

# Chapter 469

## 1981 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]

## DEPARTMENT OF ENERGY

**469.020 Definitions for ORS 469.010 to 469.225 and 469.880 to 469.895.** As used in ORS 176.820, 469.010 to 469.225, 469.860 (3), 469.880 to 469.895, 469.900 (3), 469.990, 469.992, 757.710 and 757.720, unless the context requires otherwise:

(1) "Agency" includes a department or other agency of state government, city, county, municipal corporation, political subdivision, port, people's utility district, joint operating agency and electric cooperative.

(2) "Coal supplier" means any person engaged in the wholesale distribution in this state of coal intended for use in this state for an energy facility.

(3) "Cost-effective" means that an energy resource, facility or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility or conservation measure. Cost comparison under this definition shall include but not be limited to:

(a) Cost escalations and future availability of fuels;

(b) Waste disposal and decommissioning costs;

(c) Transmission and distribution costs;

(d) Geographic, climatic and other differences in the state; and

(e) Environmental impact.

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

(5) "Department" means the 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, hydropower plant or combustion turbine power 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) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas or other fossil energy resource.

(B) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas.

(C) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(f) A synthetic fuel plant which converts a natural resource, including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of  $2 \times 10^9$  Btu of heat a day.

(8) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(9) "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.

(10) "Petroleum supplier" means a petroleum refiner in this state, or any person engaged in the wholesale distribution of crude petroleum or derivative thereof or of propane in this state.

(11) "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.

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

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

(14) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas. [1975 c.606 §2; 1977 c.794 §1, 1979 c.723 §2; 1981 c.629 §1; 1981 c.792 §1]

**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 disperse 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 176.820, 192.500, 192.690, 469.010 to 469.580, 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

(f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;

(g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720;

(h) Maintain an inventory of energy research projects in Oregon and the results thereof;

(i) Collect, compile and analyze energy statistics, data and information; and

(j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section. [1975 c 606 §4; 1981 c 792 §2]

**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 Personnel Relations 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 183.550 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 171.562 and 171.565. 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 depart-

ment 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 ORS 469.030 (2)(c), 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 ORS 469.060 (1). [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 176.820, 192.500, 192.690, 469.010 to 469.580, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

- (a) Sales volume;
- (b) Forecasts of energy resource requirements;
- (c) Inventory of energy resources; and

(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

(2) In obtaining information under subsection (1) of this section, the director with the written consent of the Governor may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, administer oaths, and may cause the depositions of persons residing within or without Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts, to obtain information relevant to energy resources.

(3) In obtaining information under this section the director:

(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the director for such study; and

(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or records as provided in ORS 176.820, 192.500, 192.690, 469.010 to 469.580, 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.

**469.097 Monitoring industry progress in energy conservation; industry data; report to legislature.** (1) The department shall to the extent permitted by its resources monitor industry progress in achieving energy conservation.

(2) On or before March 1, 1984, each energy supplier and industry shall provide to the department upon the director's request the industry energy consumption and conservation data and other information required by the director for preparation of the report required under subsection (4) of this section and to otherwise carry out the provisions of this section. The provisions of ORS 469.080 apply to the director's request for information under this subsection.

(3) The department shall to the extent permitted by its resources analyze and study the data and information received under subsection (2) of this section.

(4) The department shall to the extent permitted by its resources report the results of the analysis and study required by subsection (3) of this section to the Energy Policy Review Committee on or before July 1, 1984. The department shall provide a report on that analysis and study to the Sixty-third Legislative Assembly on or before January 20, 1985. The report to the Legislative Assembly shall include, but not be limited to:

- (a) Recommended methods of improving industrial energy conservation;
- (b) An assessment of alternative financing methods for industrial energy conservation efforts;
- (c) A state-wide inventory of industrial energy use; and
- (d) Any proposed legislation.

(5) As used in this section, "energy supplier" means a utility, petroleum supplier or fuel

oil supplier that supplies electricity, natural or synthetic gas, crude petroleum or fuel oil to an industry. [1981 c 865 §3]

**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 recommended 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 ORS 469.100 (3)(a); 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]

**469.135 Energy Conservation Clearinghouse for Commerce and Industry.** The department shall expand the Energy Conservation Clearinghouse for Commerce and Industry so that it provides:

(1) Current information to business and industry on:

(a) State and federal financing mechanisms;

(b) Tax advantages of energy conservation investments; and

(c) General economic advantages of energy conservation investments.

(2) Teaching on conservation techniques and management of energy by corporations.

[1981 c 865 §2]

**469.140** [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]

**469.155 Advisory energy conservation standards for dwellings.** (1) As used in this section:

(a) "Dwelling" means real or personal property inhabited as the principal residence of an owner or renter. "Dwelling" includes a 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.

(b) "Energy conservation standards" means standards for the efficient use of energy for space and water heating in a dwelling.

(2) The director shall establish advisory energy conservation standards for existing dwellings by July 1, 1982. The standards shall be adopted by rule in accordance with ORS 183.310 to 183.410. The standards:

(a) Shall take cost-effectiveness into account; and

(b) Shall be compatible with and further the state's incentive programs for residential energy conservation.

(3) The director shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards.

(4) The director shall review the level of compliance with the standards and report on

compliance to the legislature in 1985. [1981 c 565 §2]

**469.157 Finding when increasing grant.** When making an expenditure limitation increase request for any grant-in-aid to a proposed alternative energy project which is to be funded out of assessments from energy resource suppliers, the Department of Energy shall demonstrate that the development incentive provided by the proposed grants is not already duplicated by an incentive provided by other legislation passed by the Sixty-first Legislative Assembly including but not limited to ORS 469.097 and 469.135 or chapter 714, Oregon Laws 1981. The department shall also demonstrate that assessment revenue already authorized cannot fund the amount of the grant. [1981 c 746 §7]

**Note:** 469.157 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation

## 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 that uses solar radiation for domestic water heating and that meets or exceeds 50 percent of the energy requirements for domestic water heating in the dwelling. "Alternative energy device" includes a groundwater heat pump.

(2) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer for the alternative energy device.

(3) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing. [1977 c.196 §2, 1979 c.670 §3; 1981 c 894 §4]

**Note:** Section 9, chapter 894, Oregon Laws 1981, provides

**Sec. 9.** (1) The new provisions provided by section 8 of this Act and the amendments to ORS 469.160, 469.170, 469.175 and 469.180 made by sections 4 to 7 of this Act apply to alternative energy devices first placed in service on or after January 1, 1982. For alternative energy devices first placed in service before January 1, 1982, the law in effect at the time the device is first placed in service shall continue to apply.

(2) The amendments to ORS 316.116 by section 3 of this Act first apply to tax years beginning on or after January 1, 1982.

**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 preliminary or final 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) Except as provided in subsections (6) and (7) of this section, applicants for an alternative energy device tax credit are required to obtain both preliminary and final certification from the department to be eligible for the tax credit.

(3) An application for preliminary certification shall be made in writing on a form provided by the department and shall contain:

- (a) The location of the alternative energy device;
- (b) A description of the type of device; and
- (c) Any other information that the department determines is necessary.

(4) An application for final certification shall be made in writing on a form provided by the department and shall contain:

- (a) The actual cost of the device;
- (b) The date the device is placed in service;

(c) Identification of each person making the investment and the amount each contributes toward the actual cost; and

(d) Any other information that the department determines is necessary for review of the application.

(5) (a) When the department finds that adequate consumer protection can be provided without requiring an individual preliminary certification, the director may issue a dealer system certification to the person selling and installing an alternative energy device.

(b) An application for a dealer system certification shall be made in writing on a form provided by the department and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and installation of the alternative energy device;

(B) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing and siting method and installation procedure;

(C) The addresses of three installations of the system that are available for inspection by the department;

(D) The range of installed costs to purchasers of the device;

(E) Any important installation or operating instructions; and

(F) Any other information that the department determines is necessary.

(c) A new application for dealer system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) A dealer system certification may be required for tax credit eligibility of a specific device if the department determines that this will improve installation quality and program efficiency.

(6) Preliminary certification shall be waived for an alternative energy device sold and installed by a dealer who has a valid dealer system certification for the system installed. A dealer that receives a waiver under this subsection must notify the department of the sale of an alternative energy device to a customer within 30 days of that sale.

(7) A waiver of the application for preliminary certification required by subsection (3) of

this section may be granted by the director if the director determines:

- (a) Special circumstances make the requirement unreasonable; and
- (b) The alternative energy device otherwise qualifies for certification under ORS 469.160 to 469.180. [1977 c 196 §4; 1979 c.670 §4; 1981 c 894 §5]

**469.175 Certification of alternative energy devices; appeal; tax relief; transfer.** (1) Within 30 days of the receipt of an application for preliminary 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 a complete application for preliminary, final or dealer system certification before the 60th day after filing of the application under ORS 469.170. The action of the director regarding the final certification 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 60-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 in the final certification 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. Failure of the director to act constitutes approval of the application.

(4) If the preliminary, final or dealer system 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 183.550 governing contested cases.

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

(6) A preliminary 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, 1981 c 894 §6]

**469.180 Revocation of certificate; forfeiture of tax credits; collection.** (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the director may order the revocation of a dealer system, preliminary or final certificate issued under ORS 469.170 or 469.175 if the director finds that:

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

(b) The alternative energy device or dealer system 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 application or certificate.

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

(3) If the final 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 necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the final 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.

(5) In order to obtain information necessary to review an application for final or dealer system certification and after the application is approved, the department or its representative may inspect an alternative energy

device that has been installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the denial of an application for a dealer system or final certification. [1977 c 196 §6, 1979 c.670 §6, 1981 c 894 §7]

### 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:

(a) 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 sale by or 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.

(b) 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 in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an

energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(e) Equipment used by a trade or business solely for recycling:

(A) Including:

(i) Equipment used solely for hauling and refining used oil;

(ii) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used further in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(iii) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(iv) Any equipment used solely for processing recyclable materials such as bailers, flatteners, crushers, separators and scales.

(B) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the director.

(f) 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 as a trade or business and actually used in the utilization of a renewable energy resource to supply or displace existing sources of electricity, petroleum or natural gas.

(3) "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; 1981 c 894 §17]

**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 that receive a preliminary certification from the director for tax credits in any calendar year shall not exceed \$40 million. If the applications exceed the \$40 million limit, the director, in the director's 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 \$40 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 \$35 million, the director, in the director's discretion, may increase the certified costs above the \$10 million maximum for previously certified facilities. The 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, 1981 c.894 §18]

**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 January 1, 1986;

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

(c) The applicant will be the owner or contract purchaser of the energy conservation facility at the time of erection, construction or installation of the proposed facility, and:

(A) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the energy conservation facility in connection with Oregon property; or

(B) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the energy conservation facility to a person who will utilize 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 or the lessee of the applicant's facility:

(A) Intends to convert from a purchased 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;

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

(D) Plans to construct or install a facility that substantially reduces the consumption of purchased electricity; or

(E) Plans to construct or install equipment for recycling as defined in ORS 469.185 (2)(e).

(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 or the lessee of the applicant's facility will be reduced, and on the amount of energy that will be produced for sale, 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 the director finds the filing inappropriate because special circumstances render the filing unreasonable, and if the director finds such facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225. [1979 c 512 §6, 1981 c.894 §19]

**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 183.550 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 183.550 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.

(8) The director shall not grant final certification under this section for any facility after December 31, 1988. [1979 c.512 §8, 1981 c.894 §20]

**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 183.550, 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 469.590 to 469.621.** As used in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, unless the context requires otherwise:

(1) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(2) "Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 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 produced from a single geothermal reservoir, 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) At least six inches in diameter, and five or more miles 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) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas.

(C) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(f) A synthetic fuel plant which converts a natural resource including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of  $2 \times 10^9$  Btu of heat a day.

(11) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(12) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement offsite, or causing radiation levels offsite, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property offsite.

(13) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(14) "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.

(15) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of more than 25,000 kilowatts, for generation and distribution of electricity, and associated transmission lines.

(16) "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.

(17) (a) "Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. 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, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 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.

(18) "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.

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

(20) "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.

(21) "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.

(22) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(23) "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.

(24) "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; 1981 c 587 §1, 1981 c 629 §2, 1981 c 707 §1, 1981 c 866 §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, 469.590 to 469.621, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the Federal Government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state [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, 469.590 to 469.621, 469.930 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, 469.590 to 469.621, 469.930 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** [1975 c 552 §37, 1975 c 606 §26a.; repealed by 1981 c 629 §3]

**469.350 Application for site certificate; comment and recommendation.** (1) Applications for site certificates shall be made to the 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 ORS 469.420 (2). 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]

**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 ORS 469.400 (1).

(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 certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or 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) There is no currently available alternative site for disposal of such wastes;

(3) 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;

(4) 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;

(5) That following closure of the site, radon gas release, gamma radiation levels and radium release to surface or ground waters will not exceed levels referred to in ORS 469.300 (17) unless the council finds that lower levels are appropriate;

(6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and

(7) That, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:

(a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure. [Formerly 459.625, 1979 c 283 §3, 1981 c 587 §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 ORS 469.400 (1). 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 issued under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 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 con-

struction. 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 ORS 469.470 (3), 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 176.820, 192.500, 192.690, 469.010 to 469.580, 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 ORS 469.420 (3) and (4) 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 ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930.

(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; penalty.**

(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 \$200 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 \$5,000.

(3) Each holder of a certificate under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 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, 1981, and thereafter, upon approval of the department's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the director promptly shall enter an order establishing the amount of revenues required to be derived from an annual revenue fee in order to fund the cost of regulating the facility. In no case shall the fee exceed:

(a) For a nuclear-fueled electric power generating plant, \$0.25 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 authorized 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 energy resource supplier shall pay to the department annually, commencing with the fiscal year beginning July 1, 1981, 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, including those enumerated in ORS 469.030 and others authorized by law, 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, including those enumerated in ORS 469.030, and others authorized by law 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 energy resource 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. The assessment against an energy resource supplier shall not exceed 25 mills per one million British thermal units of energy sold in the most recently concluded calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250. 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 energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(e) The amounts assessed to individual energy resource 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.

(g) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

(B) "Petroleum supplier" has the meaning given that term in ORS 469.020.

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

(i) Except as provided in chapter 792, Oregon Laws 1981, orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(5) 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.

(6) An energy resource supplier that fails to pay a fee required under subsection (4) of this section after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee per month for the period that the fee is past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The director shall be entitled to recover all costs and attorney fees connected with the action. [Formerly 453 405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3]

Note: Sections 4, 5, 7 and 8, chapter 792, Oregon Laws 1981, provide:

Sec. 4. If ORS 469.420 or any part thereof or section 7 of this Act is judicially declared to impose a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, ORS 469.420 is repealed and section 5 of this Act is enacted in lieu thereof.

Sec. 5. (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 \$200 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 \$5,000.

(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, 1981, and thereafter, upon approval of the department's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the director promptly shall enter an order establishing the amount of revenues required to be derived from an annual revenue fee in order to fund the cost of regulating the facility. In no case shall the fee exceed.

(a) For a nuclear-fueled electric power generating plant, \$0.25 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 authorized 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 energy resource supplier shall pay to the department annually, commencing with the fiscal year beginning July 1, 1981, 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 or upon the effective date of this section, 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, including those enumerated in ORS 469.030 and others authorized by law, 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, including those enumerated in ORS 469.030 and others authorized by law, 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 energy resource suppliers in accordance with paragraph (c) of this subsection.

(c) The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed

five-tenths of one percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250.

(d) The director shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(e) The amounts assessed to individual energy resource 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) An energy resource supplier shall provide the director, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. For the year in which this 1981 Act first takes effect, the statement shall be provided to the director within 45 days after the effective date of this 1981 Act [August 21, 1981]. The statement shall be in the form prescribed by the director and is subject to audit by the director. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that 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.

(g) As used in this section

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

(B) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier's business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

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

funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7 of this 1981 Act.

(i) Except as provided in section 7 of this 1981 Act, orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(5) 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.

(6) An energy resource supplier that fails to pay a fee provided under subsection (4) of this section after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The director shall be entitled to recover all costs and attorney fees connected with the action.

**Sec. 7.** (1)(a) Notwithstanding the requirements of ORS 469.420 (4)(a) to (e), the director's order for the biennium beginning July 1, 1981, issued pursuant to ORS 469.420 (4)(a) shall

(A) Contain a determination of the amounts which would be assessed each class of energy resource suppliers and each individual energy resource supplier in accordance with the method of calculation provided by the provisions of

(i) ORS 469.420 (4)(b) and (c), and

(ii) Paragraphs (b) and (c) of subsection (4) of section 5 of this 1981 Act,

(B) Require initial payment by each energy resource supplier of only the lesser of the amounts determined by the director in accordance with paragraph (a) of this subsection for each individual energy resource supplier, and

(C) Require payment of an additional assessment upon expiration of the review period provided by subsection (3) of this section or if there is a judicial determination that amounts assessed pursuant to ORS 469.420 are not subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(b) The additional assessment required by subparagraph (C) of paragraph (a) of this subsection shall consist of the balance of the difference in the amounts determined by the director pursuant to paragraph (a) of this subsection for each individual energy resource supplier for which the amount determined by the director pursuant to the method provided by ORS 469.420 is greater than the amount determined by the director pursuant to the method provided by section 5 of this 1981 Act.

(2) It is the intent of the Legislative Assembly that funds assessed pursuant to this section are not subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution.

(3)(a) Jurisdiction to determine whether ORS 469.420 as amended by section 3 of this 1981 Act imposes

a tax or excise levied on, with respect to or measured by the extraction, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas that is subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution is conferred upon the Supreme Court. A petition for review shall be filed within 60 days only following the date that the director's order issued under subsection (1) of this section is served by mailing or by personal service on an energy resource supplier. Any person interested in or affected or aggrieved by ORS 469.420 as amended by section 3 of this 1981 Act or an order of the director issued under subsection (1) of this section may petition for judicial review. The petition shall state the facts showing how the petitioner is interested, affected or aggrieved, and the ground upon which the petition is based. The Supreme Court shall give priority on its docket to a petition for review filed under this subsection. Filing of a petition shall stay the operation of those portions of the order which would implement subparagraph (C) of paragraph (a) of subsection (1) of this section.

(b) Judicial review of the order shall be limited to

(A) The order and any supporting documents referenced therein,

(B) The provisions of this 1981 Act authorizing the order, and

(C) The legislative history and any supporting documents related to section 2, Article VIII or section 3a, Article IX of the Oregon Constitution

(c) The court may declare the order or a portion of the order invalid if it finds that the order

(A) Violates constitutional provisions, or

(B) Exceeds the statutory authority of the director

(4) As used in this section and section 8 of this 1981 Act, "energy resource supplier" has the meaning given that term in ORS 469.420 (4)

**Sec. 8.** If a judicial determination is made that any funds that have been assessed by the director pursuant to this 1981 Act would, if retained, be subject to the provisions of section 2, Article VIII or section 3a, Article IX of the Oregon Constitution, the funds shall be returned to the energy resource supplier from which they were assessed

**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 183.550, 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, 469.590 to 469.621, 469.930 and 469.992 or rules adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 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 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) No member of the council shall be an 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, 469.590 to 469.621, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or 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, 469.590 to 469.621, 469.930 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, 469.590 to 469.621, 469.930 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, 469.590 to 469.621, 469.930 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, 469.590 to 469.621, 469.930 and 469.992 shall be adopted in the manner required by ORS 183.310 to 183.550. [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, 469.590 to 469.621, 469.930 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; exceptions.**

Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(1) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at

sites approved by the council in accordance with ORS 469.375.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner consistent with rules adopted by the Department of Environmental Quality after consultation with and approval by the Health Division.

(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, 1981 c 587 §2]

**469.530 Regulation of transport of radioactive material; review and approval of security programs.** (1) In cooperation with appropriate federal agencies, the council shall regulate the transportation process for all radioactive material.

(2) No radioactive material, designated by the council by rule as posing a significant hazard to public health or the environment if improperly transported, shall be transported in this state except as in conformance with the provisions of ORS 469.605 to 469.615, 469.619 and 469.621. Such material shall include but is not limited to:

(a) Plutonium isotopes in any quantity and form exceeding two grams or 20 curies, whichever is less;

(b) Uranium enriched in the isotope U-235 exceeding 25 atomic percent of the total uranium content in quantities where the U-235 content exceeds one kilogram;

(c) Any element with atomic number 89 or greater, the activity of which exceeds 20 curies;

(d) Spent nuclear reactor fuel elements or mixed fission products associated with spent nuclear reactor fuel elements the activity of which exceeds 20 curies;

(e) Any large quantity of aggregate radioactivity exceeding that specified in Title

10, Code of Federal Regulations, section 71.4, paragraph (f), (1978), entitled "Packaging of Radioactive Materials for Transport";

(f) Any quantity, arrangement and packaging combination of fissile material specified by the United States Nuclear Regulatory Commission or successor agency as a Fissile Class III shipment in Title 10, Code of Federal Regulations, section 71.4, paragraph (d)(3), (1978), entitled "Packaging of Radioactive Materials for Transport";

(g) Uranium oxide in powdered form in excess of 1,000 pounds per shipment; and

(h) Radioactive waste of any kind originating from any nuclear power plant or nuclear installation or any person licensed by the Health Division pursuant to ORS 453.655, the Nuclear Regulatory Commission or an agreement state established pursuant to 42 U.S.C. 2021.

(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; 1981 c 707 §3]

**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 Management 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 deter-

mine 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 employe

**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 183.550 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, 469.590 to 469.621, 469.930 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, 469.590 to 469.621, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453 565]

### (Insurance)

**469.565 Property insurance required; exceptions; filing of policy.** (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

(2) Insurance required under this section does not apply to:

(a) Any claim of an employe of a person obtaining insurance under this section, if the claim is made under a state or federal workers' compensation Act and if the employe is employed at the site of and in connection with the nuclear power plant at which the nuclear incident occurred; or

(b) Any claim arising out of an act of war.

(3) A person obtaining insurance under this section shall maintain insurance for the term of the license issued to the nuclear power plant by the United States Nuclear Regulatory Commission and for any extension of the term, and until all radioactive material has been removed from the nuclear power plant and transportation of the radioactive material from the nuclear power plant has ended.

(4) A person obtaining insurance under this section shall file a copy of the insurance policy, any amendment to the policy and any superseding insurance policy with the director.

(5) Property insurance required under this section is in addition to and not in lieu of insurance coverage provided under the Price-Anderson Act (42 U.S.C. 2210).

(6) Property insurance required by subsections (1) to (5) of this section may include private insurance, self-insurance, utility industry association self-assurance pooling programs, or a combination of all three.

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [1981 c 866 §§3, 4]

**469.567 Eligible insurers.** (1) In order to provide the private insurance specified under ORS 469.565, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.565 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [1981 c 866 §5]

#### (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,

469.590 to 469.621, 469.930 and 469.992 or with a site certificate issued pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 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]

#### (Siting of Nuclear-fueled Thermal Power Plants)

**469.590 Definitions for ORS 469.590 to 469.595.** As used in ORS 469.590 to 469.595:

(1) "High-level radioactive waste" means spent nuclear fuel or the radioactive by-products from the reprocessing of spent nuclear fuel.

(2) "Spent nuclear fuel" means nuclear fuel rods or assemblies which have been irradiated in a power reactor and subsequently removed from that reactor. [1981 c 1 §2]

**469.593 Findings.** The people of this state find that if no permanent repository for high-level radioactive waste is provided by the Federal Government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes. Therefore, the people of this state enact ORS 469.590 to 469.601. [1981 c 1 §1]

**469.595 Condition to site certificate for nuclear-fueled thermal power plant.** Before issuing a site certificate for a nuclear-fueled thermal power plant, the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the Federal Government. The repository must provide for the terminal disposition of such waste, with or without provision for retrieval for reprocessing. [1981 c 1 §3]

**Note:** Section 7, chapter 1, Oregon Laws 1981, provides

**Sec. 7.** The provisions of section 3 of this 1980 Act do not apply to any nuclear-fueled thermal power plant for

which a site certificate was granted before November 15, 1980

**469.597 Election procedure; voter approval required.** (1) Notwithstanding the provisions of ORS 469.370, if the council finds that the requirements of ORS 469.595 have been satisfied and proposes to issue a site certificate for a nuclear-fueled thermal power plant, the proposal shall be submitted to the voters of this state for their approval or rejection at the next available state-wide general election. The procedures for submitting a proposal to the voters under this section shall conform, as nearly as possible to those for state measures, including but not limited to procedures for printing related material in the voters' pamphlet.

(2) A site certificate for a nuclear-fueled thermal power plant shall not be issued until the voters of this state have approved the issuance of the certificate at an election held pursuant to subsection (1) of this section. [1981 c.1 §§4, 5]

**469.599 Public Utility Commissioner's duty.** The Public Utility Commissioner shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.450 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 §6]

**469.601 Effect of ORS 469.595 on applications and applicants.** ORS 469.595 does not prohibit:

(1) The council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 §8]

#### (Transportation of Radioactive Material)

**469.603 Intent to regulate transportation of radioactive waste.** It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allowable under and consistent with federal laws and regulations. [1981 c.707 §2]

**469.605 Permit to transport required; application.** (1) No person shall ship or transport radioactive material identified by the council pursuant to ORS 469.530 (2) into or within the State of Oregon without first obtaining a permit from the department.

(2) Such permit shall be issued for a period not to exceed one year and shall be valid for all shipments within that period of time unless specifically limited by permit conditions.

(3) Application for a permit under this section shall be made in a form and manner prescribed by the director and may include:

(a) A description of the kind, quantity and radioactivity of the material to be transported;

(b) A description of the route or routes proposed to be taken and the transport schedule;

(c) A description of any mode of transportation; and

(d) Other information required by the director to evaluate the application.

(4) The director shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the department of performing the duties of the department under this section and ORS 469.609, and for investigation and prosecution of violations of ORS 469.605 to 469.615 and 469.621. The director may include as part of the fee an amount to provide for training required under ORS 469.611 if federal funds are not sufficient to provide for that training. Fees collected under this subsection shall be deposited in the Energy Department Account established under ORS 469.120.

(5) The director shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.300, 469.530, 469.603 to 469.621 and 469.992. [1981 c.707 §5]

**469.607 Authority of council.** (1) After consultation with the Public Utility Commissioner of Oregon and other appropriate state, local and federal agencies, the council by rule:

(a) Shall fix requirements for notification, record keeping, reporting, packaging and emergency response;

(b) Shall designate those routes by highway, railroad, waterway and air where trans-

portation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, requirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, checkpoints, operator or crew training or other operational requirements to enhance public health and safety; and

(d) Shall establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.300, 469.530, 469.603 to 469.621 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS 183.310 to 183.550. [1981 c 707 §6]

**469.609 Notice to state agencies and local governments when permit application received.** (1) Upon receipt of the application required under ORS 469.605, the director shall notify the Health Division and other interested state agencies and all local government agencies trained and certified under ORS 469.611 in whose jurisdiction the route or routes of the proposed shipments are located. The department shall notify the agencies of:

(a) The type and quantity of material to be transported;

(b) Any mode of transportation to be used;

(c) The route or routes to be taken and the transport schedule; and

(d) Any other information at the discretion of the director.

(2) The director shall place reasonable conditions upon the permit based upon comments received from the agencies notified under subsection (1) of this section. [1981 c 707 §8]

**469.611 Emergency response planning; Health Division as coordinator.** (1) The director shall coordinate emergency response planning with appropriate agencies of government at the local, state and national levels to assure that the response to a radioac-

tive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife: This planning shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Health Division shall be designated by the director as on-scene coordinator for any radiological accident occurring within the State of Oregon. The Health Division shall contact the governing body of each county in whose jurisdiction the route or routes of the proposed shipments are located to implement emergency response training. The Health Division shall insure that all emergency services personnel that may be designated by a local government unit receive training in the proper procedures for identifying and dealing with a radiological accident pending the arrival of the Health Division staff. The Health Division shall certify to the director when training of local agency personnel has been completed. [1981 c 707 §9]

**469.613 Records; inspection.** (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the director.

(2) The director may authorize any employee or agent of the director to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.300, 469.530, 469.603 to 469.621 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The director shall provide for:

(a) The inspection of each permitted large quantity radioactive material shipment at the point of entry of the shipment into this state

or at the point of origin for the transportation of large quantity radioactive material originating within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placarded packing label as specified by federal regulations. [1981 c 707 §10]

**469.615 Indemnity for claims against state.** (1) A person obtaining a permit under ORS 469.605 shall indemnify the State of Oregon for any claims against the state arising from the release of radioactive material during that transportation for which the permit was issued and for the cost of response to an accident involving the radioactive material for which the permit was issued.

(2) With respect to radioactive materials, the director shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605. [1981 c 707 §11]

**469.617 Report to legislature; content.** The director shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the department in administering ORS 469.300, 469.530, 469.603 to 469.621 and 469.992; and

(4) Such recommendations for additional legislation as the council considers necessary and appropriate. [1981 c 707 §12]

**469.619 Department to make federal regulations available.** The department shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.530, 469.603 to 469.621 and 469.992. [1981 c 707 §14]

**469.621 Advisory committee.** The director may establish a committee of local officials and interested citizens to advise the council on radioactive materials transportation issues from a local perspective. [1981 c 707 §7]

### RESIDENTIAL ENERGY CONSERVATION ACT (Investor-owned Utilities)

**469.631 Definitions for ORS 469.631 to 469.645.** As used in ORS 469.631 to 469.645:

(1) "Cash payment" means a payment made by the investor-owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Commissioner" means the Public Utility Commissioner of Oregon.

(4) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(7) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a

duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the investor-owned utility.

(8) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(9) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(10) "Investor-owned utility" means an electric or gas utility regulated by the commissioner as a public utility under ORS chapter 757.

(11) "Residential customer" means a dwelling owner or tenant who is billed by an investor-owned utility for electric or natural gas service received at the dwelling.

(12) "Space heating" means the heating of living space within a dwelling.

(13) "Tenant" means a tenant as defined

in ORS 91.705 or any other tenant. [1981 c 778 §2]

**469.633 Investor-owned utility program.** Within 30 days after November 1, 1981, each investor-owned utility shall submit for the commissioner's approval a residential energy conservation program that, to the commissioner's satisfaction:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures at the request of a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. The financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms approved by the commissioner:

(i) A principal amount of up to \$4,000;

(ii) For an electric utility, an interest rate that does not exceed six and one-half percent annually or, for a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 C.F.R. § 201.4 (a)) on the date of the loan application, but not lower than six and one-half percent or higher than 12 percent; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.641 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) \$350.

(b) That an otherwise eligible dwelling owner may obtain up to \$4,000 in loans or \$350 in cash payments for each dwelling.

(c) That there may be up to \$4,000 in loans or \$350 in cash payments for each dwelling.

(d) That a change in ownership of a dwelling shall not prevent the new dwelling owner from obtaining a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.631 to 469.645; and

(B) The amount of the financing is within the limit for that dwelling prescribed in paragraph (c) of this subsection.

(e) If the commissioner so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling.

(f) If the investor-owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the investor-owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The investor-owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) For an electric utility, provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space heating potential.

(6) Provides that the investor-owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.631 to 469.645 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request [1981 c 778 §3]

**469.635 Alternative program of investor-owned utilities.** (1) An investor-owned utility may meet the program submission requirements of ORS 469.633 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 889, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.633.

(2) An investor-owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the investor-owned utility offers another financing program determined by the commissioner to meet or exceed the program required in ORS 469.633 (3). A program shall be considered to meet or exceed the program required in ORS 469.633 (3) if it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.633 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.633 (3)(a)(B).

(3) An investor-owned utility that has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agree-

ment with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that is determined by the commissioner to meet or exceed the requirements in ORS 469.633 and 469.641 shall not be required to submit a separate program. However, the provisions of ORS 469.637, 469.639, 469.643 and 469.645 nevertheless shall be applicable. [1981 c 778 §7]

**469.637 Energy conservation part of utility service of investor-owned utility.** The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the investor-owned utility. [1981 c 778 §4]

**469.639 Billing for energy conservation measures.** (1) Except as provided in subsection (2) of this section, the commissioner may require as part of an investor-owned utility residential energy conservation program that, for dwelling owners with approved credit, the utility add to the periodic utility bill for the owner-occupied dwelling for which energy conservation measures have been provided pursuant to ORS 469.631 to 469.645 an amount agreed to between the dwelling owner and the investor-owned utility.

(2) The commissioner shall allow an investor-owned utility to charge or bill a dwelling owner separately from the periodic utility bill for energy conservation measures provided pursuant to ORS 469.631 to 469.645 if that utility wishes to do so. [1981 c 778 §5]

**469.641 Conditions for cash payments to dwelling owner by investor-owned utility.** (1) Except as provided in section 31, chapter 778, Oregon Laws 1981, an investor-owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(a) The measures were provided in the dwelling on or after November 1, 1981; and

(b) The measures will not be paid for with other investor-owned utility grants or loans.

(2) Receipt of a state residential weatherization tax credit before November 1, 1981, shall not disqualify a dwelling owner under paragraph (b) of subsection (1) of this section from receiving a cash payment for additional energy conservation measures. [1981 c 778 §6]

**469.643 Formula for customer charges.** The commissioner shall adopt by rule a formula under which the investor-owned utility shall charge all customers to recover:

(1) The cost to the investor-owned utility of the services required to be provided under ORS 469.633; and

(2) Any bad debts, including casualty losses, attributable to dwelling owner default on a loan for energy conservation measures. [1981 c 778 §8]

**469.645 Implementation of program by investor-owned utility.** After the commissioner has approved the residential energy conservation program of an investor-owned utility required by ORS 469.633, the investor-owned utility promptly shall implement that program. [1981 c 778 §9]

#### (Publicly Owned Utilities)

**469.649 Definitions for ORS 469.649 to 469.659.** As used in ORS 469.649 to 469.659:

(1) "Cash payment" means a payment made by the publicly owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Director" means the Director of the Oregon Department of Energy.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a mobile home as

defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(6) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the publicly owned utility.

(7) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(9) "Publicly owned utility" means a utility that:

(a) Is owned or operated in whole or in part, by a municipality, cooperative association or people's utility district; and

(b) Distributes electricity.

(10) "Residential customer" means a dwelling owner or tenant who is billed by a publicly owned utility for electric service received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Tenant" means a tenant as defined in ORS 91.705 or any other tenant. [1981 c 778 §10]

**469.651 Publicly owned utility program.** Within 30 days after November 1, 1981, each publicly owned utility shall submit to the director a residential energy conservation program that:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the publicly owned utility or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures at the request of a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. The financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms:

(i) A principal amount of up to \$4,000; or

(ii) An interest rate that does not exceed six and one-half percent annually; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.657 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) \$350;

(b) That an otherwise eligible dwelling owner may obtain up to \$4,000 in loans or \$350 in cash payments for each dwelling;

(c) That there may be up to \$4,000 in loans or \$350 in cash payments for each dwelling;

(d) That a change in ownership of a dwelling shall not prevent the new dwelling owner from obtaining a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.649 to 469.659; and

(B) The amount of the financing is within the limit for that dwelling prescribed in paragraph (c) of this subsection;

(e) If the publicly owned utility so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling; and

(f) If the publicly owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the publicly owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The publicly owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) Provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space-heating potential.

(6) Provides that the publicly owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.649 to 469.659 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §11]

**469.653 Alternative program of publicly owned utility.** (1) A publicly owned utility may meet the program submission requirements of ORS 469.651 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 887, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.651.

(2) A publicly owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the publicly owned utility offers another financing program that meets or exceeds the program required in ORS 469.651 (3). A program shall be considered to meet or exceed the program required in ORS 469.651 (3) when it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.651 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.651 (3)(a)(B).

(3) A publicly owned utility whose governing body has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November

1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that meets or exceeds the requirements of ORS 469.651 and 469.657 shall not be required to submit a separate program. However, the provisions of ORS 469.655 and 469.659 nevertheless shall be applicable. [1981 c 778 §14]

**469.655 Energy conservation as part of utility service of publicly owned utility.** The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the publicly owned utility. [1981 c 778 §12]

**469.657 Conditions for cash payments to dwelling owner by publicly owned utility.** (1) Except as provided in section 31, chapter 778, Oregon Laws 1981, a publicly owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(a) The measures were provided in the dwelling on or after November 1, 1981.

(b) The measures will not be paid for with other publicly owned utility grants or loans.

(2) Receipt of a state residential weatherization tax credit before November 1, 1981, shall not disqualify a dwelling owner under paragraph (b) of subsection (1) of this section from receiving a cash payment for additional energy conservation measures. [1981 c 778 §13]

**469.659 Implementation by publicly owned utility.** After the publicly owned utility has submitted to the director the residential energy conservation program required by ORS 469.651, the publicly owned utility promptly shall implement that program. [1981 c 778 §15]

#### (Oil Dealers)

**469.673 Definitions for ORS 469.673 to 469.683.** As used in ORS 469.673 to 469.683:

(1) "Cash payment" means a payment made by the department to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company,

trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(7) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from a fuel oil dealer.

(8) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(9) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows, and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(10) "Fuel oil dealer" means a person, association, corporation or other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(11) "Residential customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service received at the dwelling.

(12) "Space heating" means the heating of living space within a dwelling.

(13) "Tenant" means a tenant as defined in ORS 91.705 or any other tenant. [1981 c 778 §16]

**469.675 Oil dealer program.** Within 30 days after November 1, 1981, each fuel oil dealer shall submit for the director's approval a residential energy conservation program that, to the director's satisfaction:

(1) Makes available to all residential customers of the fuel oil dealer information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners

(2) Provides within 60 days of a request by a residential customer of the fuel oil dealer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling. [1981 c 778 §17]

**469.677 Contracts for information, assistance and technical advice; standards for energy audits.** (1) The director shall contract and a fuel oil dealer may rely upon the director to contract for the information, assistance and technical advice required to be provided by a fuel oil dealer under ORS 469.675.

(2) The director shall adopt standards for energy audits required under ORS 469.675 by rule in accordance with the rulemaking provisions of ORS 183.310 to 183.550. [1981 c 778 §18]

**469.679 Implementation by fuel dealer.** After the director has approved the residential energy conservation program of a fuel oil dealer required by ORS 469.675, the fuel oil dealer promptly shall implement that program. [1981 c 778 §19]

**469.681 Petroleum supplier assessment; computation; effect of failure to pay; interest.** (1) Each petroleum supplier shall pay to the department annually, beginning with the fiscal year beginning July 1, 1981, its share of an assessment to fund the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677.

(2) The amount of the assessment required by subsection (1) of this section shall be based on sales of distillate fuel oil by each petroleum supplier and shall be determined by the director in a manner consistent with the method prescribed in ORS 469.420 (4)(c)(C). The aggregate amount of the assessment shall not exceed \$400,000. In making this assessment, the director shall exclude all gallons of distillate fuel oil sold by petroleum suppliers that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(3) If any petroleum supplier fails to pay any amount assessed to it under this section within 30 days after the payment is due, the Attorney General, on behalf of the department, may institute a proceeding in the circuit court to collect the amount due.

(4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half percent of the payment due per month or fraction of a month from the date the payment was due to the date of payment.

(5) The assessment required by subsection (1) of this section is in addition to any assessment required by ORS 469.420 (2) and any other fee or assessment required by law.

(6) As used in this section, "petroleum supplier" means a petroleum refiner in this state or any person engaged in the wholesale distribution of crude petroleum or a derivative of crude petroleum. [1981 c 778 §23]

**469.683 Oil-Heated Dwellings Energy Audit Account.** (1) There is established in the General Fund of the State Treasury the Oil-Heated Dwellings Energy Audit Account. Moneys deposited in the account under subsections (2) to (5) of this section shall be used to pay the cost of the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677.

(2) The department shall pay into the State Treasury all assessment moneys received by the department under ORS 469.681 during the preceding calendar month. The State Treasurer shall deposit the moneys to the credit of the Oil-Heated Dwellings Energy Audit Account.

(3) The moneys in the Oil-Heated Dwellings Energy Audit Account are continuously appropriated to the department for the purpose of paying the cost of information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677.

(4) Notwithstanding ORS 293.140, any interest attributable to moneys in the Oil-Heated Dwellings Energy Audit Account shall accrue to that account.

(5) The department shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy Audit Account. [1981 c 778 §§24, 25]

#### (Miscellaneous)

**469.685 Use of earlier energy audit.** A dwelling owner served by an investor-owned utility, as defined in ORS 469.631, or a publicly owned utility, as defined in ORS 469.649, who applies for financing under the provisions of ORS 316.069, 317.083, 318.090 and 469.631 to 469.687, may use without obtaining a new energy audit an energy audit obtained from an energy supplier under chapter 887, Oregon Laws 1977, or a public utility under chapter 889, Oregon Laws 1977, before November 1, 1981. [1981 c 778 §30]

**469.687 Title for ORS 469.631 to 469.687.** ORS 316.069, 317.083, 318.090 and 469.631 to 469.687 shall be known as the Oregon Residential Energy Conservation Act. [1981 c 778 §1]

### 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]

#### (Low Interest Loans)

**469.710 Definitions for ORS 469.710 to 469.720.** As used in ORS 469.710 to 469.720, unless the context requires otherwise:

(1) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(2) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation mea-

sure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(3) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(4) "Dwelling owner" means the person who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for purchase of real property.

(5) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(6) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation

of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(7) "Fuel oil dealer" means a person, association, corporation or any other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(8) "Residential fuel oil customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service for space heating received at the dwelling.

(9) "Space heating" means the heating of living space within a dwelling.

(10) "Wood heating resident" means a person whose entire space heating is provided by the combustion of wood, and whose dwelling has no facilities to provide back-up space heating energy. [1981 c 894 §22]

**469.715 Low interest loans for cost-effective energy conservation; interest rate.** (1) Dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents, shall be eligible for low-interest loans for cost-effective energy conservation measures through commercial lending institutions.

(2) The interest rate shall not exceed six and one-half percent annually for loans provided by commercial lending institutions to dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents for the purpose of financing energy conservation measures pursuant to ORS 469.710 to 469.720. [1981 c 894 §§23, 24]

**469.720 Energy audit required.** (1) A dwelling owner who is or who rents to a residential fuel oil customer or who is or who rents to a wood heating resident, may not apply for low-interest financing under ORS 469.710 to 469.720 unless:

(a) The dwelling owner, customer or resident has first requested and obtained an energy audit from a fuel oil dealer, a publicly owned utility or an investor-owned utility or from a person under contract with the Oregon Department of Energy under ORS 316.069, 317.071, 317.083, 318.090 and 469.631 to 469.687; and

(b) The dwelling owner presents to the lending institution a copy of the energy audit together with certification that the dwelling

in question receives space heating from fuel oil or wood.

(2) Any dwelling owner applying for low-interest financing under ORS 469.710 to 469.720 who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may use without obtaining a new energy audit any assistance and technical advice obtained from an energy supplier before November 1, 1981, under chapter 887, Oregon Laws 1977, or from a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials. [1981 c 894 §25, 26]

### (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 183.550 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]

**469.750 State purchase of alternative fuels.** (1) Any state agency, board, commission, department or division that is authorized to purchase or otherwise acquire fuel for the systems providing heating, air conditioning, lighting and the supply of domestic hot water for public buildings and grounds may enter into long-term contracts for the purchase of alternative fuels. Such contracts may be for terms not longer than 20 years.

(2) As used in this section:

(a) "Alternative fuels" includes all fuels other than petroleum, natural gas, coal and products derived therefrom. The term includes, but is not limited to, solid wastes or fuels derived from solid wastes.

(b) "Public buildings and grounds" has the meaning given that term in ORS 276.210. [1981 c 386 §6]

**Note:** 469 750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

**469.800 Oregon participation in Pacific Northwest Electric Power and Conservation Planning Council.** The State of Oregon agrees to participate in the formation

of the Pacific Northwest Electric Power and Conservation Planning Council pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501. Participation of the State of Oregon in the council is essential to assure adequate representation for the citizens of Oregon in decision making to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the Pacific Northwest region of an efficient and adequate power supply and to fulfill the other purposes stated in section 2 of Public Law 96-501. [1981 c 49 §1]

**469.805 State members of council; confirmation; qualifications.** The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the council for terms of three years. The Governor, in making the appointments, shall consider but is not limited to:

(1) Prior experience, training and education as related to the duties and functions of the council and the priorities contained in section 4 of Public Law 96-501.

(2) General knowledge of the concerns, conditions and problems of the physical, social and economic environment of the State of Oregon.

(3) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501. [1981 c 49 §2]

**469.810 Conflicts of interest prohibited.** (1) A council member, or member of the council member's household, as defined in ORS 244.020 (8), shall not own or have any beneficial interest in any stock or indebtedness of any utility or direct service industry.

(2) A council member, or a member of a council member's household, as defined in ORS 244.020 (8), shall not be a director, officer, agent or employe of any utility or direct service industry.

(3) A council member, or a member of a council member's household, as defined in ORS 244.020 (8), shall not be a director, officer, agent or employe of or hold any proprietary interest in any consulting firm which does business with any utility or direct service industry.

(4) A council member, or a member of the council member's household, as defined in ORS 244.020 (8), shall not receive any compensation from any utility or direct service industry arising out of the member's business, trade or profession.

(5) A council member shall be considered a public official and be subject to the provisions of ORS chapter 244, including the reporting requirements thereof.

(6) A council member shall be a citizen of the United States and have been a resident of the State of Oregon for one year preceding appointment.

(7) A council member shall not hold any other elected or appointed public lucrative office or be principally engaged in any other business or vocation.

(8) As used in this section:

(a) "Beneficial interest" does not include an interest in a pension fund, a mutual fund or an insurance fund.

(b) "Consulting firm" means any corporation, partnership or sole proprietorship whose principal business is providing personal services.

(c) "Utility or direct service industry" means a utility or direct service industry customer that purchases electrical energy directly from the Bonneville Power Administration. [1981 c 49 §3]

**469.815 Status of members; duties; attendance at public meetings; technical assistance.** (1) Persons appointed by the Governor and confirmed by the Senate to serve as council members shall be considered to be full-time state public officials. Council members shall perform the duties of members of the council as specified in Public Law 96-501, consistently with the priorities contained in section 4 thereof and as otherwise provided in state law.

(2) If public meetings are held in the State of Oregon, pursuant to section 4(g)(1) of Public Law 96-501, council members must either attend the meeting or otherwise become familiar with the nature and content of the meeting.

(3) A council member may request, and state agencies shall provide, technical assistance to assist the council member in performing the council member's duties. [1981 c 49 §4]

**469.820 Term; reappointment; vacancy.** (1) Each council member shall serve a term ending January 15 of the third year following appointment. A council member, except upon removal as provided in ORS 469.830 (2), continues to serve as a member of the council until a successor is appointed and confirmed.

(2) A council member is eligible for reappointment, subject to Senate confirmation, but no member shall serve more than three consecutive terms. A council member who serves 18 months or more of a term shall be considered to have served a full term. However, with respect to the initial term consisting of two years, a council member who serves 12 months or more shall be considered to have served a full term.

(3) Within 30 days of the creation of a vacancy in the position of a council member, the Governor shall appoint a person to serve the succeeding term or the remainder of the unexpired term. However, the Governor need not appoint a person to serve the remainder of the unexpired term if the vacancy occurs within 30 days or less of the expiration of the term. [1981 c 49 §5]

**469.825 Prohibited activities of members.** (1) A person who has been a council member shall not engage in any of the activities prohibited by ORS 469.810 (2) and (3), within one year after ceasing to be a council member.

(2) A person who has been a council member shall not appear as a representative of any party on any matter before the council within three years after ceasing to be a council member.

(3) A person who has been a council member shall not represent, aid, counsel, consult or advise for financial gain any person on any matter before the council within three years after ceasing to be a council member.

(4) A person who has been a council member shall not appear for financial gain as a representative of or aid, counsel or advise any party before the council or the Bonneville Power Administration or communicate with the council or the Bonneville Power Administration with the intent to influence the outcome of any decision on any matter in which the council member was substantially and personally involved while on the council.

(5) Notwithstanding the status of council members as state officers, the provisions of 18

U.S.C. 207 relating to post-employment activities shall be considered to be state law in so far as they do not conflict therewith, applicable to council members appointed pursuant to ORS 469.800 to 469.845 and 469.990 (3), regardless of the salary paid to the council members.

(6) Subsections (2) to (5) of this section shall not apply to any appearance, attendance, communication or other action on behalf of the State of Oregon; nor shall subsections (2) to (5) of this section apply to an appearance or communication made in response to a subpoena [1981 c 49 §6]

**469.830 Removal of members; grounds; procedure.** (1) Council members shall serve at the pleasure of the Governor, except as provided in subsection (2) of this section.

(2) The Governor shall remove a council member for the following causes:

(a) Failure to attend three consecutive council meetings except for good cause.

(b) Conviction of a felony.

(c) Violation of ORS chapter 244.

(d) Violation of ORS 469.810.

(3) Before removal of a council member by the Governor, the council member shall be given a written statement of the reasons for removal and, upon request by the member, an opportunity to be heard publicly on such reasons before the Governor. A copy of the statement of reasons and a transcript of the record of the hearing shall be filed with the Secretary of State. [1981 c 49 §7]

**469.835 Salary of members; staff.** (1) Each council member shall receive a salary not to exceed the salary of the Public Utility Commissioner, or the maximum salary authorized under section 4(a)(3) of Public Law 96-501.

(2) Each council member is entitled to appoint one secretarial staff assistant who shall be in the unclassified service. [1981 c 49 §8]

**469.840 Northwest Regional Power and Conservation Account.** (1) There is established a Northwest Regional Power and Conservation Account. Moneys received pursuant to Public Law 96-501 shall be placed in the account.

(2) So much of the account created by subsection (1) of this section as is necessary

for payment of salaries and expenses necessary under ORS 469.835, and related costs, and the actual and necessary travel expenses of the advisory committee created under section 12, chapter 49, Oregon Laws 1981, is continuously appropriated to the Executive Department for such purposes.

(3) Pending receipt of moneys under subsection (1) of this section, the Executive Department shall pay the salaries, expenses and other costs authorized by subsection (2) of this section from the Executive Department Revolving Fund. Out of the special account created under subsection (1) of this section, there are appropriated sufficient moneys to reimburse the Executive Department Revolving Fund for such payments.

(4) The balance of the account created by subsection (1) of this section, after payments required or anticipated under subsection (2) of this section, is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commissioner, the Department of Energy, the State Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action. [1981 c 49 §9]

**469.845 Annual report to Governor and legislature.** Council members shall prepare a report which shall be presented to the Governor and to the President of the Senate and the Speaker of the House of Representatives of the Legislative Assembly on October 1 of each year. The report shall include a review of the council's actions during the prior year. [1981 c 49 §10]

**Note:** Sections 12 and 14, chapter 49, Oregon Laws 1981, provide

**Sec. 12.** (1) There is created an advisory committee to the Oregon council members if the Oregon council members are appointed pursuant to this Act. The advisory committee shall be appointed by and shall serve at the pleasure of the Governor. The advisory committee shall consist of at least seven members who shall be representative of the interests of Oregonians in local government, in conservation, in development of electrical energy, including renewable resources, and in protection of fish and wildlife

(2) Members of the advisory committee shall possess the qualifications required of members of the council under section 2 of this Act

(3) Members shall serve until June 30, 1983, or until adoption of the initial plan by the council pursuant to section 4(d) of Public Law 96-501, whichever occurs later. Members shall be appointed within 30 days after the

effective date of this Act [April 7, 1981] and shall serve until their successors are appointed. Appointment shall be made within 30 days of the date of a vacancy

(4) Members of the advisory committee are entitled to no compensation but shall be reimbursed for actual and necessary travel expenses incurred in performance of their duties

(5) The advisory committee shall advise the Oregon council members and shall have access to council files. The committee shall meet at the call of the chairperson or upon the request of a majority of the members. The advisory committee shall also seek information from sectors affected by council activities that are of interest or concern to the council and provide that information to the Oregon council members in an appropriate manner

**Sec. 14.** Section 12 of this Act is repealed July 1, 1985

### COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAM

**469.860 Definitions for ORS 469.860 to 469.900.** (1) As used in ORS 469.865 to 469.875, 469.900 (1) and (2) and subsection (2) of this section:

(a) "Commercial building" means a public building as defined in ORS 456.746.

(b) "Commissioner" means the Public Utility Commissioner.

(c) "Conservation services" means providing energy audits or technical assistance for energy conservation measures as part of a program approved under ORS 469.860 to 469.900.

(d) "Electric utility" means a public utility, as defined in ORS 757.005, which produces, transmits, delivers or furnishes electric power and is regulated by the commissioner under ORS chapter 757.

(e) "Energy conservation measure" means a measure primarily designed to improve the efficiency of energy use in a commercial building. "Energy conservation measures" include, but are not limited to, improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(2) As used in ORS 469.865 and 469.900 (2), "gas utility" means a public utility, as defined in ORS 757.005, which delivers or

furnishes natural gas to customers for heat, light or power.

(3) As used in ORS 469.880 to 469.895 and 469.900 (3):

(a) "Commercial building" means a public building as defined in ORS 456.746.

(b) "Conservation services" has the meaning given in subsection (1) of this section.

(c) "Energy conservation measure" has the meaning given in subsection (1) of this section.

(d) "Publicly owned utility" means an electric utility owned or operated, in whole or in part, by a municipality, cooperative association or people's utility district. [1981 c 708 §§1, 7, 13]

**Note:** 469.860 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

**469.865 Electric utility to adopt commercial energy conservation services program.** (1) Within 180 days after the adoption of the rules by the commissioner under section 2, chapter 708, Oregon Laws 1981, each electric utility shall present for the commissioner's approval a commercial energy conservation services program which shall, to the commissioner's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the electric utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the electric utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the electric utility. [1981 c 708 §3]

**Note:** Section 2, chapter 708, Oregon Laws 1981, provides

**Sec. 2.** Within 365 days after the effective date of this Act [November 1, 1981], the commissioner shall adopt rules governing energy conservation programs provided under sections 1 to 6 of this Act and may provide

for coordination among electric utilities and gas utilities that serve the same commercial building

**469.870 Application of ORS 469.865, 469.870 and 469.900 (1) to electric utility.** ORS 469.865, 469.900 (1) and this section shall not apply to an electric utility if the commissioner determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections. [1981 c 708 §4]

**469.875 Fee for gas utility audit.** The commissioner shall determine whether the gas utility may charge a reasonable fee to the customer for the energy audit service and, if so, the fee amount. [1981 c 708 §9]

**469.880 Energy audit program.** Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The director shall adopt rules governing the commercial energy audit program established under this section within 365 days after November 1, 1981, and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. [1981 c 708 §14]

**469.885 Publicly owned utility to adopt commercial energy audit program; fee.** (1) Within 180 days after the adoption of rules by the director under ORS 469.880, each publicly owned utility shall present for the director's approval a commercial energy audit program which shall, to the director's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the publicly owned utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section.

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee

for the energy audit and, if so, the fee amount. [1981 c 708 §§15, 16]

**469.890 Publicly owned utility to adopt commercial energy conservation program; fee.** (1) Within 365 days after November 1, 1981, the director shall adopt rules governing energy conservation programs prescribed by ORS 469.895, 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the director, each covered publicly owned utility shall present for the director's approval a commercial energy conservation services program which shall, to the director's satisfaction:

(a) Make information about energy conservation available to all commercial building customers of the covered publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the covered publicly owned utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the covered publicly owned utility.

(2) The commercial energy conservation services program submitted under subsection (1) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c 708 §§18, 19]

**469.895 Application of ORS 469.890 to 469.900 to publicly owned utility.** (1) ORS 469.890, 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890, 469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

(2) ORS 469.890, 469.900 (3) and this section shall not apply to a covered publicly owned utility if the director determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the director shall publish a list identifying each covered publicly owned utility to which ORS 469.890, 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c 708 §17]

**469.900 Duty of commissioner to avoid conflict with federal requirements.**

(1) The commissioner shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

(2) The commissioner shall insure that each gas utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to gas utilities and energy conservation in commercial buildings.

(3) The director shall insure that each covered publicly owned utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to covered publicly owned utilities and energy conservation in commercial buildings. [1981 c 708 §§5, 10, 20]

**Note:** 469.900 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

## NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

**469.930 Northwest Interstate Compact on Low-Level Radioactive Waste Management.** The Northwest Interstate Compact on Low-Level Radioactive Waste Management is enacted into law by the State of Oregon and entered into with all other jurisdictions lawfully joining therein in a form as provided for as follows:

## ARTICLE I

Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

## ARTICLE II

Definitions

As used in this compact:

(1) "Facility" means any site, location, structure or property used or to be used for the storage, treatment or disposal of low-level waste, excluding federal waste facilities.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

## ARTICLE III

Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state.

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon.

(3) Authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state.

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

(6) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

## ARTICLE IV

Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside

of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state and shall contain at least the following:

(a) The generator's name and address;

(b) A description of the contents of the low-level waste container;

(c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and

(d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in the region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent

any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

#### ARTICLE V

##### Northwest

##### Low-Level Waste Compact

##### Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

#### ARTICLE VI

##### Eligible Parties

##### and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval

(2) After the compact has initially taken effect pursuant to paragraph (1) of this Article any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

#### ARTICLE VII Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c 479 §1]

**469.935 State appointee subject to Senate confirmation.** The Oregon appointee to the Northwest Low-Level Waste Compact Committee shall be subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution. [1981 c 497 §3]

**Note:** 469.935 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See the preface to Oregon Revised Statutes for further explanation.

#### PENALTIES

**469.990 Penalties.** (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, 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.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c 606 §20, subsection (3) enacted as 1981 c 49 §11]

**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, 469.590 to 469.621 and 469.930 or in material violation of any site certificate issued pursuant to ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930 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 ORS 469.070 (4) or for a wilful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.300, 469.530, 469.603 to 469.621 and this section may be assessed by the circuit court upon complaint of the director or of any person injured by the violation. [Formerly 453.994, 1977 c 794 §17, 1981 c 707 §13]

**469.994 Civil penalty when dealer certificate revoked.** (1) The Director of the Department of Energy shall impose a civil penalty in an order entered against a dealer under ORS 469.180 (1)(a) in an amount equal to the total amount of tax relief estimated to have been provided under ORS 316.116 to purchasers of the system for which a dealer's certificate has been revoked. The penalty shall be imposed if:

(a) A dealer notified under the procedures for a contested case provided in ORS 183.310 to 183.550 fails to request a hearing to contest the revocation under ORS 469.180 (1)(a) of that dealer's system certificate; or

(b) If, after a hearing held under the contested case procedures, the dealer's system certificate is revoked under ORS 469.180 (1)(a).

(2) The Department of Energy may not collect any of the amount of a civil penalty imposed under subsection (1) of this section from a purchaser of the system for which the dealer's certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469.180 (3) to collect taxes not paid by a taxpayer who holds a final certificate if the final certificate is revoked for that taxpayer's fraud, misrepresentation or for any other reason specified in ORS 469.180 (1).

(3) If the order imposing the civil penalty on the dealer is not appealed, the amount of the penalty is payable within 30 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 30 days after the court decision. The order, if not appealed or if sustained on appeal, shall constitute a judgment and

may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(4) Judicial review of a civil penalty imposed under this section shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(5) A penalty recovered under this section shall be paid into the State Treasury and credited to the General Fund and is available for general governmental expenses. [1981 c 894 §8]

