to intervene in the hearing on a site certificate may appeal the council's approval or rejection in the manner prescribed in subsection (1) of ORS 469.400. Such approval or rejection shall be deemed a final order for purposes of such appeal. [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2]

469.390 Waiting period for issuance of certificate; waiver. Except as provided in section 4, chapter 609, Oregon Laws 1971, and ORS 469.410, no site certificate shall be is-

sued under ORS 469.300 to 469.570 and 469.992 until the entire review time prescribed by ORS 469.370 has been utilized, except that the council may waive the time requirement if, pursuant to ORS 469.470, area studies of the entire state for that type of energy facility have been completed or have been determined to be unnecessary. [Formerly 453.385]

469.400 Judicial review vested in Supreme Court; appeal; execution of site certificates; contents. (1) Jurisdiction for judicial review of the council's approval or rejection of an application for a 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 only following the date the approval or rejection is served. If the council 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 council delivered or mailed its approval or rejection in accordance with ORS 183.470. Upon approval and after expiration of the appeal period provided in this subsection, the site certificate with any conditions prescribed by the council shall be executed by the chairman of the council and by the applicant, except that the filing of the petition for review stays the construction of the energy facility until final decision by the Supreme Court. No bond or other undertaking shall be required to stay such construction. Except as otherwise provided in this subsection, the review by the Supreme Court shall be as provided in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review.

(2) The certificate shall authorize the applicant to construct and operate the proposed energy facility subject to the conditions set forth in such certificate.

(3) The site certificate shall contain conditions for the protection of the public health and safety and shall require both parties to abide by state law and rules of the council in effect on the date the site certificate is executed, except that upon a clear showing that there is danger to the public health and safety that requires stricter laws or rules, the state may, subject to ORS 469.500, require compliance with such stricter laws or rules.

(4) The site certificate shall contain the applicant's warranties as to its abilities required under subsection (3) of ORS 469.470, its provisions as to protection of the public health and safety and as to time of completion of construction.

(5) Subject to the conditions set forth therein, any certificate signed by the chairman 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 proposed energy facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the facility, subject only to condition of the site certificate. Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate.

(6) Where a site certificate authorizes the construction and operation of an energy facility within the boundaries of an incorporated city, the certificate shall be conditioned upon compliance with lawful ordinances in effect and enacted by the city on the date of filing of the notice of intent or the application, whichever is earlier. If a city subsequently adopts lawful ordinances that are stricter than any ordinance in effect on the date of filing of the notice of intent or the application, upon a clear showing that there is danger to the public health and safety the state may require compliance with such stricter ordinances.

[Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3]

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate. (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.810, 192.500, 192.690, 469.010 to 469.580, 469.533, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Governor for:

(a) Any transmission lines for which application has been filed with the Federal Government and the Public Utility Commissioner 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 subsections (3) and (4) of ORS 469.420 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 adopted pursuant to paragraph (d) of subsection (1) of ORS 469.040 and rules of the council adopted pursuant to ORS 469.300 to 469.570.

(3) Site certificates executed by the Governor under ORS 469.400 prior to July 2, 1975, or pursuant to the provisions of section 58, chapter 606, Oregon Laws 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. [1975 c.606 §24]

469.420 Fees; exemptions; assessment of certain utilities and suppliers. (1) Every person filing notice of intent to file for a site certificate shall submit a fee of \$5,000 for each site so indicated. If the person subsequently becomes an applicant for a site certificate, the amount paid at the time notice of intent is filed shall be credited against the amount otherwise due under subsection (2) of this section.

(2) Every applicant for a site certificate shall submit to the department at the same time as the application for a site certificate is filed with the council, an amount equal to \$0.05 per kilowatt of the maximum planned net electric capacity for a proposed electric generating plant, or addition thereto, or an amount equal to \$1,000 for each \$1 million of estimated capital investment in any other proposed energy facility or addition thereto. In no case shall the application fee be less than \$15,000.

(3) Each holder of a certificate under ORS 469.300 to 469.570 and 469.992 shall pay a fee, due on the July 1 next following issuance of a site certificate and annually thereafter. For the fiscal year beginning July 1, 1977 and thereafter, the annual fee shall be determined as follows:

(a) For a nuclear-fueled electric power generating plant, \$0.05 per kilowatt of the maximum net electric capacity authorized by the site certificate and for all other electric power generating plants, \$0.025 per kilowatt of the maximum net electric capacity author-

ized by the site certificate. Once construction on the plant has begun the name plate rating of the plant shall be used in calculating the annual fee.

(b) For any other energy facility, \$300 for each \$1 million (or portion thereof) of estimated capital investment. Once the energy facility is in service, the booked original cost of such energy facility shall be used thereafter in calculating the annual fee.

(4) In addition to any other fees required by law, each electric utility, natural gas utility, and petroleum supplier shall pay to the department annually, commencing with the fiscal year beginning July 1, 1977, its share of an assessment to fund the activities of the department, determined by the director in the following manner:

(a) Upon approval of the department's budget authorization by a 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 the activities of the department 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 activities of the department for the second fiscal year of the biennium which order shall take into account any revisions to the department's biennial budget made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.

(b) Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to electric utilities and natural gas utilities and petroleum suppliers subject to a fee assessment and identified in paragraph (g) of this subsection as distinct classes of energy resource suppliers, on the basis of their prorated share of total British thermal units of energy sold by them in Oregon in the most recently concluded calendar year. In making this allocation, the director shall exclude British thermal units of energy sold by petroleum suppliers which are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530.

(c) Each order issued by the director pursuant to paragraph (a) of this subsection shall also assess the aggregate amounts allocated to electric utilities, natural gas utilities and petroleum suppliers as distinct classes of energy resource suppliers to individual electric utilities, natural gas utilities and petroleum suppliers within such classes, in accordance with the following ratios:

(A) The aggregate amount assessed to electric utilities as a class shall be assessed to individual electric utilities on the ratio that the annual kilowatt hour sales of each electric utility bears to the total annual kilowatt hour sales of all such electric utilities, as determined by the department for the most recently concluded calendar year;

(B) The aggregate amount assessed to natural gas utilities as a class shall be assessed to individual natural gas utilities on the ratio that the annual sales of therms of natural gas of each natural gas utility bears to the total annual sales of therms of natural gas of all such natural gas utilities, as determined by the department for the most recently concluded calendar year; and

(C) The aggregate amount assessed to petroleum suppliers as a class shall be assessed to individual petroleum suppliers on the ratio that Oregon sales of British thermal units of energy by each petroleum supplier bears to the total Oregon sales of British thermal units of energy by all petroleum suppliers, as determined by the department for the most recently concluded calendar year. In making this assessment, the director shall exclude all British thermal units of energy sold by petroleum suppliers which are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(d) The director shall send each electric utility, natural gas utility and petroleum supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail.

(e) The amounts assessed to individual electric utilities, natural gas utilities and petroleum suppliers pursuant to paragraph (c) 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 the close of the 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.

(f) Not later than April 1 of each year, every petroleum supplier subject to the assessment imposed by this subsection shall submit to the director a verified statement setting forth the number of British thermal units of energy subject to assessment which it sold in Oregon during the most recently concluded calendar year. For the year 1977 only, such statements shall be submitted by petroleum suppliers not later than 60 days after October 4, 1977.

(g) As used in this subsection, "petroleum supplier" includes only those petroleum suppliers who are required to submit forecasts to the department pursuant to subsection (4) of ORS 469.070.

(h) In determining the amount of revenues which must be derived from electric utilities, natural gas utilities and petroleum suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the department, including, but not limited to, fees imposed under this section and federal funds.

(i) 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 electric utility, natural gas utility or petroleum supplier to pay amounts assessed to it on or before the statutory deadline.

(5) Except as a portion of the application fee may be refunded under ORS 469.360, funds received under this section are continuously appropriated to the department for payment of expenses incurred under ORS 176.810, 192.500, 192.690, 469.010 to 469.580, 469.533, 469.990, 757.710 and 757.720.

(6) 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 (3) and (4) of this section. [Formerly 453 405; 1977 c.813 §1; 1979 c.234 §1]

469.430 Site inspections. The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the department to inspect, the site at any time. [Formerly 453.415]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS 183.310 to 183.500, a certificate may be revoked or suspended:

(1) For any breach of a warranty; or

(2) For failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) For violation of the provisions of ORS 469.300 to 469.570 and 469.992 or rules adopted pursuant to ORS 469.300 to 469.570 and 469.992. [Formerly 453.425]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established 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 171.560 and 171.570.

(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 employe, director or retired employe 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 any corporation or utility operating or interested in establishing an energy facility in this state or in any manufacturer of related equipment.

(4) No member shall for two years after the expiration of his term accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.570 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 any agency

thereof and held by the owner or operator of the energy facility that employs such person.

[Formerly 453.435]

469.460 Officers; meetings; compensation and expenses. (1) The council shall annually elect from among its members a chairman and vice chairman with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.570 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The Governor or the chairman 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]

469.470 Powers and duties. The 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) After public hearings, designate areas within this state that are suitable or unsuitable for use as sites for the following types of energy facilities:

(a) Nuclear-fueled and fossil-fueled thermal power plants with nominal electric generating capacity of more than 200,000 kilowatts.

(b) Geothermal power plants.

(c) Each additional type of energy facility for which the council determines such designations are necessary.

(3) Establish standards and promulgate rules that applicants for site certificates must meet including, but not limited to, standards of financial ability and qualifications as to ability to construct and operate the energy facility to which the site certificate applies and prescribe the form.

(4) Conduct public hearings on the proposed location of any site after application is filed therefor.

(5) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in establishing standards for site selection.

(6) 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 469.570 and 469.992.

(7) 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 469.570 and 469.992. [Formerly 453.455]

469.480 County advisory groups; special advisory groups; compensation and expenses. (1) The council shall designate the governing body of the city or county or counties as a special advisory group in any city or county or counties wherein a proposed site is located upon filing of a site application therefor.

(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 employes, 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. [Formerly 453.475]

(Rules; Standards)

469.490 Adoption of rules. All rules adopted by the council pursuant to ORS 469.300 to 469.570 and 469.992 shall be adopted in the manner required by ORS 183.310 to 183.500. [Formerly 453.495]

469.500 Adoption of safety standards. (1) The council shall adopt safety standards promulgated as rules for the operation of all thermal power plants and nuclear installations. Such standards shall include but need not be limited to:

(a) Emission standards at the lowest practicable limits, taking into account the state of technology and the economics of improvements in relation to the benefits to public health and safety;

(b) All necessary safety devices and procedures; and

(c) The accumulation, storage, disposal and transportation of wastes including nuclear wastes.

(2) The council shall establish programs for monitoring the environmental and ecological effects of the construction and operation of thermal power plants and nuclear installations to assure continued compliance with the terms and conditions of the certificate and the safety standards adopted under subsection (1) of this section.

(3) The director 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 standards established by the council. The council and director shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(4) The monitoring program may be conducted in cooperation with any federally operated program if the information available therefrom is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the director.

(5) 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. [Formerly 453.505]

469.510 Considerations in adoption of siting, construction and operation rules. In performing its duties and exercising its powers under ORS 469.300 to 469.570 and 469.992, the council shall set standards and promulgate rules for the siting, construction and operation of thermal plants and nuclear installations which shall take into account the following:

(1) The health, safety and welfare of the public.

(2) The effects of chemical, waste heat, moisture and radioactive discharge or other impact on the environment and associated natural resources and physical processes, including humans, air, water, fish and wildlife.

(3) Rules and regulations of the federal Nuclear Regulatory Commission, the Environmental Protection Agency, the Federal Department of Transportation and the Federal Energy Administration or their successors.

(4) Land and water use characteristics of any site, including but not limited to the aesthetics of the site and the environment and the impact on present and future use of adjacent areas.

(5) Present and future industrial, commercial and residential power needs by classes and amount for each class.

(6) Beneficial use of waste water developed by a thermal power plant.

(7) The regulations, if any, of cities or counties relating to the installations of thermal power plants or nuclear installations within their respective borders.

(8) Ability of the affected area to absorb the industrial and population growth resulting from operation of the facility. [Formerly 453.515; 1977 c.794 §15]

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 department 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 Radioactive waste disposal facilities prohibited; certain activities allowed. (1) Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state.

(2) Prior to December 31, 1981, maintenance of radioactive waste deposited in Oregon prior to March 1, 1979, shall not constitute operation of a waste disposal facility.

(3) 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. [Formerly 459.630; 1979 c.283 §2]

Note: Sections 4 and 5, chapter 283, Oregon Laws 1979, provide:

Sec. 4. (1) The Health Division shall contract for an independent study of public health hazards associated with storage of the waste described in subsection (13) of ORS 469.300 in this state. The division shall determine:

(a) Whether and to what extent such waste presents a hazard to the health and safety of the people of the State of Oregon; and

(b) What methods are available for disposal of such waste and the relative effectiveness, safety and cost of those methods.

(2) The Health Division shall report its findings to the Sixty-first Legislative Assembly.

Sec. 5. In addition to any other fees required by law, any person who, but for the provisions of subsection (2) of ORS 469.525, would be in violation of subsection (1) of ORS 469.525 shall pay to the Health Division, on or after July 1, 1979, a proportionate share of an assessment of all such persons sufficient to reimburse the division for the cost of the study required by section 4 of this Act.

469.530 Regulation of transport of radioactive material; duties of certificate holders and transporters; review and approval of security programs. (1) In cooperation with appropriate federal agencies, the council shall regulate the transportation process for all radioactive material derived from or destined for any thermal power plant or nuclear installation.

(2) The holder of a site certificate for any thermal power plant or nuclear installation and any transporter of radioactive materials derived from such plant or installation must keep the council and director informed on the procedures, routes and schedules for the transportation of such materials.

(3) The council and the director 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]

469.533 Department of Energy rules required for health protection and evacuation procedures in nuclear emergency. The Department of Energy in cooperation with the Health Division and the Emergency Services Division 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]

Note: Sections 4 to 8 and 11, chapter 726, Oregon Laws 1979, provide:

Sec. 4. Sections 5 to 8 of this Act are added to and made a part of ORS 469.300 to 469.570.

Sec. 5. 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 department under ORS 469.533. The department shall review the county procedures to determine whether they are compatible with the rules of the department.

Sec. 6. (1) The rules adopted under ORS 469.533 shall:

(a) Require counties to prepare evacuation plans for areas within 10 miles of a nuclear-fueled thermal power plant; and

(b) Provide for control of radiologically contaminated foodstuffs in areas within 50 miles of a nuclear-fueled thermal power plant.

(2) The rules may provide for distances different from those specified in subsection (1) of this section if they are supported by site-specific studies approved by the department.

Sec. 7. (1) In addition to any other fees required by law, each operator of a nuclear-fueled thermal power plant within this state shall pay to the department annually, commencing with the fiscal year beginning July 1, 1979, an assessment to fund the activities of the department and the counties in complying with sections 5 to 7 of this 1979 Act. The fee assessed under this section shall not exceed \$100,000 per year for any one nuclear-fueled thermal power plant.

(2) The director shall reimburse the counties for expenses incurred by the counties in complying with the requirements of section 5 of this 1979 Act to the extent funds are available under subsection (1) of this section. The counties shall be reimbursed only for those expenses that are attributable to planning for the protection of the public health and safety in the event of an accident or a catastrophe in the operation of a nuclear-fueled thermal power plant as determined by the director. Reimbursement of the counties will be reduced by the amount of funds available for such planning from other state and federal fund sources.

(3) Funds received by the department under this section are continuously appropriated to the department for payment of expenses of the department and the counties associated with county emergency planning under sections 5 to 7 of this 1979 Act.

Sec. 8. (1) The department shall assign one inspector to the site of each nuclear-fueled thermal power plant. The director shall prepare a written statement of the inspector's responsibilities and authority.

(2) An inspector shall be present at the site of a nuclear-fueled thermal power plant at least 40 hours per week during any time the reactor core is in operation. The director may approve exceptions to this requirement. The inspector may be temporarily replaced by another qualified department employee.

Sec. 11. Sections 5 to 8 of this 1979 Act are repealed on July 1, 1983.

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 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. (1) In instances where the director determines either from his monitoring or surveillance that there is danger of violation of a safety standard adopted under ORS 469.500 from the continued operation of a plant or installation, he 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. [Formerly 453.545]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the director 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 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 469.570 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the director based upon his monitoring or surveillance, 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 accumulation, storage, disposal or transportation of radioactive material located at, derived from or destined for 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 469.570.

(3) 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]

469.553 Uranium mill or mill tailings disposal facility site certification required; council procedure for application review; fees. (1) Any person desiring to construct or operate a 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, 469.380, 469.390 and 469.400, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.420 in connection with site certificates applied for or issued under this section. [1979 c.283 §7]

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. (1) Notwithstanding the authority of the Health Division pursuant to ORS 453.605 to 453.745 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 183.310 to 183.500 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Governor may do any and all things necessary to implement the requirements of the federal Act referred to in subsection (1) of this section. [1979 c.283 §9]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.500, any information filed or submitted pursuant to ORS 469.300 to 469.570 and 469.992 shall be made available for public inspection and copying during regular office hours of the department 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 469.570 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Enforcement)

469.570 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 469.300 to 469.570 and 469.992 or with a site certificate issued pursuant to ORS 469.300 to 469.570 and 469.992. [Formerly 453.575]

(Natural Gas Storage)

469.580 Use of underground reservoir for natural gas storage requires certificate. Any person desiring to condemn or utilize an underground reservoir for the purpose of storage of natural gas pursuant to ORS 520.340, 520.350 and 772.610 to 772.625 shall file with the council a site certificate application. [1977 c.296 §13]

ENERGY CONSERVATION PROGRAMS

(Single Family Residence)

469.700 Energy efficiency ratings; public information; "single family residence" defined. (1) On or before January 1, 1978, the Energy Conservation Board, after public hearing, shall adopt a recommended voluntary energy efficiency rating system for single family residences and provide the 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 of Energy 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]

(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) "Director" means the Director of Commerce.

(2) "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]

469.740 Energy conservation standards for public buildings; adoption by Director of Commerce; considerations. Not later than January 1, 1978, in accordance with ORS 183.310 to 183.500 and after consultation with the Energy Conservation Board and the Department of Energy, the director shall adopt rules establishing energy conservation standards for public buildings. The standards shall provide means of measuring and reducing total energy consumption, shall establish a goal for 20 percent energy savings by 1980 and provide a flexible means for achieving that savings, 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]

469.745 Voluntary compliance program. To provide the public with a guide for energy conservation, the Director of the Department of Energy shall adopt a program for

voluntary compliance by the public with the standard adopted by the Director of Commerce under ORS 469.740. [1977 c.853 §4]

Note: Sections 1 to 5, 6b and 10, chapter 887, Oregon Laws 1977, as amended by chapter 164, Oregon Laws 1979, provide:

Sec. 1. This Act shall be known as the Oregon Energy Conservation Act of 1977.

Sec. 2. The Legislative Assembly finds and declares that:

(1) There is an urgent and continuing need for all Oregonians to conserve energy;

(2) Many of the homes in Oregon are in need of additional insulation and other weatherization measures to make them more energy efficient;

(3) Insulation and other weatherization measures in many cases can conserve energy and make it available for other uses at less cost than energy from new sources; and

(4) Expenditure by energy suppliers on conservation programs is in many cases a prudent and cost-effective means of gaining new supplies for energy consumers.

Sec. 3. As used in chapter 887, Oregon Laws 1977, unless the context requires otherwise:

(1) "Commercial lending institutions" 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.

(2) "Director" means the Director of the Department of Energy.

(3) "Dwelling" means real or personal property within the state inhabited as the principal residence of an owner or renter and which is occupied at the time weatherization services are requested. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and multiple unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(4) "Dwelling owner" means the person or persons having 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.

(5) "Contractor" means a person, partnership, association, company, corporation or other form of organization qualified to perform one or more weatherization services.

(6) "Weatherization services" means providing and installing items primarily designed to improve the efficiency of space heating and energy utilization 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. "Weatherization

services" includes installing mobile home weatherization materials.

(7) "Mobile home weatherization materials" means items primarily designed to improve the efficiency of space heating and energy utilization of a dwelling. Such items include, but are not limited to, caulking, weather-stripping and other infiltration preventative materials, floor insulation, ground cover, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers.

(8) "Energy supplier" means a publicly owned utility or fuel oil dealer which supplies electricity or fuel oil for the space heating of dwellings.

(9) "Fuel oil dealer" means a person, association, company, corporation or any other form of organization which supplies during any 12-month period more than 500,000 gallons of fuel oil at retail for the space heating of dwellings.

(10) "Investor-owned utility" means an electric or gas utility regulated by the Public Utility Commissioner of Oregon under ORS chapter 757.

(11) "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.

(12) "Space heating" means the primary means of heating the air within a dwelling by electricity, gas or fuel oil.

(13) "Space-heating customer" means a dwelling owner or tenant receiving space-heating services from an energy supplier.

(14) "Tenant" means a person or head of a household who has rented a dwelling for more than six months or who has a written agreement for a period of six months or more with the dwelling owner.

Sec. 4. Within 90 days after July 28, 1977, each energy supplier shall present for approval by the director a weatherization services program which shall, in accordance with the rules of the director adopted pursuant to ORS 183.310 to 183.500:

(1) Make available to all space-heating customers of the energy supplier, upon request, information relating to weatherization services;

(2) Except as provided in section 5, chapter 887, Oregon Laws 1977, provide to all space-heating customers of the energy supplier, upon request, assistance and technical advice concerning various methods of saving energy in the customer's dwelling, including but not limited to an inspection of the customer's dwelling to determine sources of heat loss followed within 60 days by an estimate of the cost to the customer for the installation of recommended weatherization services by a contractor;

(3) Include a list of not less than two contractors providing various types of weatherization services within or in close proximity to the service area or areas of the energy supplier, each of which has registered with the Builders Board and posted a surety bond as provided in ORS chapter 701;

(4) Based upon the list described in subsection (3) of this section, submit to each space-heating customer desiring one or more types of weatherization services, a list of not less than two contractors in close proximity to the customer to provide such services; and

(5) Provide to dwelling owners who are space-heating customers or who rent to space-heating customers information about the availability of low-interest home loans for weatherization services through commercial lending institutions.

Sec. 5. (1) No energy supplier shall be required to provide assistance and technical advice concerning weatherization services to a space-heating customer unless such energy supplier is the primary provider of space-heating energy for the customer.

(2) No energy supplier who in good faith complies with the provisions of section 4 of this Act shall be liable for any act or failure to act or any contractor whose name is submitted by such energy supplier to a space-heating customer.

Sec. 6b. The interest rate for loans provided by commercial lending institutions to dwelling owners who are or who rent to space-heating customers of energy suppliers pursuant to chapter 887, Oregon Laws 1977, and dwelling owners who are or who rent to residential customers of investor-owned utilities pursuant to chapter 889, Oregon Laws 1977, for the purpose of financing weatherization services shall not exceed six and one-half percent annually.

Sec. 10. Sections 1 to 6 of this Act expire and stand repealed on January 1, 1982.

Note: Sections 6 and 7, chapter 164, Oregon Laws 1979, provide:

Sec. 6. Any space-heating customer of an energy supplier or residential customer of a public utility applying for low interest financing under the provisions of chapter 887 or 889, Oregon Laws 1977, after the effective date of this Act [October 3, 1979], may use any assistance and technical advice provided by an energy supplier under chapter 887, Oregon Laws 1977, or by a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials, obtained prior to the effective date of this Act, in applying for that financing, if:

(1) The assistance or cost estimate was voluntarily obtained after July 28, 1977, and prior to the effective date of this Act; and

(2) The applicant was not eligible to apply for low interest financing under chapter 887 or 889, Oregon Laws 1977, at the time the assistance or cost estimate was obtained because the applicant's residence was excluded from the definition of "dwelling" under section 3, chapter 887, Oregon Laws 1977, or section 3, chapter 889, Oregon Laws 1977.

Sec. 7. A space-heating customer of an energy supplier or residential customer of a public utility may not apply for low interest financing under chapter 887 or 889, Oregon Laws 1977, unless the customer has first requested and obtained assistance and technical advice from an energy supplier under chapter 887, Oregon Laws 1977, or a public utility under chapter 889, Oregon Laws 1977

PENALTIES

469.990 Penalties for ORS 469.090. (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, wilfully 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) Wilful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine or not more than \$10,000 or imprisonment for up to one year, or both, for each offense.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is punishable, upon conviction, by a fine of not more than \$1,000 for each offense. [1975 c.606 §20]

469.992 Civil penalties. (1) A civil penalty in an amount not less than \$1,000 per day nor more than \$25,000 per day for each day of construction or operation in material violation of ORS 469.300 to 469.570 and this section or in material violation of any site certificate issued pursuant to ORS 469.300 to 469.570 and this section may be assessed by the circuit court.

(2) 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 circuit court for a wilful failure to submit an energy forecast required by subsection (4) of ORS 469.070 or for a wilful failure to comply with a subpoena served by the director pursuant to subsection (2) of ORS 469.080. [Formerly 453.994; 1977 c.794 §17]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979

Thomas G. Clifford
Legislative Counsel

CHAPTER 470
[Reserved for expansion]

