

2007

OREGON REVISED STATUTES

Including

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Chapter 756

2007 EDITION

Public Utility Commission

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GENERAL PROVISIONS

756.010 Definitions. As used in ORS chapters 756, 757, 758 and 759, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Commission" means the Public Utility Commission of Oregon.

(2) "Commissioner" means a member of the Public Utility Commission of Oregon.

(3) "Customer" includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a public utility or telecommunications utility.

(4) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(5) "Person" includes individuals, joint ventures, partnerships, corporations and associations or their officers, employees, agents, lessees, assignees, trustees or receivers.

(6) "Public utility" has the meaning given that term in ORS 757.005.

(7) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

(8) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

(9) "Telecommunications utility" has the meaning given that term in ORS 759.005. [Amended by 1971 c.655 §2; 1973 c.776 §14; 1977 c.337 §1; 1985 c.834 §6; 1987 c.447 §75; 1991 c.841 §1; 1995 c.733 §52]

COMMISSION POWERS AND DUTIES**(Generally)**

756.014 Public Utility Commission; appointment; confirmation; term; removal.

(1) There is created the Public Utility Commission of Oregon. The commission shall be composed of three members appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. No more than two of such members shall be of the same political party.

(2) Each commissioner shall hold office for the term of four years. A commissioner shall hold office until a successor has been appointed and qualified. The chairperson shall be designated by the Governor and shall serve as chairperson at the pleasure of the Governor.

(3) Any vacancy occurring in the office of commissioner shall be filled by appointment by the Governor to hold office for the balance of the unexpired term.

(4) The Governor may at any time remove a commissioner for any cause deemed

by the Governor sufficient. Before such removal the Governor shall give the commissioner a copy of the charges, and shall fix a time when the commissioner can be heard, which shall not be less than 10 days thereafter. The hearing shall be open to the public. If the commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the commissioner, and the findings thereon with a record of the proceedings. Such power of removal is absolute, and there is no right of review of the same in any court. [1985 c.834 §2; 1999 c.1102 §1]

756.016 Quorum; seal; individual commissioner authorized to act for commission. (1) A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the Public Utility Commission.

(2) The commission shall have a seal with the words "Public Utility Commission of Oregon" and such other design as the commission may prescribe engraved thereon, by which the proceedings of the commission shall be authenticated and of which the courts shall take judicial notice.

(3) Any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated by order of the commission. Except as provided in ORS 756.055, all investigations, inquiries and hearings so held shall be conducted as though by the full commission with such commissioner empowered to exercise all the powers of the commission with respect thereto. [1985 c.834 §§3,4,5]

756.020 [Amended by 1973 c.792 §48; 1983 c.540 §1; repealed by 1985 c.834 §12]

756.022 Oath of office. Before entering upon the duties of office, each commissioner shall take and subscribe to an oath or affirmation to support the Constitution of the United States and of this state, and to faithfully and honestly discharge the duties of office. The oath shall be filed with the Secretary of State. [1971 c.655 §3; 1985 c.834 §7]

756.026 Prohibited interests of commissioner and family. (1) No member of the Public Utility Commission shall:

(a) Hold any other office of profit;

(b) Hold any office or position under any political committee or party;

(c) Hold any pecuniary interest in any business entity conducting operations which if conducted in this state would be subject to the commission's regulatory jurisdiction; or

(d) Hold any pecuniary interest in, have any contract of employment with, or have

any substantial voluntary transactions with any business or activity subject to the commission's regulatory jurisdiction.

(2) The prohibitions of subsection (1)(c) and (d) of this section apply to the spouse and minor children of each commissioner.

(3) If the Governor determines that any commissioner has done any act prohibited by subsection (1) of this section, or that a commissioner's spouse or a minor child has done any act prohibited by subsection (2) of this section, the Governor shall remove the commissioner in the manner provided in ORS 756.014 (4).

(4) Subsection (3) of this section does not apply to a commissioner if the commissioner or the commissioner's spouse or a minor child acquires any pecuniary interest prohibited by subsection (1) or (2) of this section, advises the Governor of such acquisition, and causes divestiture of such interest within the time specified by the Governor.

(5) For purposes of subsection (1) of this section, a business or activity shall not be considered subject to the commission's regulatory jurisdiction solely because the business or activity is a private carrier as defined by ORS 825.005. [1971 c.655 §4; 1985 c.834 §8; 1987 c.123 §1; 1995 c.306 §41]

756.028 Employee statements regarding prohibited interests. Each employee of the Public Utility Commission shall file with the commission a statement regarding holdings of the employee and the holdings of the employee's spouse and minor children of any pecuniary interest in any business or activity subject to the commission's regulatory jurisdiction. Supplementary statements shall be filed as such pecuniary interests are acquired or divested. The statements shall be in such form as the commission prescribes. If the commission determines that an employee or spouse or minor child of the employee holds any such pecuniary interest that may interfere with the impartial discharge of the employee's duties, the commission shall order divestiture of the interest. [1971 c.655 §5]

756.030 [Repealed by 1971 c.655 §250]

756.032 Employee dismissal for retention of prohibited interests or failure to file statements. (1) The Public Utility Commission shall dismiss an employee:

(a) Who fails to file the statement required by ORS 756.028 before the 11th day after the date of employment.

(b) Who fails to file the supplementary statement required by ORS 756.028 before the 11th day after the acquisition of a pecuniary interest.

(c) Who fails to cause divestiture of a pecuniary interest within the time specified in an order issued pursuant to ORS 756.028.

(2) Dismissal of an employee under subsection (1) of this section is subject to the procedure and appeal provided in ORS 240.555 and 240.560. An employee so dismissed is eligible for reemployment. [1971 c.655 §6; 1979 c.468 §34; 2003 c.14 §452]

756.034 Intent of prohibited interest provisions. Nothing in ORS 756.022 to 756.032 is intended to authorize any act otherwise prohibited by law. [1971 c.655 §7]

756.036 Duties and functions. (1) The Public Utility Commission may:

(a) Organize and reorganize the office of the Public Utility Commission in the manner that it considers necessary to properly discharge the responsibilities of the Public Utility Commission.

(b) Contract for or procure on a fee or part-time basis, or both, such experts, technical or other professional services as it may require for the discharge of its duties.

(c) Obtain such other services as it considers necessary or desirable.

(d) Participate in organizations of regional and national utility commissions.

(e) Appoint advisory committees. A member of an advisory committee so appointed shall receive no compensation for services as a member. Subject to any applicable law regulating travel and other expenses of state officers and employees, the member shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(2) Subject to any applicable law regulating travel and other expenses of state officers and employees, the commissioners and the officers and employees of the commission shall be reimbursed for such reasonable and necessary travel and other expenses incurred in the performance of their official duties.

(3) The chairperson of the commission appointed under ORS 756.014 shall serve as the administrative head of the commission and has the power to:

(a) With the consent of one or more of the other members of the commission, appoint and employ all subordinate officers and employees, including, but not limited to, deputies, assistants, engineers, examiners, accountants, auditors, inspectors and clerical personnel, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law.

(b) Prescribe internal policies and procedures for the government of the commission, the conduct of its employees, the assignment and performance of its business and the cus-

tody, use and preservation of its records, papers and property in a manner consistent with applicable law. [1971 c.655 §8; 1985 c.834 §9; 1999 c.1102 §2; 2003 c.14 §453]

756.037 Commission authority to provide assistance, information, resources and advice to Legislative Assembly. The Public Utility Commission and commission staff may provide such assistance to the Legislative Assembly and its committees as required by the Legislative Assembly for the performance of its duties, and may furnish to the Legislative Assembly and its committees such information, resources and advice as the members of the Legislative Assembly consider necessary for the performance of legislative duties. [2001 c.558 §2]

756.040 General powers. (1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. The commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates. Rates are fair and reasonable for the purposes of this subsection if the rates provide adequate revenue both for operating expenses of the public utility or telecommunications utility and for capital costs of the utility, with a return to the equity holder that is:

(a) Commensurate with the return on investments in other enterprises having corresponding risks; and

(b) Sufficient to ensure confidence in the financial integrity of the utility, allowing the utility to maintain its credit and attract capital.

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility and telecommunications utility in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

(3) The commission may participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the public generally and the customers of the services of any public utility or telecommunications utility operating or providing service to or within this state.

(4) The commission may make joint investigations, hold joint hearings within or without this state and issue concurrent orders in conjunction or concurrence with any official, board, commission or agency of any state or of the United States. [Amended by 1961 c.467 §1; 1971 c.655 §9; 1973 c.776 §15; 1987 c.447 §76; 1995 c.733 §53; 2001 c.569 §1]

756.045 Employing legal counsel. Upon request by the Public Utility Commission, the Attorney General shall furnish to the commission such attorneys as the commission finds necessary. [Formerly 756.150]

756.047 Authority of commission to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Public Utility Commission may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the commission; or

(b) Provides services or seeks to provide services to the commission as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person has access to chemicals or hazardous materials, to facilities in which chemicals and hazardous materials are present or to information regarding the transportation of chemical or hazardous materials;

(b) In which the person inspects gas or electrical lines or facilities;

(c) In which the person has access to critical infrastructure or security-sensitive facilities or information; or

(d) That has fiscal, payroll or purchasing responsibilities as one of the position's primary responsibilities. [2005 c.730 §69]

Note: 756.047 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 756 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

756.050 Office, office supplies and sessions of commission. (1) The Public Utility Commission shall keep office at the capital and shall be provided with suitable office quarters under ORS 276.004. Necessary office furniture, supplies, stationery, books, periodicals and maps shall be furnished, and all necessary expenses therefor shall be audited and paid as other state expenses are audited and paid.

(2) The commission may hold sessions and maintain offices at places other than the capital for the more convenient and efficient performance of the duties imposed upon the commission by law, and shall upon request be provided by the county court or board of county commissioners of any county in the

state with suitable rooms for offices and hearings. [Amended by 1969 c.706 §64g; 1971 c.655 §11]

756.055 Delegation of authority. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may designate by order or rule any commissioner or any named employee or category of employees who shall have authority to exercise any of the duties and powers imposed upon the commission by law. The official act of any commissioner or employee so exercising any such duties or powers is considered to be an official act of the commission.

(2) The commission may not delegate to any commissioner, named employee or category of employees under subsection (1) of this section the authority to:

- (a) Sign an interim or final order after hearing;
- (b) Sign any order upon any investigation the commission causes to be initiated;
- (c) Sign an order that makes effective a rule;
- (d) Enter orders on reconsideration or following rehearing; or
- (e) Grant immunity from prosecution, forfeiture or penalty. [1971 c.655 §12; 1985 c.834 §10]

756.060 Authority to adopt rules and regulations. The Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission. [Amended by 1971 c.655 §13; 1973 c.776 §16; 1987 c.447 §77; 1995 c.733 §54]

756.062 Substantial compliance with laws adequate for commission activities; construction of laws generally. (1) A substantial compliance with the requirements of the laws administered by the Public Utility Commission is sufficient to give effect to all the rules, orders, acts and regulations of the commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(2) The provisions of such laws shall be liberally construed in a manner consistent with the directives of ORS 756.040 (1) to promote the public welfare, efficient facilities and substantial justice between customers and public and telecommunications utilities. [Formerly 757.025; 1973 c.776 §17; 1987 c.447 §78; 1995 c.733 §55; 2001 c.569 §2]

756.064 [1971 c.655 §15; 1973 c.776 §18; repealed by 1975 c.605 §33]

756.068 Service of notice or other legal process. The service or delivery of any notice, order, form or other document or legal process required to be made by the Public Utility Commission may be made by mail. If by mail, service or delivery is made when the required material is deposited in the post office, in a sealed envelope with postage paid, addressed to the person on whom it is to be served or delivered, at the address as it last appears in the records of the commission. [1971 c.655 §16]

(Investigatory Powers)

756.070 Investigating management of utilities. The Public Utility Commission may inquire into the management of the business of all public utilities and telecommunications utilities and shall keep informed as to the manner and method in which they are conducted and has the right to obtain from any public utility or telecommunications utility all necessary information to enable the commission to perform duties. [Amended by 1971 c.655 §17; 1973 c.776 §19; 1987 c.447 §70; 1995 c.733 §56]

756.075 Right of entry for examination of equipment, records or employees; use of findings. (1) The Public Utility Commission or authorized representatives may enter upon any premises, or any equipment or facilities operated or occupied by any public utility or telecommunications utility for the purpose of making any inspection, examination or test reasonably required in the administration of ORS chapter 756, 757, 758 or 759 and to set up and use on such premises equipment or facilities any apparatus and appliances and occupy reasonable space therefor.

(2) The commission or authorized representatives shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility or telecommunications utility and to examine under oath any officer, agent or employee of such public utility or telecommunications utility in relation to its business and affairs.

(3) Any person who on behalf of the commission makes demand of a public utility or telecommunications utility for an examination, inspection or test shall, upon request therefor, produce a certificate under the seal of the commission showing authority to make such examination, inspection or test.

(4) Nothing in this section authorizes the commission to use any information developed thereunder for any purpose inconsistent with any statute administered by the commission or to make a disclosure thereof for other than regulatory purposes. [Formerly 757.260; 1973 c.776 §20; 1987 c.447 §80; 1995 c.733 §57]

756.080 [Repealed by 1971 c.655 §250]

756.090 Maintaining and producing records; expenses of examining out-of-state records. (1) The Public Utility Commission may require by rule, or by order or subpoena to be served on any public utility or telecommunications utility the maintaining within this state or the production within this state at such time and place as the commission may designate, of any books, accounts, papers or records kept by such public utility or telecommunications utility in any office or place within or without this state, or verified copies in lieu thereof, if the commission so orders, in order that an examination thereof may be made by the commission or under direction of the commission.

(2) When a public utility or telecommunications utility keeps and maintains its books, accounts, papers or records outside the state, the commission may examine such documents and shall be reimbursed by the public utility or telecommunications utility for all expenses incurred in making such out-of-state examination. [Amended by 1971 c.655 §19; 1973 c.776 §21; 1987 c.447 §81; 1995 c.733 §58]

756.100 [Repealed by 1953 c.25 §2]

756.105 Duty to furnish information to commission. (1) Every public utility or telecommunications utility shall furnish to the Public Utility Commission all information required by the commission to carry into effect the provisions of ORS chapters 756, 757, 758 and 759 and shall make specific answers to all questions submitted by the commission.

(2) If a public utility or telecommunications utility is unable to furnish any information required under subsection (1) of this section for any reason beyond its control, it is a good and sufficient reason for such failure. The answer or information shall be verified under oath and returned to the commission at the commission's office within the period fixed by the commission. [Formerly 757.115; 1973 c.776 §22; 1987 c.447 §82; 1995 c.733 §59]

756.110 [Repealed by 1953 c.25 §2]

756.115 Failure to furnish requested information. No officer, agent or employee of any public utility, or telecommunications utility shall:

(1) Fail or refuse to fill out and return any forms required by the Public Utility Commission;

(2) Fail or refuse to answer any question therein propounded;

(3) Knowingly or willfully give a false answer to any such question or evade the answer to any such question where the fact inquired of is within the person's knowledge;

(4) Upon proper demand, fail or refuse to exhibit to the commission or any person authorized to examine the same, any book, paper, account, record or memorandum of such

public utility or telecommunications utility which is in possession or under the control of the person;

(5) Fail to properly use and keep a system of accounting or any part thereof, as prescribed by the commission; or

(6) Refuse to do any act or thing in connection with such system of accounting when so directed by the commission or authorized representative. [Formerly 757.180; 1973 c.776 §23; 1987 c.447 §83; 1995 c.733 §60]

756.120 [Repealed by 1971 c.655 §250]

756.125 Interference with commission's equipment. No person shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the Public Utility Commission, or any apparatus or appliance sealed by the commission. [Formerly 757.340]

756.130 [Repealed by 1971 c.655 §250]

756.140 [Repealed by 1971 c.655 §250]

756.150 [Amended by 1971 c.655 §10; renumbered 756.045]

ENFORCEMENT AND REMEDIES

756.160 Enforcement of statutes and ordinances relating to utilities. (1) The Public Utility Commission shall inquire into any neglect or violation of any law of this state or any law or ordinance of any municipality thereof relating to public utilities and telecommunications utilities by any public utility or telecommunications utility doing business therein, its officers, agents or employees and shall enforce all laws of this state relating to public utilities and telecommunications utilities and may enforce all such laws and ordinances of a municipality. The commission shall report all violations of any such laws or ordinances to the Attorney General.

(2) The Attorney General, district attorney of each county, and all state, county and city police officers shall assist the commission in the administration and enforcement of all laws administered by the commission, and they, as well as assistants and employees of the commission, shall inform against and diligently prosecute all persons whom they have reasonable cause to believe guilty of violation of any such laws or of the rules, regulations, orders, decisions or requirements of the commission made pursuant thereto.

(3) Upon the request of the commission, the Attorney General or the district attorney of the proper county shall aid in any investigation, hearing or trial, and shall institute and prosecute all necessary suits, actions or proceedings for the enforcement of those laws and ordinances referred to in subsection (1) of this section.

(4) Any forfeiture or penalty provided for in any law administered by the commission shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction. [Amended by 1971 c.655 §23; 1973 c.776 §24; 1987 c.447 §84; 1995 c.733 §61]

756.170 [Repealed by 1971 c.655 §250]

756.180 Enforcing utility laws. (1) Whenever it appears to the Public Utility Commission that any public utility or telecommunications utility or any other person subject to the jurisdiction of the commission is engaged or about to engage in any acts or practices which constitute a violation of any statute administered by the commission, or any rule, regulation, requirement, order, term or condition issued thereunder, the commission may apply to any circuit court of the state where such public utility or telecommunications utility or other person subject to the jurisdiction of the commission operates for the enforcement of such statute, rule, regulation, requirement, order, term or condition.

(2) Such court, without bond, has jurisdiction to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such public utility or telecommunications utility or any other person subject to the jurisdiction of the commission, or its officers, agents, employees and representatives from further violations of such statute, rule, regulation, requirement, order, term or condition, and enjoining upon them obedience thereto.

(3) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in any statute administered by the commission. [Amended by 1971 c.655 §24; 1973 c.232 §5; 1973 c.776 §25; 1987 c.447 §85; 1995 c.733 §62]

756.185 Right to recover for wrongs and omissions; treble damages. (1) Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If the party seeking damages alleges and proves that the wrong or omission was the result of gross negligence or willful misconduct, the public utility is liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(4) This section does not apply with respect to the liability of any public utility for personal injury or property damage. [Formerly 757.335; 1973 c.776 §26; 1981 c.856 §1; 1981 c.897 §104a; 1987 c.447 §86; 1989 c.827 §1; 1995 c.696 §48; 1995 c.733 §63]

756.190 [Repealed by 1971 c.655 §250]

756.200 Effect of utility laws on common law and other statutory rights of action, duties and liabilities. (1) The remedies and enforcement procedures provided in ORS chapters 756, 757, 758 and 759 do not release or waive any right of action by the state or by any person for any right, penalty or forfeiture which may arise under any law of this state or under an ordinance of any municipality thereof.

(2) All penalties and forfeiture accruing under said statutes and ordinances are cumulative and a suit for and recovery of one, shall not be a bar to the recovery of any other penalty.

(3) The duties and liabilities of the public utilities or telecommunications utilities shall be the same as are prescribed by the common law, and the remedies against them the same, except where otherwise provided by the Constitution or statutes of this state, and the provisions of ORS chapters 756, 757, 758 and 759 are cumulative thereto. [Formerly 760.045; 1973 c.776 §27; 1987 c.447 §87; 1995 c.733 §64]

FUNDS AND FEES

756.305 Public Utility Commission Account. (1) There hereby is established in the General Fund an account to be known as the Public Utility Commission Account. Except as limited by ORS 756.360, all moneys, without regard to their sources, credited to the Public Utility Commission Account hereby are appropriated continuously to the Public Utility Commission for the payment of any and all of the expenses of the Public Utility Commission.

(2) The Public Utility Commission shall keep a record of all moneys deposited in the Public Utility Commission Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [1957 c.459 §1; 1971 c.655 §27; 1997 c.249 §220]

756.310 Annual fees payable by utilities and telecommunications providers.

(1) Subject to the provisions of subsections (3) and (4) of this section, each public utility and telecommunications provider shall pay a fee to the Public Utility Commission in each calendar year. The amount of the fee shall equal the amount that the commission finds and determines to be necessary, together with the amount of all other fees paid or payable to the commission by such public utilities and telecommunications providers in the current calendar year, to defray the costs of performing the duties imposed by law upon the commission with respect to the public utilities and telecommunications providers, and to pay those amounts as may be necessary to obtain matching funds to implement the program referred to in ORS 824.058.

(2) In each calendar year the percentage rate of the fee required to be paid by public utilities shall be determined by orders entered by the commission on or after March 1 of each year. Notice of the orders shall be given to each utility. The utility shall pay to the commission the fee or portion thereof so computed upon the date specified in the notice. The date of payment shall be at least 15 days after the date of mailing of the notice.

(3) The fee payable under subsection (1) of this section by each public utility may not be less than \$10, or more than twenty-five hundredths of one percent of the utility's gross operating revenues derived within this state in the preceding calendar year. For the purpose of this subsection, the gross operating revenues of an electric company do not include revenues from sales of power for resale to the extent that the revenues from those sales exceed an amount equal to 25 percent of the total revenues received by the electric company from sales of electricity to end users in the preceding calendar year.

(4)(a) For a telecommunications provider, the fee payable under subsection (1) of this section shall be a percentage amount not to exceed twenty-five hundredths of one percent of the provider's gross retail intrastate revenue for each calendar year, but may not be less than \$100. The percentage amount shall be determined by order of the commission not less than 60 days prior to the calendar year upon which the fee is based. The fee shall be payable to the commission not later than April 1 of the year following that calendar year.

(b) A telecommunications provider shall collect the fee payable under subsection (1) of this section by charging an apportioned amount to each of the provider's retail customers. The amount of the charge shall be described on the retail customer's bill in a manner determined by the provider.

(c) In the event a telecommunications utility has an approved rate that includes the fee required under subsection (1) of this section and separately charges retail customers for the fee described in this section, at the time the utility begins collecting the charge the utility shall file with the commission a rate schedule reducing rates in an amount projected to equal the amount separately charged to customers.

(5) The commission may use any of its investigatory and enforcement powers provided under this chapter for the purpose of administering and enforcing the provisions of this section.

(6) As used in this section:

(a) "Electric company" means any entity that is a public utility under ORS 757.005 that is engaged in the business of distributing electricity to retail electric customers in Oregon.

(b) "Retail customer" does not include a purchaser of intrastate telecommunications services who is a telecommunications provider, telecommunications cooperative, inter-exchange carrier or radio common carrier.

(c) "Telecommunications provider" means any entity that is a telecommunications utility or a competitive telecommunications provider as defined in ORS 759.005. [Amended by 1953 c.10 §2; 1957 c.464 §1; 1959 c.355 §1; 1961 c.109 §1; 1963 c.89 §1; 1971 c.132 §1; 1973 c.170 §1; 1975 c.127 §1; 1985 c.293 §1; 1987 c.439 §1; 1987 c.447 §88; 1991 c.841 §2; 1995 c.733 §65; 1997 c.826 §8; 1999 c.339 §1; 2007 c.245 §1]

756.315 [1989 c.1041 §2; repealed by 1991 c.841 §4]

756.320 Statements accompanying fees; audit and refunding by commission.

Payment of each fee or portion thereof provided for in ORS 756.310 shall be accompanied by a statement verified by the public utility or telecommunications provider involved, showing the basis upon which the fee or portion thereof is computed. This statement shall be in such form and detail as the Public Utility Commission shall prescribe and shall be subject to audit by the commission. The commission may refund any overpayment of any such fee in the same manner as other claims and expenses of the commission are payable as provided by law. [Amended by 1987 c.447 §89; 1995 c.733 §66; 1997 c.826 §9; 1999 c.339 §2]

756.325 Distribution of information filed with commission; fees; rules.

(1) The Public Utility Commission may by rule prescribe for the free distribution for public information or educational purposes or applicable charge for any blank forms, transcript, document, order, statistical data or publication prepared by and on file in the office of the commission. In no event shall the fee exceed the cost of preparing, reproducing and distributing such blank forms,

transcript, document, order, statistical data or publication.

(2) In the ordinary course of distribution, no fee shall be charged or collected for copies of published documents furnished to public officers for use in their official capacity, or for annual reports of the commission. [1971 c.655 §28]

756.330 [Amended by 1965 c.288 §1; repealed by 1971 c.655 §250]

756.340 [Repealed by 1971 c.655 §250]

756.350 Penalty for failure to pay fees; action to collect unpaid fees and penalties. Every person who fails to pay any fees provided for in ORS 756.310 or 756.320 after they are due and payable shall, in addition to such fees, pay a penalty of two percent of such fees for each and every month or fraction thereof that they remain unpaid. If, in the judgment of the Public Utility Commission, action is necessary to collect any unpaid fees or penalties, the commission shall bring such action or take such proceedings as may be necessary thereon in the name of the State of Oregon in any court of competent jurisdiction, and be entitled to recover all costs and disbursements incurred therein. [Amended by 1971 c.655 §29]

756.360 Disposal and use of fees and penalties collected. All fees, fines, penalties and other moneys collected by the Public Utility Commission under ORS 756.310, 756.320, 756.350, 758.015, 758.400 to 758.475 and ORS chapter 759 shall be paid by the commission into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility Commission Account and the fees, fines, penalties and other moneys collected from:

(1) Public utilities shall be used only for the purpose of paying the expenses of the commission in performing the duties imposed by law upon the commission in respect to utilities, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs.

(2) Telecommunications providers shall be used only for the purpose of paying the expenses of the commission in performing the duties imposed by law upon the commission in respect to telecommunications providers, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs. [Amended by 1957 c.459 §7; 1967 c.164 §3; 1971 c.655 §30; 1973 c.776 §28; 1974 c.59 §1; 1987 c.447 §90; 1995 c.733 §67; 1999 c.339 §3]

756.370 [Formerly 757.065; repealed by 1983 c.40 §1]

756.375 [Formerly 757.070; repealed by 1983 c.40 §1]

756.380 [Formerly 757.080; 1995 c.306 §42; renumbered 823.071 in 1995]

756.385 [Formerly 757.085; 1995 c.733 §67a; renumbered 823.073 in 1995]

756.390 [Formerly 757.090; 1983 c.78 §1; 1995 c.733 §67b; renumbered 823.075 in 1995]

756.400 [1971 c.655 §31; repealed by 1983 c.540 §10]

756.410 [1971 c.655 §32; 1977 c.253 §1; repealed by 1983 c.540 §10]

756.420 [1971 c.655 §33; repealed by 1983 c.540 §10]

756.430 [1971 c.655 §34; repealed by 1983 c.540 §10]

756.440 [1971 c.655 §35; repealed by 1983 c.540 §10]

DECLARATORY RULINGS

756.450 Declaratory rulings. On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission. A declaratory ruling is binding between the commission and the petitioner on the state of facts alleged, unless it is modified, remanded or set aside by a court. However, the commission may review the ruling and modify or set it aside if requested by the petitioner or other party to the proceeding. Binding rulings provided by this section are subject to judicial review as orders in contested cases in the manner provided by ORS 756.610. [1971 c.655 §36; 2005 c.638 §2]

COMPLAINT AND INVESTIGATION PROCEDURE

756.500 Complaint; persons entitled to file; contents; amendments. (1) Any person may file a complaint before the Public Utility Commission, or the commission may, on the commission's own initiative, file such complaint. The complaint shall be against any person whose business or activities are regulated by some one or more of the statutes, jurisdiction for the enforcement or regulation of which is conferred upon the commission. The person filing the complaint shall be known as the complainant and the person against whom the complaint is filed shall be known as the defendant.

(2) It is not necessary that a complainant have a pecuniary interest in the matter in controversy or in the matter complained of, but the commission shall not grant any order of reparation to any person not a party to the proceedings in which such reparation order is made.

(3) The complaint shall state all grounds of complaint on which the complainant seeks relief or the violation of any law claimed to have been committed by the defendant, and the prayer of the complaint shall pray for the relief to which the complainant claims the complainant is entitled.

(4) The complaint may, at any time before the completion of taking of evidence, be amended by order of the commission. However, if a charge not contained in the original complaint or a prior amended complaint is sought to be made by any such amendment, the defendant shall be given a reasonable time to investigate the new charge and answer the amended complaint. The final hearing shall, if necessary, be continued until some date after the defendant has had a reasonable time to investigate and be prepared to meet the amended complaint.

(5) Notwithstanding subsection (1) of this section, any public utility or telecommunications utility may make complaint as to any matter affecting its own rates or service with like effect as though made by any other person, by filing an application, petition or complaint with the commission. [Formerly 756.520; 1987 c.447 §91; 1995 c.733 §68]

756.505 [Repealed by 1971 c.655 §250]

756.510 [Amended by 1971 c.655 §40; renumbered 756.518]

756.512 Notice of complaint to defendant; responsive pleadings; setting cause for hearing. (1) The Public Utility Commission shall serve a copy of the complaint upon the defendant, and shall give the defendant at least 10 days within which to respond to the complaint. Within the time so fixed, or such further time as the commission shall fix, the defendant shall file an answer to the complaint, taking issue on such parts of the complaint as the defendant desires and setting forth such additional matter as shall be pertinent to the matter in controversy. Such additional matter shall be deemed denied without the filing of any other pleading by the complainant. After the filing of the answer the commission shall set the matter for hearing, giving the defendant at least 10 days' written notice of the time and place of the hearing, unless the commission for good reason stated in the notice, fixes a shorter time. Amendment of any answer may be permitted by order of the commission.

(2) If the defendant fails to file a responsive pleading or otherwise appear within the time prescribed in subsection (1) of this section, or if the responsive pleading filed raises no issue of law or fact, the commission may act on the complaint without a hearing. [Formerly 756.530]

756.515 Investigations and hearings on commission's own motion; hearings for aggrieved persons. (1) Whenever the Public Utility Commission believes that any rate may be unreasonable or unjustly discriminatory, or that any service is unsafe or in-

adequate, or is not afforded, or that an investigation of any matter relating to any public utility or telecommunications utility or other person should be made, or relating to any person to determine if such person is subject to the commission's regulatory jurisdiction, the commission may on motion summarily investigate any such matter, with or without notice.

(2) If after making such investigation the commission is satisfied that sufficient grounds exist to warrant a hearing being ordered upon any such matter, the commission shall furnish any public utility or telecommunications utility or other person interested a statement notifying it of the matters under investigation, which statement shall be accompanied by a notice fixing the time and place for hearing upon such matters in the manner provided in ORS 756.512 for notice of complaint.

(3) Thereafter proceedings shall be had and conducted in reference to the matters investigated in like manner as though complaint had been filed with the commission relative thereto, and the same orders may be made in reference thereto as if such investigation had been made on complaint.

(4) The commission may, after making an investigation on the commission's motion, but without notice or hearing, make such findings and orders as the commission deems justified or required by the results of such investigation. Except as provided in subsections (5) and (6) of this section such findings and orders have the same legal force and effect as any other finding or order of the commission.

(5) In addition to any other remedy provided by law, any party aggrieved by an order entered pursuant to subsection (4) of this section may request the commission to hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the commission not later than 15 days after the date of service of the order, and the commission shall hold the hearing not later than 60 days after receipt of such a request for hearing.

(6) If the commission receives a request for hearing pursuant to subsection (5) of this section, the order is suspended pending the outcome of the hearing unless the commission finds that the order is necessary for the public health or safety or to prevent the dissipation of assets of a business or activity subject to the commission's regulatory jurisdiction. [Formerly 757.515; 1973 c.776 §29; 1975 c.318 §1; 1983 c.703 §18; 1987 c.447 §92; 1995 c.733 §69]

HEARING PROCEDURE

756.518 Procedures applicable to all matters before commission; oral hearing; rules. (1) Except as otherwise provided the provisions of ORS 756.500 to 756.610 apply to and govern all hearings upon any matter or issue coming before the Public Utility Commission under any statute administered by the commission, whether instituted on the application, petition or complaint of others or initiated by the commission, together with the orders of the commission therein and the review thereof in the courts.

(2) Upon request of any party in a major proceeding before the commission, the commission shall afford the parties an opportunity for oral argument before a final order is issued. There must be a quorum of the commission present at the time the oral argument is made. The commission shall adopt rules that establish criteria for determining which proceedings give rise to a right to oral argument under this subsection. In addition, the commission may adopt rules governing participation in oral arguments, cross-examination of witnesses, draft or proposed orders or such other matters as the commission deems appropriate. [Formerly 756.510; 2001 c.558 §3]

756.519 [1977 c.424 §2; 1985 c.59 §1; repealed by 1995 c.733 §74]

756.520 [Amended by 1971 c.655 §37; renumbered 756.500]

756.521 Public hearings; record required; furnishing transcripts. All hearings shall be open to the public and may be had before the Public Utility Commission, an examiner or any other person authorized to hold such hearing. A full record thereof shall be kept. However, it shall not be necessary to transcribe testimony unless requested. For purposes of rehearing or reconsideration under ORS 756.561, a transcription shall be made at the commission's expense, and copies of such transcription shall be supplied to the parties, at cost. A copy of the transcript shall be supplied to a party without cost upon the filing with the commission of a satisfactory affidavit of indigency. [1971 c.655 §41; 2005 c.638 §3]

756.525 Parties to proceedings. (1) The Public Utility Commission may permit any person to become a party who might, on the institution of the proceeding, have been such a party, if application therefor is made before the final taking of evidence in the proceeding.

(2) At any time before the final taking of evidence in a proceeding, any person may apply to the commission for permission to appear and participate in the proceeding. The commission shall determine the interest of

the applicant in the proceeding and shall grant the application, subject to appropriate conditions, if the commission determines that such appearance and participation will not unreasonably broaden the issues or burden the record, and otherwise may deny the application.

(3) This section does not apply to any person who might have been an original party in a proceeding before the commission if that person is required by statute to file a pleading or other response in the proceeding within a specified time. [1971 c.655 §42]

756.528 Segregation of issues. At any time before the conclusion of the taking of evidence in a proceeding, the Public Utility Commission may segregate the issues involved and order separate hearings thereon at such times and places as the commission may prescribe. [1971 c.655 §43; 2005 c.638 §4]

756.530 [Amended by 1971 c.655 §38; renumbered 756.512]

756.534 Place of hearings; continuation. Except as provided in ORS 756.040 (4), the hearing may be held at any place designated by the Public Utility Commission within this state, or different parts of the hearing may be held at different places in this state, as shall be designated by the commission. The hearing may be continued from time to time and place to place as ordered and fixed by the commission. [Formerly 756.560]

756.538 Taking and use of depositions; rules. (1) In any investigation, the Public Utility Commission may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use in the investigation.

(2) In any proceeding requiring a hearing, the commission or any party to the proceeding may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes.

(3) Depositions may be taken within or without the State of Oregon by the commission, or any other person authorized to administer oaths, in accordance with procedures prescribed by the rules of the commission.

(4) The commission shall promulgate rules concerning the manner of applying for and taking depositions and the use thereof. Such rules shall provide reasonable provisions against abuse of such procedure and for protection of the rights of all persons affected. [1971 c.655 §45]

756.540 [Repealed by 1971 c.655 §250]

756.543 Issuance of subpoenas; failure to comply. (1) The Public Utility Commission shall issue subpoenas to any party to a proceeding before the commission upon request and proper showing of the general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or their officers or employees, or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the commission certifies that the testimony of a witness was relevant and material, any person who paid fees and mileage to that witness shall be reimbursed by the commission and from moneys referred to in ORS 756.360, subject to the limitations provided in ORS 756.360.

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the person may be lawfully interrogated, the judge of the circuit court of any county, on the application of the commission, or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1971 c.655 §46; 1983 c.540 §2; 1987 c.980 §23; 1997 c.249 §221]

756.549 Self-incrimination of witnesses in commission proceedings. (1) No person shall be excused from testifying or from producing evidence in any proceeding held by the Public Utility Commission on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to prosecution, penalty or forfeiture if:

(a) The person has been directed by the commission to testify or produce evidence under oath;

(b) The person claims, at the time the person is directed by the commission to testify or produce evidence, that the testimony or evidence required of the person may tend to incriminate the person or subject the person to prosecution, penalty or forfeiture; and

(c) The commission specifically grants the person immunity from prosecution, penalty or forfeiture regarding those matters about which the person testifies or produces evidence as directed.

(2) Except for prosecution and punishment for perjury, no person who testifies or produces evidence in accordance with subsection (1) of this section shall be prosecuted or subjected to any penalty or forfeiture concerning any matter about which the person so testified or produced evidence. [1971 c.655 §47]

756.550 [Amended by 1957 c.599 §1; 1971 c.655 §50; renumbered 756.558]

756.552 Self-incrimination of witnesses in court proceedings. No person shall be excused from testifying or from producing books and papers in any court proceeding based upon or growing out of any violation of the provisions of ORS chapter 756, 757, 758, 759 or 825 or ORS 824.020 to 824.042, 824.050 to 824.110, 824.200 to 824.256 or 824.300 to 824.310 on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which the person may have testified or produced any documentary evidence. However, no person shall be exempted from prosecution or punishment for perjury while so testifying. The immunity conferred by this section shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. [Formerly 757.590; 1989 c.827 §2]

756.555 Powers of commission at hearings. The Public Utility Commission may administer oaths, certify to official acts, issue notices in the name of the commission, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony, and take and receive testimony, conduct hearings and investigations, whether upon complaint or upon the commission's own motion. [Formerly 757.555]

756.558 Taking of evidence; findings; issuance of orders; providing copies of orders. (1) At the conclusion of the taking of evidence, the Public Utility Commission shall declare the taking of evidence concluded. Thereafter no additional evidence shall be received except upon the order of the commission and a reasonable opportunity of the parties to examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.

(2) After the completion of the taking of evidence, and within a reasonable time, the commission shall prepare and enter findings of fact and conclusions of law upon the evidence received in the matter and shall make and enter the order of the commission thereon. The findings of fact and conclusions of law may be embodied in the same instrument with the order or may be embodied in a separate instrument. The findings of fact, conclusions of law and order thereon shall be signed by the commission. The order shall

state the date it becomes effective. A copy of the findings of fact and conclusions of law and a copy of the order shall, forthwith upon the entry of the same, be served upon each of the parties to the proceeding.

(3) Upon application of any person, the commission shall furnish certified copies, under the seal of any order made by the commission. [Formerly 756.550]

756.560 [Amended by 1971 c.655 §44; renumbered 756.534]

756.561 Rehearing; reconsideration. (1) After an order has been made by the Public Utility Commission in any proceeding, any party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of service of such order. The commission may grant such a rehearing or reconsideration if sufficient reason therefor is made to appear.

(2) No such application shall excuse any party against whom an order has been made by the commission from complying therewith, nor operate in any manner to stay or postpone the enforcement thereof without the special order of the commission.

(3) If a rehearing is granted, the proceedings thereupon shall conform as nearly as possible to the proceedings in an original hearing, except as the commission otherwise may direct. If in the judgment of the commission, after such rehearing and the consideration of all facts, including those arising since the former hearing, the original order is in any respect unjust or unwarranted, the commission may reverse, change or modify the same accordingly. Any order made after such rehearing, reversing, changing or modifying the original determination is subject to the same provisions as an original order. [Formerly 756.570]

756.565 Prima facie effect of commission actions. All rates, tariffs, classifications, regulations, practices and service fixed, approved or prescribed by the Public Utility Commission and any order made or entered upon any matter within the jurisdiction of the commission shall be in force and shall be prima facie lawful and reasonable, until found otherwise in a proceeding brought for that purpose under ORS 756.610. [Formerly 760.575; 2005 c.638 §5]

756.568 Rescission, suspension and amendment of orders. The Public Utility Commission may at any time, upon notice to the public utility or telecommunications utility and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by the commission. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders. [Formerly 757.540; 1973 c.776 §30; 1987 c.447 §92a; 1995 c.733 §70]

756.570 [Amended by 1971 c.655 §51; renumbered 756.561]

756.572 Effect of orders on successors in interest. (1) An order of the Public Utility Commission issued in accordance with the provisions of ORS chapters 756, 757, 758 and 759 is binding upon the successors in interest of each person affected thereby, until set aside, rescinded, suspended or modified as provided by law.

(2) Any investigation, hearing or other proceeding involving the issuance of an order of the commission that has not been finally determined when a transfer of any interests of a person is effected may be continued and finally determined, notwithstanding any such transfer of interest. Any order issued in such investigation, hearing or other proceeding is binding upon the successors in interest. [1971 c.655 §54; 1973 c.776 §31; 1987 c.447 §93; 1995 c.733 §71]

756.575 Notice of acceptance of terms of orders. The Public Utility Commission may provide by rule that any public utility or telecommunications utility affected by any order shall within a time to be fixed by the commission, notify the commission whether the terms of the order are accepted and will be obeyed. [1971 c.655 §55; 1973 c.776 §32; 1987 c.447 §94; 1995 c.733 §72]

756.580 [Amended by 1971 c.655 §56; repealed by 2005 c.638 §21]

756.585 [1971 c.655 §57; repealed by 2005 c.638 §21]

756.590 [Amended by 1971 c.655 §58; 1995 c.781 §46; repealed by 2005 c.638 §21]

756.594 [1971 c.655 §59; repealed by 2005 c.638 §21]

756.598 [1971 c.655 §60; 1979 c.284 §197; repealed by 2005 c.638 §21]

756.600 [Amended by 1971 c.655 §61; 2003 c.576 §558; repealed by 2005 c.638 §21]

756.610 Judicial review. (1) Except as provided in subsection (2) of this section, final orders of the Public Utility Commission are subject to judicial review as orders in contested cases under the provisions of ORS 183.480 to 183.497.

(2) ORS 183.482 (3) does not apply to judicial review of an order of the Public Utility Commission. At any time after filing a petition for judicial review of a final order of the commission, the petitioner may apply to the Court of Appeals for a stay of the order until the final disposition of the appeal. The court may grant a stay for cause shown. As a condition of granting a stay, the court may require a bond or other security, or impose such other conditions as the court deems appropriate. A stay may be granted only after notice to the commission and opportunity for hearing. Any bond required by the court must be executed in favor of the commission for the benefit of interested persons, and may be enforced by the commission or by any in-

terested person. [Amended by 1971 c.655 §62; 2003 c.576 §559; 2005 c.638 §6]

Note: Section 20 (2), chapter 638, Oregon Laws 2005, provides:

Sec. 20. (2) Notwithstanding the repeal of ORS 756.580, 756.585, 756.590, 756.594, 756.598 and 756.600 by section 21 of this 2005 Act and the amendments to ORS 756.610 by section 6 of this 2005 Act, any findings of fact, conclusions of law or order that becomes subject to suit under ORS 756.580 (repealed by this 2005 Act) before the effective date of this 2005 Act [January 1, 2006] shall be governed by ORS 756.580, 756.585, 756.590, 756.594, 756.598 and 756.600 as though those sections had not been repealed by this 2005 Act and ORS 756.610 as though ORS 756.610 had not been amended by this 2005 Act. [2005 c.638 §20(2)]

PENALTIES

756.990 Penalties. (1) Any public utility or telecommunications utility that fails to comply with an order or subpoena issued pursuant to ORS 756.090 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more than \$500.

(2) Except where a penalty is otherwise provided by law, any public utility, telecommunications utility or other person subject to the jurisdiction of the Public Utility Commission shall forfeit a sum of not less than \$100 nor more than \$10,000 for each time that the person:

(a) Violates any statute administered by the commission;

(b) Does any act prohibited, or fails to perform any duty enjoined upon the person;

(c) Fails to obey any lawful requirement or order made by the commission; or

(d) Fails to obey any judgment made by any court upon the application of the commission.

(3) Violation of ORS 756.115 is a Class A violation. A penalty of not less than \$500 nor more than \$1,000 shall be recovered from the public utility or telecommunications utility for each such offense when such officer, agent or employee acted in obedience to the

direction, instruction or request of the public utility, telecommunications utility or any general officer thereof.

(4) Violation of ORS 756.125 is punishable, upon conviction, by a fine of not more than \$100 or imprisonment for not more than 30 days, or both. Any public utility or telecommunications utility that knowingly permits the violation of ORS 756.125 shall forfeit, upon conviction, not more than \$1,000 for each offense.

(5) Violation of ORS 756.543 (1) is punishable, upon conviction, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for not more than one year, or both.

(6) In construing and enforcing this section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility, telecommunications utility or other person subject to the jurisdiction of the commission acting within the scope of the person's employment shall in every case be deemed to be the act, omission or failure of such public utility, telecommunications utility or other person subject to the jurisdiction of the commission. With respect to any violation of any statute administered by the commission, any penalty provision applying to such a violation by a public utility or telecommunications utility shall apply to such a violation by any other person.

(7) Except when provided by law that a penalty, fine, forfeiture or other sum be paid to the aggrieved party, or as provided in ORS 757.994 (1), all penalties, fines or forfeitures or other sums collected or paid under the provisions of any law administered by the commission shall be paid into the General Fund and credited to the Public Utility Commission Account. [1971 c.655 §63; 1973 c.232 §4; 1973 c.776 §33; 1977 c.105 §1; 1979 c.415 §1; 1987 c.447 §95; 1995 c.733 §73; 1999 c.1051 §223; 2003 c.202 §9; 2003 c.576 §560]

Chapter 757

2007 EDITION

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GENERAL PROVISIONS

757.005 Definitions. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, “public utility” means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals, which is party to an oral or written agreement for the payment by a public utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the public utility.

(b) As used in this chapter, “public utility” does not include:

(A) Any plant owned or operated by a municipality.

(B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality where there is no municipal or public utility plant to furnish the same.

(C) Any corporation, company, individual or association of individuals providing heat, light or power:

(i) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(ii) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(iii) From solar or wind resources to any number of customers; or

(iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to 758.555.

(E) Any person furnishing heat, but not delivering electricity or natural gas to its customers, except:

(i) As provided in ORS 757.007 and 757.009; or

(ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally owned system that was fur-

nishing steam or other thermal forms of heat to its customers.

(F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership, individual or association of individuals furnishing heat to a single thermal end user from an electric generating facility, plant or equipment that is physically interconnected with the single thermal end user.

(G) Any corporation, company, partnership, individual or association of individuals that furnishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any number of customers for use in motor vehicles and does not furnish any utility service described in paragraph (a) of this subsection.

(H) An electricity service supplier, as defined in ORS 757.600.

(2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer. [Amended by 1953 c.583 §2; 1967 c.241 §1; 1967 c.314 §1; 1971 c.655 §64a; 1973 c.726 §1; 1979 c.62 §1; 1981 c.360 §1; 1981 c.749 §21; 1983 c.118 §1; 1983 c.799 §7; 1985 c.550 §1; 1985 c.633 §7; 1985 c.779 §1; 1987 c.447 §96; 1987 c.900 §3; 1989 c.5 §2; 1989 c.999 §§1,2; 1991 c.294 §1; 1995 c.267 §1; 1999 c.330 §2; 1999 c.491 §1; 1999 c.865 §21; 2001 c.104 §292; 2003 c.82 §4]

757.007 Contract and rate schedule filing for certain furnishers of heat exempt from regulation; procedure. (1) Every person exempt from regulation under ORS 757.005 (1)(b)(E) shall file with the Public Utility Commission, not later than 30 days prior to their effective date, all contracts and schedules establishing rates, terms and conditions for the provision of heating services.

(2) Prior to the effective date, the commission may suspend the effective date of such contracts or schedules for an additional period of not more than 120 days in order to determine the reasonableness of such contracts or schedules, taking into consideration the services being provided, the costs and risks of service, the availability and costs of alternative forms of service and other reasonable considerations, including the impact on existing customers of the utilities furnishing electricity and natural gas and on the public generally.

(3) If the contract or schedule is not suspended, or if the contract or schedule is determined reasonable by the commission after suspension, the contract or schedule shall not be subject to further commission review during its term or such other period as the commission may specify, except as provided in ORS 757.009.

(4) In any proceeding before the commission to determine the reasonableness of con-

tracts or schedules proposed under this section, the burden shall be upon the proponent of the contract or schedule to establish its reasonableness. [1989 c.999 §§4a,4c; 2003 c.82 §5]

757.009 Procedure for reregulation of furnishers of heat. (1) Except as provided in subsection (2) of this section, the Public Utility Commission may, upon written complaint or upon the commission's own motion, regulate, under ORS 757.205 to 757.240, or any part thereof, any person otherwise exempt from regulation under ORS 757.005 (1)(b)(E) as follows:

(a) With respect to any or all customers, if the commission finds that the activities of such person have an adverse effect upon the customers of public utilities furnishing electricity or natural gas and the benefits of such regulation outweigh any adverse effect on the public generally; or

(b) With respect to any customer receiving service not exceeding 500 million British thermal units per year or any residential customer, if the commission finds that such person has engaged in unjust or unreasonable practices with respect to the services or rates available to the customer and the customer has no reasonable alternative to the services provided.

(2) The commission shall not regulate persons under subsection (1)(a) of this section with respect to contracts that became effective prior to the date of service of the complaint or with respect to heating systems already in place on the date of service of the complaint if the commission determines that continued expansion will increase the efficiency of those systems. [1989 c.999 §§4b,4d; 2003 c.82 §6]

757.010 [Repealed by 1971 c.655 §250]

757.015 "Affiliated interest" defined. As used in ORS 757.105 (1) and in ORS 757.495, "affiliated interest" with a public utility means:

(1) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility.

(2) Every corporation and person in any chain of successive ownership of five percent or more of voting securities of such public utility.

(3) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(4) Every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of such public utility.

(5) Every corporation which has two or more officers or two or more directors in common with such public utility.

(6) Every corporation and person, five percent or more of which is directly or indirectly owned by a public utility.

(7) Every corporation or person which the Public Utility Commission determines as a matter of fact after investigation and hearing actually is exercising any substantial influence over the policies and actions of such public utility, even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(8) Every person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of such public utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated. [Amended by 1971 c.655 §65; 1989 c.17 §1]

757.020 Duty of utilities to furnish adequate and safe service at reasonable rates. Every public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited. [Amended by 1971 c.655 §66]

757.025 [Amended by 1971 c.655 §14; renumbered 756.062]

757.030 [Repealed by 1971 c.655 §250]

757.035 Adoption of safety rules and regulations; enforcement. (1) The Public Utility Commission has power, after a hearing had upon the motion of the commission or upon complaint, to require by general or special orders embodying reasonable rules or regulations, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of telegraph, telephone, signal or power lines within this state, upon the public streets or highways, and also upon all other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every line, plant, system, equipment or appara-

tus in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health or safety of all employees, customers or the public.

(2) When acting pursuant to subsection (1) of this section, the Public Utility Commission shall adopt by rule as the standard of such construction, operation and maintenance the 1973 edition of the American National Standard, National Electrical Safety Code, C2.

(3) In lieu of subsection (2) of this section, or in addition thereto, the commission may adopt by rule any revision or edition of or amendment to the National Electrical Safety Code approved by the American National Standards Institute after July 14, 1977, and in effect on the date of adoption by the commission. [Amended by 1969 c.530 §1; 1971 c.655 §68; 1975 c.658 §1; 1977 c.346 §1]

757.039 Regulation of hazardous substance distribution and storage operations; cooperation with federal agencies; disclosure of reports and information. (1) As used in this section, "hazardous substance or material" means:

(a) Fuel gas, whether in a gaseous, liquid or semisolid state;

(b) Petroleum or petroleum products; and

(c) Any other substance or material which may pose an unreasonable risk to life or property when transported by pipeline facilities.

(2) The Public Utility Commission has power, after a hearing had upon the commission's own motion or upon complaint, to require by general or special orders embodying reasonable rules, every person or municipality, their agents, lessees or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of a hazardous substance or material by pipeline; or of facilities for the storage or treatment of a hazardous substance or material to be transmitted or distributed by pipeline or upon the public streets or highways; or of any other premises used, whether leased, owned or controlled by them, to construct, maintain and operate every pipeline, plant, system, equipment or apparatus used in the transmission, distribution, storage or treatment of a haz-

ardous substance or material to be transmitted by pipeline or upon the public streets or highways in such manner as to protect and safeguard the health and safety of all employees, customers and the public, and to this end to adopt and prescribe the installation, use, maintenance and operation of appropriate safety or other devices, or appliances, to establish or adopt standards of construction or equipment, and to require the performance of any other act which seems to the commission necessary or proper for the protection of the health and safety of all employees, customers or the public.

(3) The commission is authorized to cooperate with, make certifications to and enter into agreements with the Secretary of Transportation of the United States of America and to assume responsibility for, and carry out on behalf of the Secretary of Transportation, safety jurisdiction relating to pipeline facilities and transportation of hazardous substances and materials in Oregon in any manner not otherwise subject to the jurisdiction of any other agency of this state.

(4) Notwithstanding any other provisions to the contrary, the commission shall make public such reports as are required to be made public under applicable federal law and regulations and provide such information as is required by the Secretary of Transportation.

(5) The jurisdiction of the commission over propane, butane or mixtures of these gases shall be limited to systems transporting such gases to 10 or more customers, or to systems any portion of which is located in a public place. [Formerly 757.095; 1983 c.540 §3; 2001 c.35 §1]

757.040 [Amended by 1971 c.655 §101; renumbered 758.035]

757.045 [Amended by 1967 c.394 §1; repealed by 1971 c.781 §1]

757.050 Authority of commission to order extension of service to unserved areas. The Public Utility Commission has power to require any public utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and service. However, no such extension of service shall be required until the public utility has been granted such reasonable franchises as may be necessary for the extension of service, and unless the conditions are such as to reasonably justify the necessary investment by the public utility in extending its line, plant or system into such locality and furnishing such service. [Amended by 1971 c.655 §67]

757.055 [Repealed by 1971 c.655 §250]

757.056 Information on energy conservation to be furnished by certain utilities; rules.

(1) As used in this section, "energy conservation services" means services provided by public utilities to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) All public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such rules as the Public Utility Commission may prescribe. [1977 c.197 §2; 1977 c.887 §11]

757.060 [Amended by 1955 c.145 §1; repealed by 1961 c.691 §20]

757.061 Regulation of water utilities; rules. (1) For the purposes of this section, "financial regulation" means regulation under ORS 757.105 to 757.110, 757.135, 757.140, 757.205 to 757.220, 757.400 to 757.460 and 757.480 to 757.495.

(2) Except as provided in this section, water utilities that serve fewer than 500 customers are not subject to regulation under this chapter or required to pay the fee provided for in ORS 756.310.

(3) A water utility that serves fewer than 500 customers and that provides wastewater services to the public inside the boundaries of a city is subject to regulation under this chapter and must pay the fee provided for in ORS 756.310.

(4) A water utility that serves fewer than 500 customers and that is found by the Public Utility Commission to have provided inadequate or discriminatory service at any time is thereafter subject to regulation under this chapter and must pay the fee provided for in ORS 756.310.

(5) A water utility that serves fewer than 500 customers and that at any time charges an average annual residential rate of \$18 per month or more is thereafter subject to regulation under this chapter, other than financial regulation, and must pay the fee provided for in ORS 756.310.

(6) A water utility that serves fewer than 500 customers is subject to financial regulation under this chapter, and must pay the fee provided for in ORS 756.310, if:

(a) The Public Utility Commission grants a petition from a water utility requesting

that the water utility be subject to financial regulation; or

(b) The water utility charges a rate for water service that exceeds a maximum rate established by the commission under subsection (7) of this section and 20 percent or more of the customers of the water utility file a petition with the commission requesting that the water utility be subject to financial regulation under this chapter.

(7) The commission shall adopt rules establishing maximum rates for water utilities serving fewer than 500 customers for the purpose of determining whether a petition may be filed under subsection (6)(b) of this section.

(8) Not less than 60 days before a water utility that serves fewer than 500 customers increases any rate to exceed any maximum rate prescribed under subsection (7) of this section, the water utility shall provide written notice to all of its customers advising the customers of their right to file a petition under subsection (6)(b) of this section. The commission shall adopt rules prescribing the content of the written notice. [1989 c.403 §2; 1999 c.330 §1; 2003 c.82 §1]

757.063 Regulation of associations furnishing water upon petition. (1) Any association of individuals that furnishes water to members of the association is subject to regulation in the same manner as provided by this chapter for public utilities, and must pay the fee provided for in ORS 756.310, if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation.

(2) The provisions of this section apply to an association of individuals even if the association does not furnish water directly to or for the public. The provisions of this section do not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109. [2003 c.82 §3]

757.065 [Renumbered 756.370]

757.068 Use of fees to make emergency repairs to water service plants. (1) In each biennium the Public Utility Commission may use not more than \$5,000 of the fees collected under ORS 756.310 to make emergency repairs to the plants of public utilities providing water service. The commission may expend moneys under the provisions of this section only if the commission determines that:

(a) Customers of the utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The commission shall attempt to recover fees used under this section from the utility providing water service. The commission may also recover a penalty as provided in ORS 756.350 from the time the fees are expended. [2003 c.202 §8]

757.069 Notice of delinquency on water bill. (1) If a customer of a water utility fails to pay a water bill for more than 120 days after the bill becomes due, the water utility shall mail notice of the delinquency to the persons who are listed as the owners of the property in the real property tax records for the county only if the utility asserts that the property owners are responsible for the bill. The notice must be mailed to the addresses of the owners as reflected in the real property tax records.

(2) The provisions of this section apply to water utilities operated by public utilities, municipalities, cooperatives and unincorporated associations. [2005 c.168 §2; 2007 c.211 §1]

757.070 [Renumbered 756.375]

757.072 Agreements for financial assistance to organizations representing customer interests; rules. (1) A public utility providing electricity or natural gas may enter into a written agreement with an organization that represents broad customer interests in regulatory proceedings conducted by the Public Utility Commission relating to public utilities that provide electricity or natural gas. The agreement shall govern the manner in which financial assistance may be provided to the organization. The agreement may provide for financial assistance to other organizations found by the commission to be qualified under subsection (2) of this section. More than one public utility or organization may join in a single agreement. Any agreement entered into under this section must be approved by the commission before any financial assistance is provided under the agreement.

(2) Financial assistance under an agreement entered into under this section may be provided only to organizations that represent broad customer interests in regulatory proceedings before the commission relating to public utilities that provide electricity or natural gas. The commission by rule shall establish such qualifications as the commission deems appropriate for determining which organizations are eligible for financial assistance under an agreement entered into under this section.

(3) In administering an agreement entered into under this section, the commission by rule or order may determine:

(a) The amount of financial assistance that may be provided to any organization;

(b) The manner in which the financial assistance will be distributed;

(c) The manner in which the financial assistance will be recovered in the rates of the public utility under subsection (4) of this section; and

(d) Other matters necessary to administer the agreement.

(4) The commission shall allow a public utility that provides financial assistance under this section to recover the amounts so provided in rates. The commission shall allow a public utility to defer inclusion of those amounts in rates as provided in ORS 757.259 if the public utility so elects. An agreement under this section may not provide for payment of any amounts to the commission. [2003 c.234 §2]

757.075 [Repealed by 1971 c.655 §250]

757.080 [1953 c.356 §1; 1961 c.354 §1; 1971 c.655 §30a; renumbered 756.380]

757.085 [1953 c.356 §2; 1961 c.354 §2; renumbered 756.385]

757.090 [1953 c.356 §3; 1961 c.354 §3; renumbered 756.390]

757.095 [1969 c.372 §2; 1971 c.655 §69; renumbered 757.039]

BUDGET, ACCOUNTS AND REPORTS OF UTILITIES

757.105 Filing of budget; review by commission; pensions as operating expenses. (1) The Public Utility Commission has the right and power of regulation, restriction and control over the budgets of expenditures of public utilities, as to all items covering:

(a) Proposed payment of salaries of executive officers;

(b) Donations;

(c) Political contributions and political advertising;

(d) Expenditures for pensions or for a trust to provide pensions for employees and officers;

(e) Other expenditures and major contracts for the sale or purchase of equipment; and

(f) Any payment or contemplated payment to any person or corporation having an affiliated interest for service, advice, auditing, associating, sponsoring, engineering, managing, operating, financing, legal or other services.

(2) On or before November 1 of each year each public utility shall prepare a budget showing the amount of money which, in its judgment, shall be needed during the ensuing

year for covering all such activities and expenditures, and file it with the commission.

(3) When any such budget has been filed with the commission, the commission shall examine into and investigate the same and unless rejected within 60 days thereafter, the proposed budget is presumptively fair and reasonable and not contrary to public interest.

(4) Proposed expenditures for pensions or for a trust to provide pensions for the employees and officers of such utility whether for future service or past service or both, shall be recognized as an operating expense if the trust fund is irrevocably committed to the payment of pensions or benefits to employees and if such pensions are reasonable and nondiscriminatory. The commission may disallow as an operating expense any expenditure for pension purposes in excess of the amount necessary and proper to maintain an actuarially sound retirement plan for the employees of the utility in Oregon. [Amended by 1957 c.593 §1; 1971 c.655 §82]

757.107 Supplemental budgets and orders. Adjustment and additions to such budget expenditures may be made from time to time during the year by filing supplementary budgets with the Public Utility Commission. The provisions of ORS 757.105 (3) apply to adjustments and additions to budgets. [Amended by 1971 c.655 §83]

757.110 Effect of budget orders. (1) Any finding and order made and entered by the Public Utility Commission under ORS 757.105 or 757.107 shall have the effect of prohibiting any unapproved or rejected expenditure from being recognized as an operating expense or capital expenditure in any rate valuation proceeding or in any proceeding or hearing unless and until the propriety thereof has been established to the satisfaction of the commission. Any such finding and order shall remain in full force and effect, unless and until it is modified or set aside by the commission or is set aside, modified or remanded in a proceeding for judicial review of an order in a contested case in the manner provided by ORS 756.610.

(2) Nothing in ORS 757.105 or 757.107 prevents the commission from at any time making and filing orders rejecting imprudent and unwise expenditures or payments. Such orders when so made shall be in full force and effect, and the public utility shall not have the right to make such expenditures or payments found to be imprudent or unwise until the order has been modified or set aside by the commission or is set aside, modified or remanded in a proceeding for judicial review of an order in a contested case in the manner provided by ORS 756.610. [Amended by 1971 c.655 §84; 2005 c.638 §7]

757.115 [Amended by 1971 c.655 §20; renumbered 756.105]

757.120 Accounts required. (1) Every public utility shall keep and render to the Public Utility Commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every public utility engaged directly or indirectly in any other business than that of a public utility shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the accounts and records of such other business. [Amended by 1971 c.655 §85]

757.125 Duty of utility to keep records and accounts; duty of commission to furnish blanks. (1) The Public Utility Commission shall prescribe the accounts and records required to be kept, and every public utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.

(2) No public utility shall keep any other accounts or records of its public utility business transacted than those prescribed or approved by the commission except such as may be required by the laws of the United States.

(3) The commission shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each public utility. [Amended by 1971 c.655 §86]

757.130 [Repealed by 1971 c.655 §250]

757.135 Closing accounts and filing balance sheet; auditing accounts. (1) Except as provided in subsection (2) of this section, the accounts required under ORS 757.120 and 757.125 shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet, together with such other information as the Public Utility Commission shall prescribe, verified by an officer of the public utility, shall be filed with the commission.

(2) If a public utility maintains its accounts and records on a fiscal year basis, the accounts required by ORS 757.120 and 757.125 shall be closed annually on the last day of the fiscal year and a balance sheet shall be promptly taken from those accounts.

On or before the first day of the fourth month following the end of the public utility's fiscal year, the balance sheet together with such information as the commission shall prescribe must be verified by an officer of the public utility and filed with the commission. The commission may require that a public utility filing information at the time specified in this subsection also file with the commission on a calendar year basis such additional information as may be prescribed by the commission.

(3) The commission may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commission. [Amended by 1983 c.540 §4; 2001 c.733 §1]

757.140 Depreciation accounts; use of certain undepreciated investment in rates. (1) Every public utility shall carry a proper and adequate depreciation account. The Public Utility Commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each public utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [Amended by 1971 c.655 §87; 1989 c.956 §2]

757.145 [Repealed by 1971 c.655 §250]

757.150 [Repealed by 1971 c.655 §250]

757.155 [Amended by 1971 c.655 §90; renumbered 757.480]

757.160 [Amended by 1971 c.655 §91; renumbered 757.485]

757.165 [Amended by 1971 c.655 §92; renumbered 757.490]

757.170 [Amended by 1971 c.655 §93; renumbered 757.495]

757.175 [Amended by 1971 c.655 §94; renumbered 757.500]

757.180 [Amended by 1971 c.655 §21; renumbered 756.115]

**RATE SCHEDULES;
MEASURING EQUIPMENT**

757.205 Filing schedules with commission; data filed with schedules. (1) Every public utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

(2) Every public utility shall file with and as part of every such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. Every public utility shall also file with the commission copies of interstate rate schedules and rules and regulations issued by it or to which it is a party.

(3) Where a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedules shall in like manner be printed and filed with the commission. [Amended by 1971 c.655 §70]

757.210 Hearing to establish new schedules; alternative regulation plan.

(1)(a) Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable.

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule that provides for rate increases or decreases or both, without prior hearing, reflecting increases or decreases or both in costs incurred, taxes paid to units of government or revenues earned by a utility and that is subject to review by the commission at least once every two years.

(2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative form of regulation plan, including a resource rate plan under ORS 757.212.

(b) Any alternative form of regulation plan shall include provisions to ensure that the plan operates in the interests of utility customers and the public generally and results in rates that are just and reasonable and may include provisions establishing a reasonable range for rate of return on investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

(A) Promotes increased efficiencies and cost control;

(B) Is consistent with least-cost resources acquisition policies;

(C) Yields rates that are consistent with those that would be obtained following application of ORS 757.268;

(D) Is consistent with maintenance of safe, adequate and reliable service; and

(E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

(c) As used in this subsection, "alternative form of regulation plan" means a plan adopted by the commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-service rate regulation.

(d) Prior to implementing a rate change under an alternative form of regulation plan, the utility shall present a report that demonstrates the calculation of any proposed rate change at a public meeting of the commission.

(3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to appear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this section are in conformity with the plan and are just and reasonable. Except as provided in ORS 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also shall be subject to complaint under ORS 756.500.

(4) Periodically, but not less often than every two years after the implementation of a plan referred to in subsection (2) of this section, the commission shall submit a report to the Legislative Assembly that shows the impact of the plan on rates paid by utility customers.

(5) The commission and staff may consult at any time with, and provide technical assistance to, utilities, their customers, and

other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the commission's decisions shall be based on the record made at the hearing. [Amended by 1971 c.655 §70a; 1981 c.715 §1; 1985 c.550 §2; 1987 c.447 §97; 1987 c.613 §1; 1989 c.5 §§3,23; 1995 c.785 §1; 2001 c.913 §3; 2005 c.845 §5]

757.212 Resource rate plans; customers who may elect to be exempt; order approving plan; effect of approving plan.

(1) For purposes of this section:

(a) "Resource rate plan" means a plan by a public utility to construct a generating plant or to enter into a wholesale power purchase or sales agreement with a term that is longer than one year.

(b) "Site" means:

(A) Buildings or other related structures that are interconnected by facilities owned by a single public utility customer and that are served through a single electric meter; or

(B) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(i) Each building or structure included in the site is not more than 1,000 feet from at least one other building or structure in the site;

(ii) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a public utility customer who is billed for electricity use at the buildings and structures; and

(iii) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights-of-way land on which municipal infrastructure facilities exist, such as street lighting, sewerage transmission and roadway controls, shall not be considered contiguous.

(2) The Public Utility Commission may approve a resource rate plan as an alternative form of regulation plan under ORS 757.210. A public utility must make a separate tariff filing for each proposed resource rate plan. If the commission approves a resource rate plan by a public utility based on the construction of a generating plant, the order approving the plan must state how the commission will reflect the costs and revenues of the generating plant in the utility's rates during all or a portion of the expected useful life of the generating plant. If the commission approves a resource rate plan based on a wholesale power purchase or sales agreement with a term longer than one year, the order approving the plan must state how the commission will reflect the costs

and revenues under the wholesale power purchase or sales agreement in the utility's rates during all or a portion of the term of the agreement.

(3) A customer receiving electricity from a public utility may elect to be exempt from the costs and benefits of a resource rate plan for any single site at which the customer has had a peak load in excess of nine megawatts in any hour during the 12-month period immediately preceding the date on which the public utility files a tariff under this section. A public utility filing a tariff under this section must give written notice of the provisions of this subsection to all of its customers that are eligible to make an election under this subsection. The notice must be given within three days after the tariff is filed. An election under this subsection must be made by a customer within 30 days after the tariff is filed.

(4) A public utility customer that elects to be exempt under subsection (3) of this section may also elect to be exempt from the costs and benefits of a resource rate plan for any single site at which the customer has had a peak load in excess of one megawatt in any hour during the 12-month period immediately preceding the date on which the public utility files a tariff under this section. An election under this subsection must be made as part of the election under subsection (3) of this section.

(5) The commission shall ensure that customers making an election under subsection (3) or (4) of this section are charged the market cost for all electricity that is required to replace the electricity that would otherwise have been provided under the resource rate plan, and that the election does not result in increased costs or risks to the public utility or to other customers of the public utility.

(6) The commission, by rule, may allow customers of a public utility other than those customers described in subsection (3) of this section to elect to be exempt from the costs and benefits of a resource rate plan.

(7) If the commission approves a resource rate plan, the order of the commission must also address:

(a) The extent to which the public utility will use power from the generating plant or from the power purchase or sales agreement to serve its retail customers in Oregon;

(b) The allocation of power available from the generating plant or power purchase or sales agreement among different classes of the public utility's customers;

(c) The ratemaking consequences of the generating plant or power purchase or sales agreement, including the consequences of

variations in the amount of power that is actually available after the plan is in operation compared with the amount of power that was anticipated to be available at the time the plan was approved; and

(d) Any other issue the commission chooses to consider.

(8) If the commission approves a resource rate plan, the commission may not thereafter review the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, or consider any complaint under ORS 756.500 seeking review of the costs and rates specific to the resource rate plan or other obligations of the public utility under the plan, except for the purpose of determining whether the public utility is in compliance with the plan and has established rates in accordance with the plan.

(9) A resource rate plan and a public utility's rates under a resource rate plan are not subject to ORS 757.355.

(10) The commission may not set aside or modify an order approving a resource rate plan unless the public utility operating under the plan approves the setting aside or modification. [2001 c.913 §2; 2005 c.638 §8]

Note: 757.212 was added to and made a part of 757.205 to 757.220 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.215 Commission authorized to suspend new rates or order interim rates during hearings; revenues collected under unapproved rates to be refunded; order after hearing. (1) The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission may enter an order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

(2) This section does not prevent the commission and the utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commission may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

(4) If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS

757.210, but does not order a suspension thereof, any increased revenue collected by the utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in such manner as the commission orders.

(5) The commission may in a suspension order authorize an interim rate or rate schedule under which the utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the utility. Any such interim increase for a public utility as defined in ORS 757.005 that produces, transmits, delivers or furnishes heat, light or power shall be effected by rates designed to increase the utility's revenues without materially changing the revenue relationships among customer classes or between the revenues derived from demand charges and from energy charges. An interim rate or rate schedule shall remain in effect until terminated by the commission. Upon completion of the hearing and decision, the commission shall order the utility to refund that portion of the increase in the interim rate or schedule that the commission finds is not justified. Any refund of an interim increase under this subsection shall be based upon an analysis of the utility's earnings for a period reasonably representative of the period during which the interim increase was in effect. Refunds shall be made as nearly as possible to the customers against whom the interim rates were charged, by credits against future bills or in such other manner as the commission orders.

(6) Refunds ordered by the commission under subsection (4) or (5) of this section shall include interest on the amount determined to be subject to refund from the date such interim rate or rate schedules took effect. [Amended by 1981 c.715 §2; 1991 c.964 §1]

757.220 Notice of schedule changes required; exception for alternative regulation. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the Public Utility Commission. All changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order speci-

fying the changes to be made and the time when they shall take effect. This section does not apply to rate changes authorized under an alternative form of regulation plan under ORS 757.210 (2). [Amended by 1995 c.785 §2]

757.225 Utilities required to collect for their services in accordance with schedules. No public utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such schedule. The rates named therein are the lawful rates until they are changed as provided in ORS 757.210 to 757.220. [Amended by 1971 c.655 §71; 1985 c.550 §3; 1991 c.67 §204]

757.227 Rate mitigation for certain electric company rate increases. (1) As used in this section, "electric company" has the meaning given that term in ORS 757.600.

(2) The Public Utility Commission shall require that an electric company mitigate a rate increase payable by a class of customers described in subsection (5) of this section if:

(a) The increase results from a transition to an electric company's generally applicable cost-based rate from the rates established under the contracts described in subsection (5) of this section; and

(b) The increase in the cost of electricity to that class of customers by reason of the transition will exceed 50 percent during the first 12 calendar months after the transition occurs.

(3) The commission shall require an electric company to mitigate a rate increase under this section by means of a schedule of rate credits for the class of customers described in subsection (5) of this section. The rate credits provided by an electric company under the schedule shall automatically decrease each year to the lowest credit necessary to avoid a rate increase that is greater than 50 percent in any subsequent year. Rate credits under this section may not be provided for more than seven years after the transition occurs.

(4) For the purpose of determining the increase in the cost of electricity to a class of customers by reason of a transition described in subsection (2)(a) of this section, the commission shall:

(a) Include the total charges for electricity service, including all special charges and credits other than the rate credit provided under this section; and

(b) Exclude any local taxes or fees paid by the class of customers.

(5) This section applies only to customers of an electric company that purchase electricity at metering points that before the transition described in subsection (2)(a) of this section were eligible for rates that were set under contracts entered into before 1960 and remained unchanged throughout the period of the contract.

(6) The full cost of providing rate credits under this section shall be spread equally among all other customers of the electric company. [2005 c.594 §3]

757.230 Control of commission over classification of services and forms of schedules; rules. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each public utility, and such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on such considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. The service classifications and schedule forms shall be designed consistently with the requirements of ORS 469.010. Each public utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 757.205 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates;

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the utility;

(c) For electric and natural gas utilities:

(A) Whether it is appropriate to incorporate interruption of service in the utility's rate agreement with the customer; and

(B) Whether the rate agreement requires the utility to acquire new resources to serve the load; and

(d) For electric utilities, for service to load not previously served, the effect of the rate on the utility's average system cost through the residential exchange provision of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501, as amended.

(2) The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be

found to be expedient. The commission shall adopt rules which allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [Amended by 1971 c.655 §72; 1977 c.682 §1; 1987 c.900 §1]

757.235 [Amended by 1953 c.285 §2; repealed by 1981 c.715 §3]

757.240 Filing schedules in business office. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public shall be printed in plain type and kept on file in every business office of such public utility, open to the public, and in such form and place as to be readily accessible to the public for convenient inspection.

(2) Copies of all new schedules shall be filed in every business office of such public utility 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [Amended by 1971 c.655 §73]

757.245 Establishment of joint rates.

(1) A public utility may establish reasonable through service and joint rates and classifications with other public utilities. Public utilities establishing joint rates shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof as between the public utilities participating therein, which shall not unduly prefer or prejudice any of such participating public utilities, and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited.

(2) The Public Utility Commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission's own initiative without complaint, establish through service, classifications and joint rates, the divisions of such rates and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate or classification without the consent of all the public utilities parties thereto or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the public utilities proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is of the opinion that the divisions of joint rates between the public utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between

the public utilities parties thereto, whether agreed upon by such public utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several public utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several public utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates, the commission shall give due consideration, among other things, to:

(a) The efficiency with which the public utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their public utility property held for and used in service;

(c) The importance to the public of the services of such public utilities;

(d) Whether any particular participating public utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one public utility to a greater or less proportion of the joint rate than another. [Amended by 1971 c.655 §74]

757.247 Tariff schedules for renewable energy generation facilities and energy conservation. (1) The Public Utility Commission may authorize a public utility to file and place into effect tariff schedules establishing rates or charges for renewable energy generation facilities, or for energy conservation measures, services or payments, provided to individual property owners or customers. Application of the schedule shall be subject to agreement between the public utility and the property owner or customer receiving service at the time the renewable energy generation facilities or conservation measures, services or payments are initially provided.

(2) A tariff schedule under this section may include provisions for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the renewable energy generation facilities or conservation measures or services were installed or per-

formed or with respect to which the payments were made.

(3) A public utility shall record a notice of any payment obligation required of a property owner or customer under this section in the records maintained by the county clerk under ORS 205.130. The commission may prescribe by rule other methods by which the public utility shall notify property owners or customers of any such payment obligation.

(4) A public utility may use moneys obtained through a rate established under ORS 757.603 (2)(a) to provide renewable energy generation facilities to property owners or customers under this section. A public utility may not charge interest to a property owner or customer for facilities acquired with moneys obtained through a rate established under ORS 757.603 (2)(a). [1991 c.268 §2; 2007 c.885 §3]

757.250 Standards and appliances for measuring service; rules. (1) The Public Utility Commission shall ascertain and prescribe for each kind of public utility suitable and convenient standard commercial units of service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the service rendered by any public utility and prescribe reasonable regulations for examination and testing of such service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. [Amended by 1971 c.655 §75]

757.255 Testing of measuring appliances; rules; fees. (1) The Public Utility Commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a public utility, and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any public utility until it has been examined and tested by the commission and found to be accurate.

(2) The commission shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commission by the public utility.

(3) The commission shall declare and establish reasonable fees for the testing of such appliances on the application of the customer, the fee to be paid by the customer at the time of the customer's request, but to be

repaid to the customer by the commission and to be paid by the public utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commission into the State Treasury.

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [Amended by 1971 c.655 §76]

757.259 Amounts includable in rate schedule; deferral; limit in effect on rates by amortization; rules. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in this section, under amortization schedules set by the commission, a rate or rate schedule:

(a) May reflect:

(A) Amounts lawfully imposed retroactively by order of another governmental agency; or

(B) Amounts deferred under subsection (2) of this section.

(b) Shall reflect amounts deferred under subsection (3) of this section if the public utility so requests.

(2) Upon application of a utility or ratepayer or upon the commission's own motion and after public notice, opportunity for comment and a hearing if any party requests a hearing, the commission by order may authorize deferral of the following amounts for later incorporation in rates:

(a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas or electricity approved by the Federal Energy Regulatory Commission;

(b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980;

(c) Direct or indirect costs arising from any purchase made by a public utility from the Bonneville Power Administration pursuant to ORS 757.663, provided that such costs shall be recovered only from residential and small-farm retail electricity consumers;

(d) Amounts accruing under a plan for the protection of short-term earnings under ORS 757.262 (2); or

(e) Identifiable utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match ap-

propriately the costs borne by and benefits received by ratepayers.

(3) Upon request of the public utility, the commission by order shall allow deferral of amounts provided as financial assistance under an agreement entered into under ORS 757.072 for later incorporation in rates.

(4) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application. However, amounts deferred under subsection (2)(c) and (d) or (3) of this section are not subject to subsection (5), (6), (7), (8) or (10) of this section, but are subject to such limitations and requirements that the commission may prescribe and that are consistent with the provisions of this section.

(5) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding under ORS 757.210 to change rates and upon review of the utility's earnings at the time of application to amortize the deferral. The commission may require that amortization of deferred amounts be subject to refund. The commission's final determination on the amount of deferrals allowable in the rates of the utility is subject to a finding by the commission that the amount was prudently incurred by the utility.

(6) Except as provided in subsections (7), (8) and (10) of this section, the overall average rate impact of the amortizations authorized under this section in any one year may not exceed three percent of the utility's gross revenues for the preceding calendar year.

(7) The commission may allow an overall average rate impact greater than that specified in subsection (6) of this section for natural gas commodity and pipeline transportation costs incurred by a natural gas utility if the commission finds that allowing a higher amortization rate is reasonable under the circumstances.

(8) The commission may authorize amortizations for an electric utility under this section with an overall average rate impact not to exceed six percent of the electric utility's gross revenues for the preceding calendar year. If the commission allows an overall average rate impact greater than that specified in subsection (6) of this section, the commission shall estimate the electric utility's cost of capital for the deferral period and may also consider estimated changes in the electric utility's costs and revenues during the deferral period for the purpose of re-

viewing the earnings of the electric utility under the provisions of subsection (5) of this section.

(9) The commission may impose requirements similar to those described in subsection (8) of this section for the amortization of other deferrals under this section, but may not impose such requirements for deferrals under subsection (2)(c) or (d) or (3) of this section.

(10) The commission may authorize amortization of a deferred amount for an electric utility under this section with an overall average rate impact greater than that allowed by subsections (6) and (8) of this section if:

(a) The deferral was directly related to extraordinary power supply expenses incurred during 2001;

(b) The amount to be deferred was greater than 40 percent of the revenue received by the electric utility in 2001 from Oregon customers; and

(c) The commission determines that the higher rate impact is reasonable under the circumstances.

(11) If the commission authorizes amortization of a deferred amount under subsection (10) of this section, an electric utility customer that uses more than one average megawatt of electricity at any site in the immediately preceding calendar year may prepay the customer's share of the deferred amount. The commission shall adopt rules governing the manner in which:

(a) The customer's share of the deferred amount is calculated; and

(b) The customer's rates are to be adjusted to reflect the prepayment of the deferred amount.

(12) The provisions of this section do not apply to a telecommunications utility. [1987 c.563 §2; 1989 c.18 §1; 1989 c.956 §1; 1993 c.175 §1; 1999 c.865 §31; 2001 c.733 §3; 2003 c.132 §1; 2003 c.234 §3]

757.260 [Amended by 1971 c.655 §18; renumbered 756.075]

757.262 Rates to encourage acquisition of cost-effective conservation resources; rules. (1) The Public Utility Commission, by rule, may adopt policies designed to encourage the acquisition of cost-effective conservation resources and small-scale, renewable-fuel electric generating resources.

(2) In furtherance of the policies adopted pursuant to subsection (1) of this section, and in such manner as the commission considers proper, the commission may authorize periodic rate adjustments for the purpose of providing some protection to a utility from reduction of short-term earnings that may result from implementation of such policies.

The adjustments may include, but are not limited to, adjustments based in whole or in part upon the extent to which actual sales deviate from a base level of sales the commission considers appropriate. [1993 c.175 §3; 1999 c.944 §3]

757.265 [Repealed by 1971 c.655 §250]

757.266 Rates may encourage tree planting programs as offset to carbon dioxide emissions. The Public Utility Commission of Oregon may allow a rate or rate schedule of a public utility to reflect amounts for small scale programs that enable the utility to gain experience with tree planting on underproducing forestland, as defined by the State Forestry Department, as an offset to carbon dioxide emissions. [1993 c.286 §1]

Note: 757.266 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.267 Legislative findings relating to inclusion of tax liabilities in rates. (1) The Legislative Assembly finds and declares that:

(a) The alignment of taxes collected by public utilities from utility customers with taxes paid to units of government by utilities, or affiliated groups that include utilities, is of special interest to this state.

(b) Taxes are a unique utility cost because the tax liability is affected by the operations or tax attributes of the parent company or other affiliates of the utility.

(c) The Public Utility Commission permits a utility to include costs for taxes that assume the utility is not part of an affiliated group of corporations for tax purposes.

(d) The parent company of a utility may employ accounting methods, debt, consolidated tax return rules and other techniques in a way that results in a difference between the tax liability paid to units of government by the utility, or the affiliated group of corporations of which the utility is a member, and the amount of taxes collected, directly or indirectly, from customers.

(e) Tax uncertainty in the ratemaking process may result in collecting taxes from ratepayers that are not paid to units of government.

(f) Utility rates that include amounts for taxes should reflect the taxes that are paid to units of government to be considered fair, just and reasonable.

(g) Tax information of a business is commercially sensitive. Public disclosure of tax information could provide a commercial advantage to other businesses.

(2) The definitions in ORS 757.268 apply to this section. [2005 c.845 §2]

757.268 Adjustments to rates by reason of taxes paid by public utility. (1) Every public utility shall file a tax report with the Public Utility Commission annually, on or before October 15 following the year for which the report is being made. The tax report shall contain the information required by the commission, including:

(a) The amount of taxes that was paid by the utility in the three preceding years, or that was paid by the affiliated group and that is properly attributed to the regulated operations of the utility, determined without regard to the tax year for which the taxes were paid; and

(b) The amount of taxes authorized to be collected in rates for the three preceding years.

(2) Every public utility shall be required to obtain and provide to the commission any other information that the commission requires to review the tax report and to implement and administer this section and ORS 757.210.

(3) The commission may disclose, or any intervenor may obtain and disclose, the amount by which the amount of taxes that units of government received from the public utility or from the affiliated group differs from the amount of costs for taxes collected, directly or indirectly, as part of rates paid by customers, including whether the difference is positive or negative.

(4) The commission shall review the tax report and any other information the commission has obtained and make the determinations described in this section within 90 days following the filing of the report, or within a further period of time that the commission may by rule establish for making determinations under this section that does not exceed 180 days following the filing of the report. If the commission determines that the amount of taxes assumed in rates or otherwise collected from ratepayers for any of the three preceding years differed by \$100,000 or more from the amount of taxes paid to units of government by the public utility, or by the affiliated group and properly attributed to the regulated operations of the utility, the commission shall require the utility to establish an automatic adjustment clause, as defined in ORS 757.210, within 30 days following the date of the commission's determinations under this section, or by a later date that the commission may by rule prescribe for establishing an automatic adjustment clause that does not exceed 60 days following the date of the commission's determinations under this section.

(5) If an adjustment to rates is made under an automatic adjustment clause established under this section, the automatic

adjustment clause shall remain in effect for each successive year after an adjustment is made and until an order terminating the automatic adjustment clause is made under subsection (9) of this section.

(6) The automatic adjustment clause shall account for all taxes paid to units of government by the public utility that are properly attributed to the regulated operations of the utility, or by the affiliated group that are properly attributed to the regulated operations of the utility, and all taxes that are authorized to be collected through rates, so that ratepayers are not charged for more tax than:

(a) The utility pays to units of government and that is properly attributed to the regulated operations of the utility; or

(b) In the case of an affiliated group, the affiliated group pays to units of government and that is properly attributed to the regulated operations of the utility.

(7) An automatic adjustment clause established under this section may not be used to make adjustments to rates for taxes paid that are properly attributed to any unregulated affiliate of the public utility or to the parent of the utility.

(8) Notwithstanding subsections (1) to (7) of this section, the commission may authorize a public utility to include in rates:

(a) Deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment; and

(b) Tax requirements and benefits that are required to be included in order to ensure compliance with the normalization requirements of federal tax law.

(9) If the commission determines that establishing an automatic adjustment clause under this section would have a material adverse effect on customers of the public utility, the commission shall issue an order terminating the automatic adjustment clause. The order shall set forth the reasons for the commission's determination under this subsection.

(10) The commission shall conduct a hearing under ORS 757.210 prior to making a determination under subsection (9) of this section that an automatic adjustment clause would have a material adverse effect on customers of the public utility.

(11) The commission may not use the tax information obtained by the commission under this section for any purpose other than those described in subsections (1) to (10) of this section. An intervenor in a commission proceeding to review the tax report or make rate adjustments described in this section may, upon signing a protective order pre-

pared by the commission, obtain and use the information obtained by the commission that is not otherwise required to be made publicly available under this section, according to the terms of the protective order.

(12) For purposes of this section, taxes paid that are properly attributed to the regulated operations of the public utility may not exceed the lesser of:

(a) That portion of the total taxes paid that is incurred as a result of income generated by the regulated operations of the utility; or

(b) The total amount of taxes paid to units of government by the utility or by the affiliated group, whichever applies.

(13) As used in this section:

(a) "Affiliated group" means an affiliated group of corporations of which the public utility is a member and that files a consolidated federal income tax return.

(b) "Public utility" or "utility" means:

(A) A regulated investor-owned utility that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003; or

(B) A successor in interest to an entity described in subparagraph (A) of this paragraph that continues to be a regulated investor-owned utility.

(c) "Regulated operations of the utility" means those activities of a public utility that are subject to rate regulation by the commission.

(d) "Tax":

(A) Means a federal, state or local tax or fee that is imposed on or measured by income and that is paid to units of government.

(B) Does not include any amount that is refunded by a unit of government as a tax refund.

(C) Does not include franchise fees or privilege taxes.

(e) "Taxes authorized to be collected in rates" means the product determined by multiplying the following three values:

(A) The revenues the utility collects from ratepayers in Oregon, adjusted for any rate adjustment imposed under this section;

(B) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, as determined by the commission in establishing rates; and

(C) The effective tax rate used by the commission in establishing rates.

(f) "Taxes paid" means amounts received by units of government from the utility or from the affiliated group of which the utility

is a member, whichever is applicable, adjusted as follows:

(A) Increased by the amount of tax savings realized as a result of charitable contribution deductions allowed because of charitable contributions made by the utility;

(B) Increased by the amount of tax savings realized as a result of tax credits associated with investment by the utility in the regulated operations of the utility, to the extent the expenditures giving rise to the tax credits and tax savings resulting from the tax credits have not been taken into account by the commission in the utility's last general ratemaking proceeding; and

(C) Adjusted by deferred taxes related to the regulated operations of the utility.

(g) "Three preceding years" means the three most recent consecutive fiscal years preceding the date the tax report is required to be filed. [2005 c.845 §3]

ATTACHMENTS REGULATION

757.270 Definitions for ORS 757.270 to 757.290. As used in ORS 757.270 to 757.290, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or consumer-owned utility.

(2) "Consumer-owned utility" means a people's utility district organized under ORS chapter 261, a municipal utility organized under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(3) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association that is authorized to construct attachments upon, along, under or across the public ways.

(4) "Public utility" has the meaning for that term provided in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government.

(5) "Telecommunications utility" has the meaning for that term provided in ORS 759.005, and does not include any entity co-

operatively organized or owned by federal, state or local government or a subdivision of state or local government. [1979 c.356 §2; 1989 c.5 §4; 1999 c.832 §4]

757.271 Authorization from pole owner required for attachment. (1) Subject to applicable regulations of the Public Utility Commission, a person shall not establish an attachment to a pole or other facility of a public utility, telecommunications utility or consumer-owned utility unless the person has executed a contract with and has authorization from the utility allowing the attachment.

(2) A licensee shall report all pole attachments to the pole owner. A pole owner may impose on a licensee a penalty charge for failing to report an attachment. The pole owner also may charge the licensee for any expenses incurred as a result of an unauthorized attachment or any attachment that exceeds safety limits established by rule of the commission. [1999 c.832 §2]

757.272 Pole owner may approve or reject attachment. (1) A licensee shall notify a public utility, telecommunications utility or consumer-owned utility of all attachments to the utility's poles according to the terms of any agreement between the licensee and the utility.

(2) Notwithstanding subsection (1) of this section, the public utility, telecommunications utility or consumer-owned utility may approve or reject the attachment. If the attachment is rejected, the licensee shall remove the attachment within three business days of the date the attachment is rejected. If the attachment is not removed within three business days of the date the attachment is rejected, the utility may remove the attachment and charge the licensee for all costs incurred by the utility in removing the attachment. [1999 c.832 §3]

757.273 Attachments to public utility and telecommunications utility facilities regulated. The Public Utility Commission of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of public utilities and telecommunications utilities. All rates, terms and conditions made, demanded or received by any public utility or telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §3; 1989 c.5 §5]

757.276 Attachments by licensees to consumer-owned utility facilities regulated. The Public Utility Commission of Oregon shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of consumer-owned utilities. All rates, terms

and conditions made, demanded or received by any consumer-owned utility for any attachment by a licensee shall be just, fair and reasonable. [1979 c.356 §4; 1987 c.414 §164; 1999 c.832 §5]

757.279 Fixing rates or charges by commission; cost of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee, a public utility, a telecommunications utility or a consumer-owned utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the public utility, telecommunications utility or consumer-owned utility that owns the facility upon which the attachment is made.

(2) When the order applies to a consumer-owned utility, the order shall also provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable. [1979 c.356 §5; 1983 c.251 §1; 1987 c.414 §165; 1989 c.5 §6; 1999 c.832 §6]

757.282 Criteria for just and reasonable rate for attachments; rate reduction.

(1) A just and reasonable rate shall ensure the public utility, telecommunications utility or consumer-owned utility the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the public utility, telecommunications utility or consumer-owned utility attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses that remain available to the owner or owners of the subject facilities.

(2) A licensee shall receive a rental deduction if the licensee is in compliance with rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole attachments. A licensee is

eligible for the rental reduction unless the commission or the utility authorizing the attachment notifies the licensee in writing that the licensee has failed to comply with either the commission's rules or the terms of a contract between the licensee and the utility authorizing the attachment.

(3) For purposes of determining the rental rate for a pole attachment, the usable space on the pole shall include 20 inches of safety clearance space between communication circuits and electric circuits, provided the licensee is in compliance with rules and agreements as described in subsection (2) of this section. [1979 c.356 §6; 1989 c.5 §7; 1999 c.832 §7]

757.285 Presumption of reasonableness of rates set by private agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable, unless the Public Utility Commission finds upon complaint by a public utility, telecommunications utility, consumer-owned utility or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1979 c.356 §7; 1987 c.414 §166; 1989 c.5 §8; 1999 c.832 §8]

757.287 Application to electrical utility attachments. Nothing in ORS 757.270 to 757.290 shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities. [1979 c.356 §8]

757.290 Regulatory procedures. The procedures of the Public Utility Commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those otherwise generally applicable to the commission. [1979 c.356 §9; 1987 c.414 §167]

Note: Section 9, chapter 832, Oregon Laws 1999, provides:

Sec. 9. (1) The Public Utility Commission shall establish a task force consisting of utility pole owners and utility pole users to advise the commission on policies and regulations for accommodating changes in the utility industries while maintaining safe and efficient utility poles, attachment installation practices and rights of way.

(2) In addition to the duties described in subsection (1) of this section, the task force shall:

(a) Develop and submit to the commission proposed rules for determining appropriate sanctions for unauthorized attachments; and

(b) Develop and submit to the commission proposed criteria for certifying compliance with laws regulating pole attachments.

(3) The commission shall adopt rules for certifying a licensee's compliance with laws regulating pole attachments and establishing appropriate sanctions for unauthorized pole attachments. [1999 c.832 §9]

NET METERING FACILITIES

757.300 Net metering facility allowed to connect to public utility; conditions for connecting and measuring energy; rules; application to out-of-state utilities. (1) As used in this section:

(a) "Customer-generator" means a user of a net metering facility.

(b) "Electric utility" means a public utility, a people's utility district operating under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(c) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator and fed back to the electric utility over the applicable billing period.

(d) "Net metering facility" means a facility for the production of electrical energy that:

(A) Generates electricity using solar power, wind power, fuel cells, hydroelectric power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues;

(B) Is located on the customer-generator's premises;

(C) Can operate in parallel with an electric utility's existing transmission and distribution facilities; and

(D) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(2) An electric utility that offers residential and commercial electric service:

(a) Shall allow net metering facilities to be interconnected using a standard meter that is capable of registering the flow of electricity in two directions.

(b) May at its own expense install one or more additional meters to monitor the flow of electricity in each direction.

(c) May not charge a customer-generator a fee or charge that would increase the customer-generator's minimum monthly charge to an amount greater than that of other customers in the same rate class as the customer-generator. However, the Public Utility Commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may authorize an electric utility to assess a greater fee or charge, of any type, if the electric utility's direct costs of interconnection and administration of the net metering outweigh the distribution system,

environmental and public policy benefits of allocating such costs among the electric utility's entire customer base. The commission may authorize a public utility to assess a greater fee or charge under this paragraph only following notice and opportunity for public comment. The governing body of a municipal electric utility, electric cooperative or people's utility district may assess a greater fee or charge under this paragraph only following notice and opportunity for comment from the customers of the utility, cooperative or district.

(3)(a) For a customer-generator, an electric utility shall measure the net electricity produced or consumed during the billing period in accordance with normal metering practices.

(b) If an electric utility supplies a customer-generator more electricity than the customer-generator feeds back to the electric utility during a billing period, the electric utility shall charge the customer-generator for the net electricity that the electric utility supplied.

(c) Except as provided in paragraph (d) of this subsection, if a customer-generator feeds back to an electric utility more electricity than the electric utility supplies the customer-generator during a billing period, the electric utility may charge the minimum monthly charge described in subsection (2) of this section but must credit the customer-generator for the excess kilowatt-hours generated during the billing period. An electric utility may value the excess kilowatt-hours at the avoided cost of the utility, as determined by the commission or the appropriate governing body. An electric utility that values the excess kilowatt-hours at the avoided cost shall bear the cost of measuring the excess kilowatt-hours, issuing payments and billing for the excess hours. The electric utility also shall bear the cost of providing and installing additional metering to measure the reverse flow of electricity.

(d) For the billing cycle ending in March of each year, or on such other date as agreed to by the electric utility and the customer-generator, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility for distribution to customers enrolled in the electric utility's low-income assistance programs, credited to the customer-generator or dedicated for other use as determined by the commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, following notice and opportunity for public comment.

(4)(a) A net metering facility shall meet all applicable safety and performance stan-

dards established in the state building code. The standards shall be consistent with the applicable standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers and Underwriters Laboratories or other similarly accredited laboratory.

(b) Following notice and opportunity for public comment, the commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may adopt additional control and testing requirements for customer-generators to protect public safety or system reliability.

(c) An electric utility may not require a customer-generator whose net metering facility meets the standards in paragraphs (a) and (b) of this subsection to comply with additional safety or performance standards, perform or pay for additional tests or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering facility, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

(5) Nothing in this section is intended to prevent an electric utility from offering, or a customer-generator from accepting, products or services related to the customer-generator's net metering facility that are different from the net metering services described in this section.

(6) The commission, for a public utility, or the governing body, for a municipal electric utility, electric cooperative or people's utility district, may not limit the cumulative generating capacity of solar, wind, fuel cell and microhydroelectric net metering systems to less than one-half of one percent of a utility's, cooperative's or district's historic single-hour peak load. After a cumulative limit of one-half of one percent has been reached, the obligation of a public utility, municipal electric utility, electric cooperative or people's utility district to offer net metering to a new customer-generator may be limited by the commission or governing body in order to balance the interests of retail customers. When limiting net metering obligations under this subsection, the commission or the governing body shall consider the environmental and other public policy benefits of net metering systems. The commission may limit net metering obligations under this subsection only following notice and opportunity for public comment. The governing body of a municipal electric utility, electric cooperative or people's utility district may limit net metering obligations under this subsection only following notice

and opportunity for comment from the customers of the utility, cooperative or district.

(7) The commission or the governing body may adopt rules or ordinances to ensure that the obligations and costs associated with net metering apply to all power suppliers within the service territory of a public utility, municipal electric utility, electric cooperative or people's utility district.

(8) This section applies only to net metering facilities that have a generating capacity of 25 kilowatts or less, except that the commission by rule may provide for a higher limit for customers of a public utility.

(9) Notwithstanding subsections (2) to (8) of this section, an electric utility serving fewer than 25,000 customers in Oregon that has its headquarters located in another state and offers net metering services or a substantial equivalent offset against retail sales in that state shall be deemed to be in compliance with this section if the electric utility offers net metering services to its customers in Oregon in accordance with tariffs, schedules and other regulations promulgated by the appropriate authority in the state where the electric utility's headquarters are located. [1999 c.944 §2; 2005 c.145 §1]

757.305 [Amended by 1971 c.655 §77; repealed by 1979 c.190 §431]

ILLEGAL PRACTICES

757.310 Prohibition related to charges for service. (1) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount prescribed in the schedules or tariffs for the public utility.

(2) A public utility may not charge a customer a rate or an amount for a service that is different from the rate or amount the public utility charges any other customer for a like and contemporaneous service under substantially similar circumstances.

(3) A difference in rates or amounts charged does not constitute a violation of subsection (2) of this section if the difference is based on:

(a) Service classification under ORS 757.230;

(b) Contracts for services under ORS 757.516; or

(c) An optional schedule or tariff for the provision of energy service that takes into account a customer's past energy usage and provides price incentives designed to encourage changes in the customer's energy usage that correspond to changes in the cost of providing energy. [Amended by 1971 c.655 §78; 1987 c.900 §2; 1993 c.485 §3; 2005 c.594 §1]

757.315 When free service or reduced rates allowed. (1) ORS 757.310 does not prevent any public utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

(b) Former employees of such public utilities or members of their families where such former employees have become disabled in the service of such public utility or are unable from physical disqualification, including retirement, to continue in the service; or

(c) Members of families of deceased employees of such public utility.

(2) The Public Utility Commission may require any public utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a public utility under the provisions of this section.

(3) The Public Utility Commission may authorize a natural gas public utility, upon application of the utility, to include in rates for residential customers of the utility amounts for the purpose of generating funds to be used for bill payment assistance to low-income residential customers of the utility. [Amended by 1971 c.655 §79; 2001 c.856 §1]

757.320 Reducing rates for persons furnishing part of necessary facilities. (1) No public utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any public utility from renting any customer's facilities incident to providing its services and for paying a reasonable rental therefor.

(3) This section does not require a public utility to furnish any part of such appliances which are situated in and upon the premises of any customer, except meters and appliances for measurements of any service, unless otherwise ordered by the Public Utility Commission. [Amended by 1971 c.655 §80]

757.325 Undue preferences and prejudices. (1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.

757.330 Soliciting or accepting special privileges from utilities. No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service

shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter. [Amended by 1971 c.655 §81]

757.335 [Amended by 1971 c.655 §25; renumbered 756.185]

757.340 [Amended by 1971 c.655 §22; renumbered 756.125]

757.345 [Repealed by 1971 c.655 §250]

757.350 [Repealed by 1971 c.655 §250]

757.355 Costs of property not presently providing utility service excluded from rate base; exception. (1) Except as provided in subsection (2) of this section, a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.

(2) The Public Utility Commission may allow rates for a water utility that include the costs of a specific capital improvement if the water utility is required to use the additional revenues solely for the purpose of completing the capital improvement. [1979 c.3 §2; 2003 c.202 §2]

ISSUANCE OF SECURITIES

757.400 Definition of “stocks.” As used in ORS 757.400 to 757.460, “stocks” means stocks, stock certificates or other evidence of interest or ownership.

757.405 Power to regulate issuance of utility securities. The power of public utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the Public Utility Commission may prescribe.

757.410 When issuance of securities is void. All stocks and bonds, notes or other evidences of indebtedness, and any security of a public utility shall be void when issued:

(1) Without an order of the Public Utility Commission authorizing the same then in effect except as provided in ORS 757.412 or 757.415 (3).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with

the terms or conditions of the order of authorization of the commission and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of indebtedness, or security issued pursuant to and in substantial conformity with an order of the commission, except as to a person taking the same otherwise than in good faith and for value and without actual notice. [Amended by 1997 c.261 §1]

757.412 Exemption from securities regulation. Subject to such terms and conditions as the Public Utility Commission may prescribe, the commission, by rule or order, may exempt the following from any or all of the provisions of ORS 757.400 to 757.480, if the commission finds that application of the law is not required by the public interest:

(1) Any stocks and bonds, notes or other evidences of indebtedness and any other security or guarantee or class of securities or guarantees for which commission authorization would otherwise be required prior to the issuance, incurrence or assumption thereof.

(2) Any public utility or class of public utilities. [1997 c.261 §3]

Note: 757.412 was added to and made a part of ORS chapter 757 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.415 Purposes for which securities and notes may be issued; order required.

(1) Except as otherwise permitted by subsection (4) of this section, a public utility may issue stocks and bonds, notes and other evidences of indebtedness, certificates of beneficial interests in a trust and securities for the following purposes and no others:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission of Oregon to ascertain the amount of money so expended and the pur-

poses for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(f) The finance or refinance of bondable conservation investment as described in ORS 757.455. Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership, issued for this purpose are conservation bonds for the purposes of ORS 757.460. Conservation bonds may rely partly or wholly for repayment on conservation investment assets and revenues arising with respect to conservation investment assets.

(2) Before issuing such securities a public utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) Conservation bonds authorized pursuant to subsection (1) of this section may be

issued directly by a public utility or through a finance subsidiary. A "finance subsidiary" means any corporation, limited liability company, company, association, trust or other entity that is:

(a) Beneficially owned, directly or indirectly, by a public utility or, in the case of a trust, for which a public utility or subsidiary thereof is the grantor; or

(b) Unaffiliated with a public utility and acquires bondable conservation investment directly or indirectly from a public utility in a transaction approved by the commission. [Amended by 1961 c.319 §1; 1995 c.539 §4; 2005 c.22 §504]

757.417 Limitation on application of ORS 757.415. ORS 757.415 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of \$75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the public utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the public utility. [1971 c.655 §88]

757.419 Limitation on application of ORS 757.480. ORS 757.480 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 757.415. [1971 c.655 §89]

757.420 Hearings and supplemental orders relating to issuance of securities; joint approval of issuance by interstate utility. (1) To enable the Public Utility Commission to determine whether the commission will issue an order under ORS 757.415, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require the filing of such data as the commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the public utility.

(2) The commission may, upon application of the public utility, after opportunity

for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 757.415. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any public utility within such other state, the commission of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a public utility owning or operating a public utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commission.

757.425 State not obligated following approval of issuance. No provision of ORS 757.405 to 757.450, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 757.405 to 757.450.

757.430 Conditional approval of issuance authorized. The Public Utility Commission may by order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of the permission such condition or conditions as the commission deems reasonable and necessary.

757.435 Disposal of proceeds from issuance of securities; rules. (1) No public utility shall, without the consent of the Public Utility Commission, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms

less favorable than those specified in such order, or a modification thereof.

(2) The commission has power to require public utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as the commission deems advisable, and to establish such rules and regulations as the commission deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order.

757.440 Approval required before utility may guarantee another's indebtedness. No public utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the Public Utility Commission an order authorizing it so to do. Every assumption made other than in accordance with such an order is void.

757.445 Wrongful issues or use of proceeds by utility. No public utility shall directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 757.400 to 757.460, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount in the order authorized for such purpose.

757.450 Wrongful acts relating to issuance of securities. No person shall:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 757.400 to 757.460 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 757.400 to 757.460, negotiate, or cause the same to be negotiated.

757.455 Conservation program investment policy; application for bondable investments; utility rates to include investment costs. (1) It is the policy of the Public Utility Commission of Oregon to encourage financing investments at the lowest possible cost to utility customers, including but not limited to conservation program expenditures.

(2) If the commission decides that a public utility should defer and amortize certain conservation program expenditures, the public utility may apply to the commission for an order designating all or part of the conservation program expenditures as bondable conservation investment, for the purpose of financing or refinancing the designated expenditures under ORS 757.415 (1)(f). After notice and an opportunity for a hearing, the commission may approve the application if it finds that the conservation program expenditures included in the application are used, useful and prudent and that financing or refinancing is likely to be more favorable to customers than other reasonably available alternatives. Upon approval, the commission shall issue an order stating the amount of the conservation program expenditures that qualify as bondable conservation investment.

(3) The commission shall set rates to include in revenue requirement recovery of a public utility's bondable conservation investment, as well as the costs of equity and debt capital associated with it, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds. Revenues collectible or collected under this subsection shall be known as "conservation investment assets." The commission shall not revalue bondable conservation investment for rate-making purposes, determine that revenues required to

recover bondable conservation investment and associated equity and debt capital costs are unjust or unreasonable, impair or reduce in any way the value of conservation investment assets, or impair the timing or the amount of revenues arising with respect to conservation investment assets that have been used to secure financing or refinancing under ORS 757.415 (1)(f).

(4) Subsections (2) and (3) of this section shall apply to any amounts presently deferred by a utility regardless of whether expended prior to September 9, 1995.

(5) As used in this section, "conservation program expenditures" includes, without limitation, loans and cash payments made to customers, the costs of conservation measures installed at the expense of the public utility, specific acquisition program development, promotion and labor costs and associated general supervision, rents, leases and overheads. [1995 c.539 §3]

757.460 Pledge of conservation investment assets as bond collateral; perfection of security interest; foreclosure. (1) A public utility or finance subsidiary may pledge conservation investment assets as collateral for conservation bonds by providing for a security interest in the conservation investment assets. A security interest in conservation investment assets is created and perfected only upon entry of an order by the Public Utility Commission of Oregon approving a contract governing the granting of the security interest, and the filing with the Secretary of State of a Uniform Commercial Code Article I financing statement showing such pledger as "debtor" and identifying the conservation investment assets and the bondable conservation investment pledged as security. The security interest is enforceable against the debtor and all third parties, subject to the rights of any third parties holding security interests in the conservation investment assets perfected in the manner described in this section if value has been given by the purchasers of the conservation bonds. An approved security interest in conservation investment assets is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated bondable conservation investment, whether or not those revenues have accrued. Upon approval by the commission, the priority of the security interest shall be as set forth in the contract governing the conservation bonds. Conservation investment assets constitute property for the purposes of contracts securing the conservation bonds, whether or not the related revenues have accrued.

(2) The relative priority of a security interest created under this section is not de-

feated or adversely affected by the commingling of revenues arising with respect to conservation investment assets with other funds of the debtor. The holders of conservation bonds shall have a perfected security interest in all cash and deposit accounts of the debtor in which revenues arising with respect to conservation investment assets pledged to the holders of conservation bonds have been commingled with other funds, but the perfected security interest is limited to an amount not greater than the amount of the revenues received by the debtor within 12 months before any default under the conservation bonds held by the holders or the institution of insolvency proceedings by or against the debtor, less payments made from the revenues to the holders during that 12-month period. If a default occurs under an approved contract governing conservation bonds, the holders of the conservation bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the perfected security interest in the conservation investment assets securing the conservation bonds, subject to the rights of any third parties holding prior security interests in the conservation investment assets perfected in the manner provided in this section. Upon application by the holders of the conservation bonds or their representatives, without limiting other remedies of those holders or representatives, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the debtor.

(3) The granting, perfection and enforcement of security interests in conservation investment assets to secure conservation bonds is governed by this section and not by ORS chapter 79.

(4) A transfer of conservation investment assets by a public utility to a finance subsidiary that the parties have expressly stated in the governing documentation to be a sale or other absolute transfer, in a transaction approved in an order issued by the commission and made in connection with the issuance by the finance subsidiary of conservation bonds, shall be treated as a true sale and not as a pledge or other financing of the conservation investment assets. According the holders of conservation bonds a preferred right to revenues of the public utility or the provision by the utility of other credit enhancement with respect to conservation bonds does not impair or negate the characterization of any transfer as a true sale.

(5) Any successor to a public utility pursuant to any bankruptcy, reorganization or other insolvency proceeding shall perform and satisfy all obligations of the utility under

an approved contract governing conservation bonds in the same manner and to the same extent as was required of the utility before the proceeding, including, without limitation, collecting and paying to the holders of the conservation bonds or their representatives revenues arising with respect to the conservation investment assets pledged to secure the conservation bonds.

(6) As used in this section:

(a) "Conservation investment assets" has the meaning given under ORS 757.455.

(b) "Finance subsidiary" has the meaning given under ORS 757.415. [1995 c.539 §2]

TRANSACTIONS INVOLVING UTILITIES

757.480 Approval needed prior to disposal, mortgage or encumbrance of certain operative utility property or consolidation with another public utility; exceptions. (1) A public utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

(a) Except as provided in subsection (5) of this section, sell, lease, assign or otherwise dispose of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility;

(b) Mortgage or otherwise encumber the whole or any part of the property of such public utility necessary or useful in the performance of its duties to the public, including any franchise, permit or right to maintain and operate such public utility or public utility property, or perform any service as a public utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any public utility property, or perform any service as a public utility, or any part thereof, with any other public utility.

(2) A public utility that sells, leases, assigns or otherwise disposes of the whole of the property of such public utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$25,000, but less than \$100,000, shall notify the commission of the sale within 60 days following the date of the sale.

(3) Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or

consolidation subject to subsection (1) of this section made other than in accordance with the order of the commission authorizing the same is void.

(4) This section does not prohibit or invalidate the sale, lease or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public.

(5) A water utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction, sell, lease, assign or otherwise dispose of the whole of the property of such water utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$10,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such water utility or water utility property, or perform any service as a water utility. [Formerly 757.155; 1999 c.530 §1]

757.485 Purchase of property or stocks of one utility by another. (1) No public utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes and having a value in excess of \$10,000 of any other public utility unless authorized so to do by the Public Utility Commission.

(2) Every contract by any public utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other public utility by or through any person, partnership or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose. [Formerly 757.160]

757.490 Approval needed for certain contracts. (1) When any public utility doing business in this state enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of said public utility in Oregon, or the use of the property of the other contracting party, or any part thereof, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges in respect of any such property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for the investigation and approval when the public utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any such proposed contract shall be filed with the commission within 90 days of execution of the contract. The contract shall

be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 757.495 (3) and (6).

(3) In making such investigation the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the public utility as well as of the corporation with which it is proposing to contract, which the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that such contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect, which has the same force and effect as any other determination or order of the commission. [Formerly 757.165; 1989 c.956 §6]

757.495 Contracts involving utilities and persons with affiliated interests. (1)

When any public utility doing business in this state enters into any contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the Public Utility Commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(2) When any public utility doing business in this state enters into any contract, oral or written, with any person or corporation having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of such public utility in Oregon, or the purchase of property, materials or supplies, which shall be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any such contract has been submitted to the commission, the commission promptly shall examine and investigate the contract. If, after such investigation, the commission determines that the contract is fair and reasonable and not contrary to the public interest, the commission shall enter findings and an order to this effect and serve a copy thereof upon the public utility, whereupon any expenses and capital expenditures incurred by the public utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after such investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and an order accordingly and serve a copy thereof upon the public utility, and, except as provided in subsection (4) of this section, it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) When any such contract has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (3) of this section, the commission may not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that such contract has not been approved under subsection (3) of this section.

(5) No public utility shall issue notes or lend its funds or give credit on its books or otherwise to any person or corporation having an affiliated interest, either directly or indirectly, without the approval of the commission.

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission shall be by findings and an order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission with respect to any of such matters shall be and remain in full force and effect, unless and until set aside, modified or remanded in a proceeding for judicial review of an order in a contested case in the manner provided by ORS 756.610. The public utility, or any other person or corporation affected by any such findings and order, may seek judicial review in the manner provided by ORS 756.610. [Formerly 757.170; 1989 c.956 §7; 2005 c.22 §505; 2005 c.638 §9]

757.500 Contracts between certain public utilities. When any public utility is primarily engaged in another enterprise and is only indirectly engaged in the production, transmission, delivery or furnishing of heat,

light, water or power to or for the public by reason of a contract or agreement, express or implied, between itself and another public utility which is directly engaged in such business, the jurisdiction of the Public Utility Commission over such public utility extends only to the right to modify, control, rescind, alter or amend any such existing contract or agreement where the interest of the customers of such public utility directly engaged in such business demands. No such contract or agreement is valid or enforceable until it has been approved by the commission as being in the public interest. [Formerly 757.175]

757.505 [Repealed by 1971 c.655 §250]

757.506 Findings and policy regarding exercise of influence over utility by person not engaged in utility business. (1) The Legislative Assembly finds and declares that:

(a) The protection of customers of public utilities which provide heat, light or power is a matter of fundamental statewide concern;

(b) Existing legislation requires the Public Utility Commission's approval of one public utility's acquisition of another public utility's stocks, bonds and certain property used for utility purposes, but does not require the commission's approval of such acquisitions by persons not engaged in the public utility business in Oregon; and

(c) An attempt by a person not engaged in the public utility business in Oregon to acquire the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power could result in harm to such utility's customers, including but not limited to the degradation of utility service, higher rates, weakened financial structure and diminution of utility assets.

(2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not engaged in the public utility business in Oregon of the power to exercise any substantial influence over the policies and actions of an Oregon public utility which provides heat, light or power in the manner set forth in this section and ORS 757.511 in order to prevent unnecessary and unwarranted harm to such utilities' customers. [1985 c.632 §2]

757.510 [Repealed by 1971 c.655 §250]

757.511 Application for authority to exercise influence over utility; contents of application; issuance of order; dissemination of information about acquisition. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial influence over the policies and actions of a

public utility which provides heat, light or power without first securing from the Public Utility Commission, upon application, an order authorizing such acquisition if such person is, or by such acquisition would become, an affiliated interest with such public utility as defined in ORS 757.015 (1), (2) or (3).

(2) Notice must be given to the commission of an application under this section at least 60 days before the application is filed with the commission. The notice must indicate whether the transaction is a transaction described in ORS 757.814 (1). If the transaction is a transaction as described in ORS 757.814 (1), the commission shall give notice to cities and counties as required by ORS 757.814 (1).

(3) The application required by subsection (1) of this section shall set forth detailed information regarding:

(a) The applicant's identity and financial ability;

(b) The background of the key personnel associated with the applicant;

(c) The source and amounts of funds or other consideration to be used in the acquisition;

(d) The applicant's compliance with federal law in carrying out the acquisition;

(e) Whether the applicant or the key personnel associated with the applicant have violated any state or federal statutes regulating the activities of public utilities;

(f) All documents relating to the transaction giving rise to the application;

(g) The applicant's experience in operating public utilities providing heat, light or power;

(h) The applicant's plan for operating the public utility;

(i) How the acquisition will serve the public utility's customers in the public interest; and

(j) Such other information as the commission may require by rule.

(4) The commission promptly shall examine and investigate each application received pursuant to this section. Except as provided in subsection (5) of this section, the commission shall issue an order disposing of the application within 19 business days of its receipt. If the commission determines that approval of the application will serve the public utility's customers in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant's satisfactory performance or adherence to specific requirements. The commission otherwise shall

issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

(5) The commission may postpone issuance of an order disposing of an application under this section if notice has been given to cities and counties under ORS 757.814 (1). In no event may the commission postpone issuance of an order disposing of the application for more than 90 days under the provisions of this subsection.

(6) Nothing in this section shall prohibit dissemination by any party of information concerning the acquisition so long as such dissemination is not otherwise in conflict with state or federal law. [1985 c.632 §3; 2007 c.807 §2a]

757.515 [Amended by 1971 c.655 §39; renumbered 756.515]

757.516 Contracts between natural gas utilities and customers for commodity and services; determination by commission of reasonableness of contract and utility activities. (1) Following a Public Utility Commission determination that such services are subject to competition, a natural gas utility may enter into a contract with any customer for the provision of natural gas commodity, rights to pipeline capacity and natural gas transportation services when such services are provided in advance of the point of interconnection between the facility of the natural gas utility and the facility of an interstate pipeline.

(2) Contracts for services described under subsection (1) of this section are not schedules of rates, tolls or charges within the meaning of ORS 757.205 and are not subject to the requirements of ORS 757.205, 757.230 and 757.310.

(3) A contract for services described under subsection (1) of this section may include services provided after the point of interconnection between a natural gas utility's facility and the interstate pipeline's facility. Services provided after the point of interconnection are subject to the requirements of ORS 757.205, 757.230 and 757.310 and shall be separately priced in accordance with the utility's filed tariffs.

(4) A natural gas utility entering contracts for services described under subsection (1) of this section shall make available to the commission any information necessary for review of such contracts for ratemaking purposes. Notwithstanding ORS 192.410 to 192.505, the commission shall not release the terms of any contract or portion of a contract for services described in subsection (1) of this section without the consent of the customer and the natural gas utility except for contracts entered into between a natural

gas utility and an affiliated interest of that natural gas utility. Notwithstanding any other provision of this section, a contract for services described in subsection (1) of this section between a natural gas utility and another public utility may be released by the commission pursuant to a hearing held under ORS 757.210.

(5) Nothing in this section shall restrict the commission from subsequent investigation of the reasonableness of contracts entered into under subsection (1) of this section for ratemaking purposes. The commission's review of such contracts for ratemaking purposes shall not in any way affect the obligations or rights of the parties under the contracts.

(6) In accordance with ORS 756.515, the commission may investigate the activities of a natural gas utility related to contracts described under subsection (1) of this section. Notwithstanding any other provision of this section, if the commission finds that the activities of a natural gas utility have not generally been in the public interest, the commission, by order, may require the natural gas utility to file all future contracts described under subsection (1) of this section as provided under ORS 757.205 or 757.240. Any such finding by the commission shall not affect the obligations or rights of the parties under any existing contracts.

(7) Nothing in this section, nor any action taken by the commission pursuant to this section, shall be deemed state action for the purpose of exempting a natural gas utility from liability for anticompetitive conduct or other unlawful practices.

(8) As used in this section, "natural gas utility" means a public utility providing natural gas service to customers. [1993 c.485 §2]

757.520 [Repealed by 1971 c.655 §250]

757.525 [Repealed by 1971 c.655 §250]

757.530 [Repealed by 1971 c.655 §250]

757.535 [Repealed by 1971 c.655 §250]

757.540 [Amended by 1971 c.655 §53; renumbered 756.568]

757.541 [1987 c.599 §1; repealed by 1995 c.691 §8]

OREGON UTILITY NOTIFICATION CENTER

757.542 Definitions. As used in ORS 757.542 to 757.562 and 757.993:

(1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal or state legal holiday.

(2) "Damage" means harm to or destruction of underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support; the penetration, impairment or destruction of any

coating, housing or other protective device; and the denting of, penetration into or severance of underground facilities.

(3) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities.

(4) "Excavator" means any person who engages in excavation.

(5) "Operator" means any person, public utility, municipal corporation, political subdivision of the state or other person with control over underground facilities.

(6) "Underground facilities" means items partially or entirely below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors that are underground.

(7) "Unlocatable underground facilities" means underground facilities that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires. [1995 c.691 §1]

Note: 757.542 to 757.562 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.545 [Repealed by 1971 c.655 §250]

757.546 [1987 c.599 §2; repealed by 1995 c.691 §8]

757.547 Oregon Utility Notification Center; board; member qualifications; terms; meetings; rules. (1)(a) The Oregon Utility Notification Center is created as an independent not-for-profit public corporation. The corporation shall be governed by a board of directors consisting of one member appointed to represent each of the following:

(A) Cities with a population of 25,000 or more;

(B) Cities with a population under 25,000;

(C) Counties;

(D) Natural gas utilities regulated by the Public Utility Commission under ORS chapter 757;

(E) Electric utilities regulated by the Public Utility Commission under ORS chapter 757;

(F) Water districts, special districts, sanitary districts or water and sanitary authorities;

(G) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(H) Telecommunications utilities serving 50,000 access lines or more and regulated by the Public Utility Commission under ORS chapter 759;

(I) Telecommunications cooperatives;

(J) Electric cooperatives;

(K) People's utility districts;

(L) Contractors;

(M) Excavators;

(N) Railroads;

(O) Cable system operators; and

(P) Municipal electric utilities.

(b) To facilitate appointment of members of the first board of directors, the Public Utility Commission shall, by order, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by the commission's order, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(c) After appointment of the first board of directors, to facilitate appointment of new members to the board, the board shall, by rule, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by rule, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(d) If the board of directors determines that a group not listed in paragraph (a) of this subsection should be represented on the board, the board may select an organization that is most representative of the group and may ask that organization to nominate a member. Upon receipt of the nomination, the board may request that the Governor appoint the nominee.

(e) The Governor shall also appoint to the board of directors one employee of the commission and one employee of the Department of Transportation.

(2) The term of office of a member is four years. A member is eligible for reappointment. Before the expiration of the term of a member, the board of directors shall solicit a nomination as provided in subsection (1) of this section and the Governor shall appoint a successor. If there is a vacancy for any cause, the board shall solicit a nomination as provided in subsection (1) of this section and the Governor shall make an appointment to become immediately effective for the unexpired term. A member may continue to serve until a successor is appointed. Nothing in this subsection or subsection (1) of this section shall restrict the authority of the Governor to appoint a person other than one of the persons nominated according to this subsection or subsection (1) of this section.

(3) The board of directors shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers as the board considers necessary for the performance of the functions of those offices. A minimum of seven of the members of the board constitutes a quorum for the transaction of business.

(4) The board of directors shall meet at least once every three months at a time and place determined by the board. The board shall meet at such other times and places specified by the call of the chairperson or of a majority of the members of the board. [1995 c.691 §2; 1999 c.451 §2]

Note: See note under 757.542.

757.550 [Repealed by 1971 c.655 §250]

757.551 [1987 c.599 §3; repealed by 1995 c.691 §8]

757.552 Duties of center; fees for services; rules; exemption from certain financial administration laws. (1) It is the function of the board of directors to operate the Oregon Utility Notification Center, through which a person shall notify operators of underground facilities of proposed excavations and request that the underground facilities be marked.

(2) The board of directors shall:

(a) Utilize a competitive process to contract with any qualified person to provide the notification required under subsection (1) of this section.

(b) Subject to subsection (3) of this section, establish rates, on a per call basis, under which subscribers shall pay to fund all of the activities of the Oregon Utility Notification Center.

(c) Adopt rules according to ORS chapter 183 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent

with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.

(3) The Oregon Utility Notification Center shall have all of the powers of a state agency. Except as provided in subsection (2) of this section, the provisions of ORS 279.835 to 279.855 and ORS chapters 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 shall not apply to the Oregon Utility Notification Center.

(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than \$500 for any of the following subscribers:

(a) Cities with a population under 15,000;

(b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(c) Cable system operators serving fewer than 15,000 customers;

(d) Utilities, special districts, people's utility districts or authorities providing electricity, water or sanitary sewer service to fewer than 15,000 residential customers; and

(e) Telecommunications cooperatives. [1995 c.691 §3; 1999 c.451 §3; 2001 c.104 §293; 2003 c.794 §329]

Note: See note under 757.542.

757.555 [Amended by 1971 c.655 §49; renumbered 756.555]

757.556 [1987 c.599 §5; repealed by 1995 c.691 §8]

757.557 Underground utility facility operators required to subscribe to center; liability for damage from excavation for nonsubscribers; exemption. (1) Every operator of underground facilities shall subscribe to the Oregon Utility Notification Center.

(2) Any person intending to excavate shall notify the Oregon Utility Notification Center at least two but not more than 10 business days before commencing an excavation. The board of directors shall, by rule, provide an exception to the requirement of advance notice for excavators in cases that involve an immediate danger to life or property, or a customer service outage. The board may adopt additional exceptions as the board, in its discretion, determines necessary.

(3) Nonsubscribing operators of underground facilities shall be responsible to all injured parties for all costs associated with damages to such facilities, loss of product or service or damages that occur as a result of excavation where the facilities damaged are under the control of the nonsubscribing op-

erator and proper notice was given to the Oregon Utility Notification Center.

(4) The provisions of this section shall not apply to operators of underground facilities that are located entirely on private property and that provide services exclusively for the use of residents or owners of the property. [1995 c.691 §4; 2001 c.104 §294]

Note: See note under 757.542.

757.560 [Repealed by 1971 c.655 §250]

757.561 [1987 c.599 §4; repealed by 1995 c.691 §8]

757.562 Report to Legislative Assembly of center activities; contracts to carry out duties. (1) The board of directors shall file with the Legislative Assembly and the Governor, not later than April 15 of each year, a report covering the activities and operations of the Oregon Utility Notification Center for the preceding calendar year according to the provisions of ORS 192.230 to 192.250.

(2) In carrying out the duties, functions and powers imposed by law on the Oregon Utility Notification Center, the board of directors may contract with any state agency or private party for the performance of such duties, functions and powers as the board considers appropriate. [1995 c.691 §5]

Note: See note under 757.542.

757.565 [Repealed by 1971 c.655 §250]

757.566 [1987 c.599 §6; repealed by 1995 c.691 §8]

757.570 [Repealed by 1971 c.655 §250]

757.571 [1987 c.599 §§7,8; repealed by 1995 c.691 §8]

757.575 [Repealed by 1971 c.655 §250]

757.580 [Repealed by 1971 c.655 §250]

757.585 [Repealed by 1971 c.655 §250]

757.590 [Amended by 1971 c.655 §48; renumbered 756.552]

757.595 [Repealed by 1971 c.655 §250]

DIRECT ACCESS REGULATION

757.600 Definitions for ORS 757.600 to 757.689. As used in ORS 757.600 to 757.689, unless the context requires otherwise:

(1) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services.

(2) "Ancillary services" means services necessary or incidental to the transmission and delivery of electricity from generating facilities to retail electricity consumers, including but not limited to scheduling, load shaping, reactive power, voltage control and energy balancing services.

(3) "Commission" means the Public Utility Commission.

(4) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(5) "Default supplier" means an electric utility service supplier or electric company that has a legal obligation to provide electricity services to a consumer, as determined by the commission.

(6) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

(7) "Direct service industrial consumer" means an end user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(8) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(9) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(10) "Economic utility investment" means all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(11) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state, but does not include a consumer-owned utility.

(12) "Electric cooperative" means an electric cooperative corporation organized under ORS chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(13) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(14) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(15) "Electricity services" means electricity distribution, transmission, generation or generation-related services.

(16) "Electricity service supplier" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory.

(17) "Governing body" means the board of directors or the commissioners of an electric cooperative or people's utility district, or the council or board of a city with respect to a municipal electric utility.

(18) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(19) "Low-income weatherization" means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(20) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(21) "New renewable energy resource" means a renewable energy resource project, or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that is not in operation on July 23, 1999. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(22) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

(23) "People's utility district" has the meaning given that term in ORS 261.010.

(24) "Portfolio access" means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the governing board of a consumer-owned utility and may include product and pricing options offered by the utility or by an electricity service supplier.

(25) "Power generation company" means a company engaged in the production and sale of electricity to wholesale customers, including but not limited to independent power producers, affiliated generation companies, municipal and state authorities, provided the company is not regulated by the commission.

(26) "Qualifying expenditures" means those expenditures for energy conservation

measures that have a simple payback period of not less than one year and not more than 10 years, and expenditures for the above-market costs of new renewable energy resources, provided that the State Department of Energy by rule may establish a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(27) “Renewable energy resources” means:

(a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues.

(b) Dedicated energy crops available on a renewable basis.

(c) Landfill gas and digester gas.

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(28) “Residential electricity consumer” means an electricity consumer who resides at a dwelling primarily used for residential purposes. “Residential electricity consumer” does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges and clubs. As used in this subsection, “dwelling” includes but is not limited to single family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles and floating homes.

(29) “Retail electricity consumer” means the end user of electricity for specific purposes such as heating, lighting or operating equipment, and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility.

(30) “Site” means a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, or buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter.

(31) “Transition charge” means a charge or fee that recovers all or a portion of an uneconomic utility investment.

(32) “Transition credit” means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(33) “Transmission facility” means the plant and equipment used to transmit electricity in interstate commerce.

(34) “Undue market power” means the unfair or improper exercise of influence to increase or decrease the availability or price of a service or product in a manner inconsistent with competitive markets.

(35) “Uneconomic utility investment” means all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or expenses disallowed by the commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties as authorized by state or federal law. [1999 c.865 §1; 2001 c.134 §8; 2003 c.186 §75]

757.601 Implementation dates for direct access and portfolio of rate options; exemption for certain small electric companies. (1) All retail electricity consumers of an electric company, other than residential electricity consumers, shall be allowed direct access beginning on March 1, 2002. Retail electricity consumers shall not be allowed direct access before that date.

(2) Residential electricity consumers shall be allowed to purchase electricity from among a portfolio of rate options as described in ORS 757.603 not later than March 1, 2002.

(3) ORS 757.600 to 757.691 do not apply to an electric company providing electricity services to fewer than 25,000 consumers in this state unless the electric company offers direct access to any of its retail electricity consumers in this state or offers to sell electricity services available under direct access to more than one retail electricity consumer of another electric utility. [1999 c.865 §2; 2001 c.819 §1; 2003 c.14 §454]

Note: 757.601 was added to and made a part of ORS chapter 757 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.603 Electric company required to provide cost-of-service rate option to all retail electricity consumers; waiver; portfolio of rate options for residential consumers. (1)(a) Except as provided in this subsection, on and after March 1, 2002, an electric company shall provide all retail electricity consumers that are connected to the electric company’s distribution system with a regulated, cost-of-service rate option.

(b) The Public Utility Commission by order may waive the requirement of paragraph (a) of this subsection for any retail electric-

ity consumer other than residential electricity consumers and small commercial electricity consumers. A waiver under this paragraph may not take effect before July 1, 2003. Before ordering a waiver under this paragraph, the commission shall conduct such studies as the commission deems necessary and provide notice and opportunity for public comment and hearings. The commission may order a waiver under this paragraph if the commission finds, based on an evidentiary record developed through public comment and hearings, that a market exists in which retail electricity consumers subject to the waiver are able to:

(A) Purchase supplies of electricity adequate to meet the needs of the retail electricity consumers;

(B) Obtain multiple offers for electricity supplies within a reasonable period of time;

(C) Obtain reliable supplies of electricity; and

(D) Purchase electricity at prices that are not unduly volatile and that are just and reasonable.

(2) Not later than March 1, 2002, each electric company shall provide each residential electricity consumer that is connected to its distribution system a portfolio of rate options. The portfolio shall include at least the following options:

(a) A rate that reflects significant new renewable energy resources; and

(b) A market-based rate.

(3)(a) The commission shall regulate the cost-of-service rate option under subsection (1) of this section and the portfolio of rate options under subsection (2) of this section. The commission shall reasonably ensure that the costs and risks of serving each option are reflected in the rates for each option.

(b) The commission may prohibit or otherwise limit the use of a cost-of-service rate by retail electricity consumers who have been served through direct access, and may limit switching among portfolio options and the cost-of-service rate by residential electricity consumers. [1999 c.865 §4; 2001 c.819 §2]

757.605 [1961 c.691 §2; 1971 c.655 §97; renumbered 758.400]

757.606 [Formerly 758.040; renumbered 165.475]

757.607 Direct access conditions; cost recovery. The Public Utility Commission shall ensure that direct access programs offered by electric companies meet the following conditions:

(1) The provision of direct access to some retail electricity consumers must not cause the unwarranted shifting of costs to other

retail electricity consumers of the electric company. The commission may, in establishing any rates and charges under ORS 757.600 to 757.667, consider and mitigate the rate impact on consumers from the reduction or elimination of subsidies in existing rate structures.

(2) The direct access, portfolio of rate options and cost-of-service rates may include transition charges or transition credits that reasonably balance the interests of retail electricity consumers and utility investors. The commission may determine that full or partial recovery of the costs of uneconomic utility investments, or full or partial pass-through of the benefits of economic utility investments to retail electricity consumers, is in the public interest.

(3) The commission shall allow recovery, through a transition charge, of any otherwise unrecoverable costs arising from or related to an electric company's contractual or other legal obligations to the Bonneville Power Administration under ORS 757.663, or arising from or related to a failure of the Bonneville Power Administration to meet its contractual or other legal obligations to the electric company, from those classes of consumers for which electric power was purchased from the Bonneville Power Administration.

(4) Notwithstanding ORS 757.355, the commission may allow a return on the unamortized balance of an uneconomic utility investment or an economic utility investment that is included in rates. [1999 c.865 §8]

757.609 Date for announcing prices for electricity in subsequent calendar year; estimated prices. (1) The Public Utility Commission shall set a date on which all electric companies must announce prices that will be charged for electricity by the companies in the subsequent calendar year. Retail electricity consumers who are eligible for direct access must be allowed at least three business days after the date set by the commission to elect whether to use direct access or to purchase electricity from an electric company.

(2) All electricity service suppliers and electric companies must announce estimated prices that will be charged for electricity by the suppliers and companies in the subsequent calendar year or contract period at least five days before the date set by the commission under subsection (1) of this section. [2003 c.478 §2]

Note: 757.609 was added to and made a part of 757.600 to 757.689 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.610 [1961 c.691 §18; renumbered 758.405]

757.611 [Formerly 758.050; renumbered 165.480]

757.612 Requirements for public purpose expenditures; electric bill payment assistance charge; rules. (1) There is established an annual public purpose expenditure standard for electric companies and Oregon Community Power to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Beginning on the date an electric company or Oregon Community Power offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company or Oregon Community Power shall collect a public purpose charge from all of the retail electricity consumers located within its service area until January 1, 2026. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company, Oregon Community Power or the electricity service supplier from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

(b) For an aluminum plant that averages more than 100 average megawatts of electricity use per year, beginning on March 1, 2002, the electric company or Oregon Community Power whose territory abuts the greatest percentage of the site of the aluminum plant shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this section relating to electric companies and Oregon Community Power.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company or Oregon Community Power through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation and new market transformation.

(B) Nineteen percent for the above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less.

(C) Thirteen percent for new low-income weatherization.

(D) Five percent shall be transferred to the Housing and Community Services Department Electricity Public Purpose Charge Fund established by ORS 456.587 (1) and used for the purpose of providing grants as described in ORS 458.625 (2).

(c) The costs of administering subsections (1) to (6) of this section for an electric company or Oregon Community Power shall be paid out of the funds collected through public purpose charges. The commission may require that an electric company or Oregon Community Power direct funds collected through public purpose charges to the state agencies responsible for implementing subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company or Oregon Community Power and may require an electric company or Oregon Community Power to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company or Oregon Community Power through public purpose charges be paid to a nongovernmental entity for investment in public purposes described in subsection (1) of this section. Notwithstanding any other provision of this subsection:

(A) At least 80 percent of the funds allocated for conservation shall be spent within the service area of the electric company that collected the funds; or

(B) If Oregon Community Power collected the funds, at least 80 percent of the funds allocated for conservation shall be spent within the service area of Oregon Community Power.

(e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon Community Power under subsection (2) of this section shall be distributed to education service districts, as described in ORS 334.010, that are located in the service territory of the electric company or Oregon Community Power. The funds shall be distributed to individual education service districts according to the weighted average daily membership (ADMw) of the component school districts of the education service district for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing

a proportionate share of funds under this paragraph to education service districts that are only partially located in the service territory of the electric company or Oregon Community Power.

(B) An education service district that receives funds under this paragraph shall use the funds first to pay for energy audits for school districts located within the education service district. An education service district may not expend additional funds received under this paragraph on a school district facility until an energy audit has been completed for that school district. To the extent practicable, an education service district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school district, the education service district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school district within the education service district, the education service district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending funds on any other purpose authorized under this paragraph unless the school district has performed an energy audit within the three years immediately prior to receiving the funds.

(ii) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.

(f) The commission may not establish a different public purpose charge than the public purpose charge described in subsection (2) of this section.

(4)(a) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(b) Oregon Community Power, for any period during which Oregon Community Power collects a public purpose charge under subsection (2) of this section:

(A) Shall have no other obligation to invest in conservation, new market transformation or new low-income weatherization or

to provide a commercial energy conservation services program; and

(B) Is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company or Oregon Community Power for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, less administration costs incurred under this subsection. The credit may not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the State Department of Energy a description of the proposed conservation project or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The State Department of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the State Department of Energy verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the State Department of Energy hire an independent auditor to assess the potential for conservation investments at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the independ-

ent auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The State Department of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit for the public purpose expenditures of their energy suppliers. The State Department of Energy shall adopt rules to determine eligible expenditures and the methodology by which such credits are accounted for and used. The rules also shall adopt methods to account for eligible public purpose expenditures made through consortia or collaborative projects.

(7)(a) In addition to the public purpose charge provided under subsection (2) of this section, an electric company or Oregon Community Power shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The commission shall establish the amount to be collected by each electric company in calendar year 2008 from retail electricity consumers served by the company, and the rates to be charged to retail electricity consumers served by the company, so that the total anticipated collection for low-income electric bill payment assistance by all electric companies in calendar year 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not change the rates established for retail electricity consumers, but the total amount collected in a calendar year for low-income electric bill payment assistance may vary based on electricity usage by retail electricity consumers and changes in the number of retail electricity consumers in this state. In no event shall a retail electricity consumer be required to pay more than \$500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2). Moneys deposited in the fund under this paragraph shall be used by the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the fund under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company or Oregon Community Power shall be expended in the service area of the electric company or Oregon Community Power from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(e) Interest on moneys deposited in the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to provide heating bill payment and crisis assistance to electricity consumers whose primary source of heat is not electricity.

(f) Notwithstanding ORS 757.310, the commission may allow an electric company or Oregon Community Power to provide reduced rates or other payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

(8) For purposes of this section, "retail electricity consumers" includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

(9) For purposes of this section, amounts collected by Oregon Community Power through public purpose charges are not considered moneys received from electric utility operations. [1999 c.865 §3; 2001 c.134 §9; 2001 c.819

§3; 2005 c.22 §506; 2007 c.217 §9; 2007 c.301 §27; 2007 c.807 §43a; 2007 c.837 §2a]

757.615 [1961 c.691 §§3,11; part renumbered 757.652; 1971 c.655 §98; renumbered 758.410]

757.616 [Formerly 758.060; renumbered 165.485]

757.617 Report to Legislative Assembly on public purpose expenditures; independent nongovernmental entity to prepare report; report on low-income bill assistance. (1)(a) The Public Utility Commission and the State Department of Energy jointly shall select an independent nongovernmental entity to prepare a biennial report to the Legislative Assembly describing program spending and results for public purpose requirements undertaken pursuant to ORS 757.612. The first report shall be due on January 1, 2003.

(b) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly describing proposed modifications to public purpose requirements undertaken pursuant to ORS 757.612. The report shall be due on January 1, 2007.

(c) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly recommending whether the public purpose funding requirements under ORS 757.612 should be renewed. The report shall be due on January 1, 2011.

(2) The Housing and Community Services Department shall prepare a biennial report to the Legislative Assembly describing program spending and needs for low-income bill assistance. The first report shall be due on January 1, 2003. [1999 c.865 §3a]

757.620 [1961 c.691 §4; renumbered 758.415]

757.621 [Formerly 758.070; renumbered 165.490]

757.622 Commission to establish terms and conditions for default electricity service to nonresidential consumers. The Public Utility Commission shall establish the terms and conditions for providing default electricity service for nonresidential electricity consumers in an emergency. The commission also shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances when the consumer is receiving electricity services through direct access and elects instead to receive such services through the default service. The terms and conditions for default service established by the commission shall provide for viable competition among electricity service suppliers. [1999 c.865 §4a]

757.625 [1961 c.691 §5; renumbered 758.420]

757.626 [Formerly 758.080; renumbered 165.495]

757.627 Retail electricity consumers eligible for direct access may aggregate electricity loads. (1) An electric company shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(2) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access. [1999 c.865 §9]

757.629 Reciprocal sales to nonresidential electricity consumers. An electric utility that sells electricity, either directly or through a related party, to a nonresidential electricity consumer of another electric utility in this state shall permit any other electricity service supplier to sell electricity to nonresidential electricity consumers of the electric utility. [1999 c.865 §11]

757.630 [1961 c.691 §6; renumbered 758.425]

757.631 [Formerly 758.090; renumbered 165.840]

757.632 Electricity service supplier's access to electric company's distribution facilities. Every electricity service supplier is authorized to use the distribution facilities of an electric company on a nondiscriminatory basis after the retail electricity consumers of the electricity service supplier are afforded direct access pursuant to ORS 757.601. [1999 c.865 §7]

757.635 [1961 c.691 §7; renumbered 758.430]

757.636 [Formerly 758.100; renumbered 165.845]

757.637 Comparable access to transmission and distribution facilities. To the extent permissible under federal law, the Public Utility Commission shall ensure that an electric company that offers direct access:

(1) Provides electricity service suppliers and retail electricity consumers access to its transmission facilities and distribution system comparable to that provided for its own use; and

(2) Provides electricity service suppliers and retail electricity consumers timely access to information about its transmission facilities and distribution system, metering and loads comparable to that provided to its own nondistribution divisions, affiliates and related parties. [1999 c.865 §10]

757.640 [1961 c.691 §8; renumbered 758.435]

757.641 [Formerly 758.110; renumbered 165.850]

757.642 Unbundling electricity assets; records. (1) Not later than March 1, 2002, an electric company shall unbundle the costs of electricity services into power generation, transmission, distribution and retail services.

(2) Every electric company shall maintain separate accounting records for each component of electricity service provided by the

electric company to retail electricity consumers. Accounts shall be maintained according to regulations issued by the Federal Energy Regulatory Commission.

(3) Unless required to provide a different accounting under federal requirements, each electric company shall, to a reasonable level of detail, separately identify and account for its costs of:

- (a) Generation;
- (b) Transmission services;
- (c) Distribution services;
- (d) Ancillary services;
- (e) Consumer service charges levied on retail electricity consumers, including but not limited to metering and billing;
- (f) Investment in public purposes; and
- (g) State and local taxes paid by retail electricity consumers.

(4) An electric company shall separately identify and account for the costs of any additional components as the Public Utility Commission may require. [1999 c.865 §5; 2001 c.819 §4]

757.645 [1961 c.691 §9; renumbered 758.440]

757.646 Commission policies to eliminate barriers to competitive retail market structures and rules to establish code of conduct for electric companies; rules.

(1) The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive. The commission may require an electric company acting as an electricity service supplier do so through an affiliate.

(2) The commission shall establish by rule a code of conduct for electric companies and their affiliates to protect against market abuses and anticompetitive practices. The code shall, at a minimum:

(a) Require an electric company and any affiliate that shares the same name and logo to disclose to all consumers the relationship between the company and affiliate and to clarify that the affiliate is not the same as the electric company and that in order to receive service from the company a consumer does not have to purchase the services of the affiliate;

(b) Prohibit preferential access by an electric company affiliate to confidential consumer information;

(c) Prohibit cross-subsidization between competitive operations and regulated operations, including the use of electric company personnel and other resources;

(d) Prohibit joint marketing activities and exclusive referral arrangements between an electric company and its affiliates;

(e) Provide the commission with all necessary access to books and records;

(f) Require electric companies to make regular compliance filings; and

(g) Require fair treatment of all competitors by a distribution utility.

(3) An electric company shall provide the commission access to all books and records necessary for the commission to monitor the electric company and its affiliate relationships. The commission shall require an electric company biannually to file a report detailing compliance with this subsection. [1999 c.865 §6; 2001 c.683 §18]

757.649 Certification of electricity service suppliers; safety standards for distribution systems; billing requirements; rules.

(1)(a) A person or other entity shall not act as an electricity service supplier unless the person or entity is certified by the Public Utility Commission. The commission, by rule, shall establish standards for certification of persons or other entities as electricity service suppliers in this state. The rules shall, at a minimum, address:

(A) The ability of the person or entity to meet the person's or entity's obligation to provide electricity services pursuant to direct access; and

(B) The ability of the person or entity to comply with applicable consumer protection laws.

(b) The commission may require an electricity service supplier to provide a bond or other security.

(c) The commission may establish a fee, not to exceed \$500, for initial certification and annual recertification of electricity service suppliers.

(d) The commission, at any time, may revoke an electricity service supplier's certification for failure to comply with applicable statutes and rules.

(e) The commission may require an electricity service supplier to provide information necessary to ensure compliance with ORS 757.612. The commission shall ensure the privacy of all information and the protection of any proprietary information provided.

(2) Every electric utility shall maintain the integrity of its transmission facilities and distribution system and provide safe, reliable

service to all retail electricity consumers. Nothing in ORS 757.600 to 757.667 or 757.669 to 757.687 shall reduce or diminish the statutory or contractual obligations of electric utilities to maintain the safety and reliability of their transmission facilities and distribution system and other infrastructure and equipment used to deliver electricity.

(3) The commission for electric companies, or the governing body for other electric utilities, shall adopt rules, ordinances, policies and service quality standards designed to maintain a reliable, safe and efficient distribution system. The commission shall regulate electrical safety regarding generation, transmission, substation and distribution facilities for electric utilities and other electrical system owners and operators as provided under ORS 757.035.

(4) Every bill to a direct access retail electricity consumer from an electricity service supplier shall contain at least:

(a) The rate and amount due for each service or product that the retail electricity consumer is purchasing and other price information necessary to facilitate direct access, as determined by the commission;

(b) The rates and amounts of state and local taxes or fees, if any, imposed on the retail electricity consumer;

(c) The amount of any public purpose charge or credit;

(d) The amount of any transition charge or transition credit; and

(e) Power source and environmental impact information necessary to ensure that all consumers have useful, reliable and necessary information to exercise informed choice, as determined by the commission.

(5)(a) A retail electricity consumer of an electric company shall receive, upon request, a separate bill from every individual electricity service supplier that provides products or services to the retail electricity consumer. If a retail electricity consumer of an electric company does not request separate bills, or a consolidated bill from an electricity service supplier as provided in paragraph (c) of this subsection, the electric company shall consolidate the bills for all electricity services into a single statement, and electricity service suppliers shall provide to the electric company the information necessary to prepare a consolidated statement.

(b) The requirement for bill consolidation by an electric company shall continue through December 31, 2001, after which time the commission may waive the requirement if the waiver results in effective billing procedures for retail electricity consumers.

(c) Upon the request of a retail electricity consumer of an electric company, an electricity service supplier shall consolidate the bills for all electricity services into a single statement, and electric utilities and other electricity service suppliers shall provide to the billing electricity service supplier any information necessary to prepare a consolidated statement.

(d) For retail electricity consumers of an electric company, the commission shall adopt by rule provisions relating to the failure of a consumer to make full payment on a consolidated bill. The rules shall address collection of payments, service disconnection and reconnection, and the allocation of costs associated with collection, disconnection and reconnection. A distribution utility shall be solely responsible for actual disconnection and reconnection. [1999 c.865 §14]

757.650 [1961 c.691 §10; renumbered 758.445]

757.652 [Formerly part of 757.615; 1965 c.242 §1; renumbered 758.450]

757.654 Commission authority to investigate allegations of undue market influence. Upon receiving a complaint, or on its own motion, the Public Utility Commission is authorized to investigate, as provided under ORS 756.515, whether any electric company that is an electricity service supplier has exercised undue market power with respect to the sale or distribution of electricity services. The commission may take such action as authorized by law to mitigate an exercise of undue market power. [1999 c.865 §12]

757.655 [1961 c.691 §13; renumbered 758.455]

757.656 Failure to comply with ORS 757.600 to 757.667; cause of action. Any claim that an electric company has failed to comply with ORS 757.600 to 757.667 shall be filed as a complaint with the Public Utility Commission pursuant to ORS 756.500. After reasonable notice to the electric company and exhausting all available remedies before the commission, any person injured by an electric company's failure to comply with any provision of ORS 757.600 to 757.667 may file an action in the circuit court for the county where the electric company has its principal business office in this state for an order requiring compliance with ORS 757.600 to 757.667. [1999 c.865 §13]

757.659 Commission rules; contents. According to the applicable provisions of ORS 756.060 and ORS chapter 183, the Public Utility Commission shall adopt such rules as are necessary to implement ORS 757.600 to 757.667. Rules adopted by the commission shall address at least the following:

(1) Requirements and methodologies for each electric company to provide unbundled rates and services pursuant to ORS 757.642.

(2) Requirements for each electric company allowing aggregation of electricity loads pursuant to ORS 757.627, which may include aggregation of demand for other services available under direct access.

(3) Requirements for consumer protection. Consumer protection rules adopted by the commission that relate to electricity service suppliers shall be applicable throughout this state and shall, at a minimum, contain provisions for the disclosure of price, power source and environmental impact in contract offers and marketing information.

(4) Market valuation methodologies for determining the amount and recovery of the costs of uneconomic utility investment and the amount of and credit for economic utility investment.

(5) Requirements for each electric company to offer a portfolio of rate options under ORS 757.603.

(6) The method of determining a default supplier for those consumers who are not eligible to participate in a portfolio program under ORS 757.603 in a manner that provides for viable competition among electricity service suppliers and among power generation companies. The commission may condition the use of a default service option by requiring reasonable notice and commitment from a consumer who intends to use the default service option in nonemergency situations.

(7) Requirements for market structure described in ORS 757.646.

(8) Requirements for public purpose charges and credits under ORS 757.612.

(9) Requirements for meters, metering services, billing and collection services, and customer response functions. [1999 c.865 §15; 2001 c.683 §19]

757.660 Use of arbitration to resolve disputes relating to valuation of electric company investments; rules. (1) In adopting market valuation methodologies under ORS 757.659 (4), the Public Utility Commission may provide for use of arbitration to resolve disputes relating to valuation of electric company investments.

(2) The commission shall adopt rules for the following purposes:

(a) Establishing the process for selecting an arbitrator under this section.

(b) Establishing the type, scope and subject matter of arbitrations under this section, and the procedure for conducting those arbitrations.

(c) Establishing standards for the decision of an arbitrator under this section.

(d) Governing who may be a party to an arbitration under this section.

(3)(a) An arbitrator selected under rules adopted pursuant to subsection (2) of this section must be experienced in valuing generating resources and may not have any material conflict of interest in the result of the arbitration.

(b) Any party to the arbitration may challenge the selection of an arbitrator by direct petition to the commission. The commission's review of the selection shall be limited to allegations of bias and lack of qualifications. The commission shall hold a hearing within 10 days after the filing of a petition, and the commission shall issue a final decision within 10 days after the hearing. The commission may require selection of a different arbitrator.

(4) The arbitrator shall control the time, manner and place of the arbitration, subject to any limitations established by commission rule.

(5) An arbitrator acts on behalf of the commission in performing duties and powers under this section and under rules adopted by the commission pursuant to this section. Nothing in this section shall be construed to grant any rights or privileges to an arbitrator that are otherwise afforded to persons employed by the state.

(6) The commission shall enforce an arbitration decision made pursuant to this section, unless any party to the arbitration files written exceptions with the commission for any of the following causes:

(a) The decision was procured by corruption, fraud or undue means;

(b) There was evident partiality or corruption on the part of the arbitrator;

(c) The arbitrator exceeded the arbitrator's powers, or so imperfectly executed the arbitrator's powers that the rights of the party were substantially prejudiced;

(d) There was an evident material miscalculation of figures or an evident material mistake in the description of any thing or property referred to in the decision; or

(e) The decision was based on an erroneous interpretation of a statute, rule or other law.

(7) If, after a hearing on the exceptions filed as provided in subsection (6) of this section, it appears to the commission that the decision should be set aside or modified, the commission may by order refer the decision back to the arbitrator with proper instructions for correction or rehearing.

(8) A commission order or decision under this section may not be appealed until after the commission issues a final order adopting the arbitration decision. [2001 c.134 §1a; 2005 c.22 §507; 2005 c.638 §10]

Note: 757.660 was added to and made a part of 757.600 to 757.689 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

757.661 Commission authority to require filing. The Public Utility Commission may require an electric company to make any filings under this chapter that the commission determines necessary to implement ORS 757.600 to 757.667. [1999 c.865 §20]

757.663 Commission authority to require electric company to enter into contracts with Bonneville Power Administration. In order to preserve the benefits of federal low-cost power for residential and small-farm consumers of electric utilities, the Public Utility Commission may require an electric company to enter into contracts with the Bonneville Power Administration for the purpose of securing such benefits. The contracts shall be subject to approval by the commission. In reviewing a contract, the commission, at a minimum, shall consider:

(1) The short-term expected cost of electric power from the Bonneville Power Administration compared to market-priced alternatives;

(2) The long-term benefit of retaining the rights to purchase electric power from the Bonneville Power Administration at cost, compared to market-priced alternatives; and

(3) Other factors deemed relevant by the commission. [1999 c.865 §19]

757.665 Limitation on installing, servicing electric meters. Electric meter installation, testing and maintenance shall be performed only by a distribution utility. [1999 c.865 §15a]

757.667 City authority over rights of way. Nothing in ORS 757.600 to 757.667 shall diminish, or authorize regulations that diminish, a city's authority to control the use of its rights of way and to collect license fees, privilege taxes, rent or other charges for the use of the city's rights of way. [1999 c.865 §17]

757.669 Policy regarding consumer-owned electric utilities. The Legislative Assembly declares that it is the policy of the State of Oregon regarding consumer-owned utilities to:

(1) Preserve and enhance the ability of community-based, consumer-owned utilities to provide reliable electric power to their consumers;

(2) Recognize that communities served by consumer-owned utilities located in various parts of the State of Oregon may differ in their needs and desires concerning the provision of electricity and related products and services;

(3) Preserve and enhance the ability of consumer-owned utilities and their elected governing bodies to respond to their consumers' needs and desires;

(4) Retain local control over consumer-owned utilities that provide or distribute electricity to retail electricity consumers;

(5) Preserve, clarify and, as provided herein, enhance the rights and authorities of consumer-owned utilities and their governing bodies; and

(6) Preserve the existing exclusive distribution rights of electric utilities as and to the extent such rights exist under current law. [1999 c.865 §22]

757.670 [1961 c.691 §14; renumbered 758.460]

757.672 Application of ORS 757.603 to 757.667 to consumer-owned electric utility; reciprocal electricity sales. (1) Nothing in ORS 757.603 to 757.667 is intended to limit or restrict the rights and authority of a consumer-owned utility, or to subject a consumer-owned utility to the regulatory authority of the Public Utility Commission not otherwise provided by law. ORS 757.603 to 757.667 shall not apply to a consumer-owned utility.

(2) Notwithstanding subsection (1) of this section, a consumer-owned utility that sells electricity, either directly or through a related party, to a nonresidential electricity consumer of another electric utility in this state, shall permit any other electricity service supplier to sell electricity to the consumer-owned utility's nonresidential electricity consumers whose electricity use, measured in average megawatts per year, is equal to or greater than the use of the nonresidential electricity consumer of the other electric utility. Such consumer-owned utility shall be subject to ORS 757.649 (1) to (4) and rules adopted thereunder. [1999 c.865 §23]

757.675 [1961 c.691 §12; 1971 c.655 §99; renumbered 758.465]

757.676 Consumer-owned utility authorized to offer direct, portfolio or other forms of access to electricity services.

The governing body of a consumer-owned utility is authorized to determine whether and under what terms and conditions it will offer its retail electricity consumers direct access, portfolio access or other forms of access to electric service suppliers. In making such determination, the governing body of a consumer-owned utility shall consider such factors as it deems appropriate. A consumer-owned utility shall have sole authority to determine:

(1) The quality and nature of electric service, including but not limited to different product and pricing options, which shall be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates, tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) Notwithstanding ORS 757.600 (10) and (35), what constitutes an economic or uneconomic utility investment, the value of such investments and, in the case of uneconomic utility investments, the manner and means of mitigating such investments.

(5) Whether and on what basis a transition charge will be adopted, assessed and collected from a retail electricity consumer located within the utility's service territory, including but not limited to a nonbypassable distribution charge, the amount and period of recovery for the charges, the allocation of the charges among retail electricity consumers located within the utility's service territory and the method of collecting such charges including but not limited to whether to impose a nonbypassable distribution charge.

(6) The manner of collecting stranded distribution charges, systems benefit charges, franchise fees, taxes and payments made in lieu of taxes from retail electricity consumers located within the utility's service territory for electric power transactions using transmission facilities, whether or not such transactions use distribution facilities. The governing body may assign charges on the basis of usage, demand or any combination or method it finds appropriate. Charges need not be assigned to specific facilities.

(7) The collection from retail electricity consumers located within the utility's service territory through rates, fees or charges, including the imposition of a nonbypassable distribution charge, in amounts sufficient to recover 100 percent of stranded costs imposed by, or incurred pursuant to the purchase of cost-based electric power from, the Bonneville Power Administration. Such stranded cost charges may include the difference in cost associated with purchasing electric power from the Bonneville Power Administration and the cost of purchasing a like and similar amount of electric power at market prices.

(8) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the utility's service territory and the consumer-owned utility in dealings with electric service suppliers.

(9) Access to or use of the utility's transmission facilities or distribution system by retail electricity consumers or electric service suppliers.

(10) The utility's qualification standards for energy service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service providers in a nondiscriminatory manner. [1999 c.865 §24; 2003 c.186 §80]

757.679 Net billing agreements. (1) Nothing in ORS 757.669 to 757.687 is intended to impair the rights or obligations of any party to net billing agreements. Notwithstanding any other provision of ORS 757.600 to 757.667, 757.676 and 757.687, and in the event a participating utility is required to make payments pursuant to a net billing agreement, the governing body of a participating utility may levy a rate, fee or charge, including a nonbypassable distribution system access charge against retail electricity consumers located within the utility's service territory, to meet its obligations.

(2) As used in this section:

(a) "EWEB" means the City of Eugene, Oregon, acting by and through the Eugene Water and Electric Board.

(b) "Net billing agreements" means those certain agreements that provide for the payment, through net billing of costs of certain nuclear power projects, including the payment of bonds, notes or other evidences of indebtedness issued by EWEB and by the supply system, respectively, to pay such project costs entered into prior to July 23, 1999:

(A) Between the administrator of the Bonneville Power Administration and EWEB;

(B) Among a participating utility, the administrator of the Bonneville Power Administration and EWEB; or

(C) Among a participating utility, the administrator of the Bonneville Power Administration and the supply system.

(c) "Participating utility" means a consumer-owned utility established by, or organized and existing under, the Oregon Constitution and laws of the State of Oregon, and that is a party to a net billing agreement.

(d) "Supply system" means the Washington Public Power Supply System, a municipal corporation or joint power agency organized and existing under and pursuant to the laws of the State of Washington. [1999 c.865 §25]

757.680 [1961 c.691 §15; renumbered 758.470]

757.683 Consumer-owned utility's distribution rights and control over distribution system. Notwithstanding the provisions of ORS 757.600 to 757.667, a consumer-owned utility shall have exclusive distribution rights, to the extent such rights are provided by law, and exclusive responsibility for the performance and oversight of its distribution system including the acquisition, construction, financing, operation and maintenance of distribution facilities and metering, billing, collection and consumer response functions relating to the distribution of electricity to retail electricity consumers located within the utility's service territory. Nothing in this section shall diminish or enlarge the rights of any person under ORS 758.400 to 758.475. [1999 c.865 §26]

757.685 [1961 c.691 §16; 1965 c.242 §2; 1971 c.655 §99a; renumbered 758.475]

757.687 Consumer-owned utility offering direct access; public purpose charge; bill assistance program. (1) Beginning on the date a consumer-owned utility provides direct access to any class of retail electric consumers, the consumer-owned utility shall collect from that consumer class a nonbypassable public purpose charge until January 1, 2026. Except as provided in subsection (8) of this section, the amount of the public purpose charge shall be sufficient to produce revenue of not less than three percent of the total revenue collected by the consumer-owned utility from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and any other costs included in rates as of July 23, 1999, except that the consumer-owned utility may exclude from the calculation of such costs any cost related to the public purposes described in subsection (5) of this section. If a consumer-owned utility has fewer than 17 consumers per mile of distribution line, the amount of the public purpose charge shall be sufficient to produce revenue not less than three percent of the total revenue from the sale of electricity services in the utility's service area to the consumer class that is provided direct access, or the utility's consumer class percentage share of state total electricity sales multiplied by three percent of total statewide retail electric revenue, whichever is less.

(2) Except as provided in subsection (9) of this section, the governing body of a consumer-owned utility shall determine the manner of collecting and expending funds for public purposes required by law to be assessed against and paid by the retail electric consumers of the utility. A determination by the governing body shall include:

(a) The manner for collecting public purpose charges;

(b) Public purpose programs upon which revenue from the charges may be expended; and

(c) The allocation of expenditures for each program.

(3) Beginning on the same date two years after July 23, 1999, a consumer-owned utility shall report annually to the State Department of Energy created under ORS 469.030 on the public purpose charges paid to the utility by its retail electric consumers and the public purposes on which the revenue was expended.

(4) A consumer-owned utility may comply with the public purpose requirements of this section by participating in collaborative efforts with other consumer-owned utilities located in this state.

(5) Funds assessed and paid by, and credits or other financial assistance issued or extended to, retail electric consumers for purposes of this section may, in the discretion of the governing body of the consumer-owned utility, be expended to fund programs for energy conservation, renewable resources or low-income energy services otherwise required by the laws of this state, adopted by the governing body pursuant to the National Energy Conservation Policy Act (Public Law 95-619, as amended November 10, 1981), or conducted by the utility pursuant to agreement with the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501). All such funds expended, credits issued and incremental costs incurred in connection with the performance of a consumer-owned utility's obligations under this section shall be credited toward the utility's public purpose funding obligation under this section.

(6) A consumer-owned utility also may credit toward its funding obligations under this section any incremental costs incurred by the utility for capital expenditures made to reduce its distribution system energy losses, existing biomass gas and waste to energy systems, existing hydroelectric generation projects using fish attraction water, for new energy conservation and renewable resource funding costs included in its wholesale power supplier's charges and for electric power generated by renewable or cogeneration resources pursuant to requirements of the Public Utilities Regulatory Policy Act of 1978 (Public Law 95-617), to the extent that such costs exceed the average cost of the utility's other electric power resources.

(7) A consumer-owned utility also may credit toward its public purpose funding ob-

ligations under this section any costs incurred in complying with ORS 469.649 to 469.659.

(8) Beginning on March 1, 2002, a consumer-owned utility whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 megawatts of electricity use per year shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(9)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by a consumer-owned utility for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, less administration costs incurred under this subsection. The credit shall not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the department a description of the proposed conservation project, new market transformation or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The department shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. Notice shall be issued to the retail electricity consumer and the appropriate consumer-owned utility. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the department verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the department hire an inde-

pendent auditor to assess the potential for conservation measures at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this paragraph unless a subsequent audit determines that new conservation investment opportunities are available. The department may require that a new audit be performed on the site to determine whether new conservation measures are available, provided that the audits occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the audits described in this subsection.

(10) A retail electricity consumer with a load greater than one average megawatt shall not be required to pay a public purpose charge in excess of three percent of the consumer's total cost of electricity services unless the charge is established in an agreement between the consumer and the consumer-owned utility.

(11) Beginning on March 1, 2002, a consumer-owned utility shall have in operation a bill assistance program for households that qualify for federal low-income energy assistance in the consumer-owned utility's service area. A consumer-owned utility shall report annually to the Housing and Community Services Department detailing the utility's program and program expenditures.

(12) A consumer-owned utility may require an electricity service supplier to provide information necessary to ensure compliance with this section. The consumer-owned utility shall ensure the privacy and protection of any proprietary information provided. [1999 c.865 §27; 2001 c.819 §5; 2007 c.301 §29]

757.689 Recovery of costs of energy conservation measures in rates of electric company. (1) In addition to the public purpose charge established by ORS 757.612, the Public Utility Commission may authorize an electric company to include in its rates the costs of funding or implementing cost-effective energy conservation measures implemented on or after June 6, 2007. The costs

may include amounts for weatherization programs that conserve energy.

(2) The commission shall ensure that a retail electricity consumer with a load greater than one average megawatt:

(a) Is not required to pay an amount that is more than three percent of the consumer's total cost of electricity service for the public purpose charge under ORS 757.612 and any amounts included in rates under this section; and

(b) Does not receive any direct benefit from energy conservation measures if the costs of the measures are included in rates under this section. [2007 c.301 §46]

757.690 [1961 c.691 §17; repealed by 1967 c.164 §4]

757.691 Applicability. Nothing in ORS 757.669 to 757.687 is intended to affect administration and enforcement of ORS 758.400 to 758.475 or to diminish or enlarge the rights of any person under ORS 758.400 to 758.475. [1999 c.865 §28]

EMERGENCY CURTAILMENT OF ELECTRICITY OR NATURAL OR MANUFACTURED GAS

757.710 Emergency curtailment plan required; credits for weatherization or alternate energy devices. (1) Any person, as defined in ORS 758.400, engaged in the sale or resale of electricity or natural or synthetic gas in this state shall present for approval by the Public Utility Commission a plan for curtailment of electrical or gas load in the event of any predictable circumstance that may jeopardize prolonged continuity of service. Utility plans shall be submitted in such form and within such time limits as the commission shall specify.

(2) Utility plans may provide for a credit against future curtailment for a customer who has already accomplished a reduction in demand for the utility's service by installing an alternative energy device or by weatherization or other installed conservation measures equivalent to the proposed level of curtailment. Where the level of curtailment exceeds the demand reduction produced, by the conservation measures or installed alternative energy device of the customer, the utility plan may provide for credit against the level of curtailment ordered to the extent of the demand reduction produced by the conservation measure or alternate energy device.

(3) The commission shall approve the feature of any plan concerning such credit against curtailment to the extent of the demand reduction produced and shall not penalize either the utility or the customer, in the event of a curtailment order, under ORS

757.720 for the amount of reduced demand. [1973 c.309 §2; 1975 c.606 §10; 1979 c.355 §1]

757.720 Factors to be considered in approving plan; authority to establish plan; consultation with State Department of Energy. (1) Approval of utility plans for the curtailment of load shall be based on the following factors:

(a) The consistency of the plan with the public health, safety and welfare;

(b) The technical feasibility of implementation of the plan;

(c) The effectiveness with which the plan minimizes the impact of any curtailment; and

(d) Consistency with Oregon energy policies formulated under ORS 469.010 to 469.225, 469.300 to 469.563 and 757.710 and this section.

(2) In the event of an emergency threatening the health, safety and welfare of the general public, the Public Utility Commission may on the commission's own motion and without hearing establish a plan for the curtailment of load by any person referred to in ORS 757.710. If an emergency is not present, the commission shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commission shall consult with the Director of the State Department of Energy before approving a plan. [1973 c.309 §3; 1975 c.606 §11; 2005 c.22 §508]

757.730 Liability when curtailment occurs. A utility shall not be liable for damages to persons or property resulting from a curtailment of service in accordance with a plan approved by the Public Utility Commission. [1973 c.309 §4]

HEALTH ENDANGERING TERMINATION OF RESIDENTIAL UTILITY SERVICE

757.750 Legislative findings. The Legislative Assembly finds that the termination of residential electric and natural gas utility service can lead to the serious impairment of human health and possibly to loss of life; therefore, the Legislative Assembly has enacted ORS 757.750 to 757.760. [1979 c.868 §2; 1983 c.326 §1]

757.755 Termination of residential electric or natural gas service prohibited; rules of commission. (1) The Public Utility Commission of Oregon shall establish rules to prohibit the termination of residential electric or natural gas service when such termination would significantly endanger the physical health of the residential consumer.

(2) The commission shall provide by rule a method for determining when the termi-

nation of residential electric or natural gas service would significantly endanger the physical health of the residential consumer. [1979 c.868 §3; 1983 c.326 §2]

757.760 Requirements for notice of termination of service; payment schedules; rules. The Public Utility Commission shall establish rules to require each electric and natural gas utility to:

(1) Give written or personal notice of a proposed termination of residential service in a manner reasonably calculated to reach the residential consumer within a reasonable period of time before the proposed date of termination;

(2) Accept reasonable partial payment on the outstanding account and to establish a reasonable payment schedule for any indebtedness, including a deposit, that the utility claims the residential consumer owes for service at any residential address in lieu of termination of or refusal to provide service, and to inform the residential consumer of the provisions of this subsection;

(3) Inform those residential consumers who cannot afford to pay their bills or deposits of the names and telephone numbers of the appropriate unit within the Department of Human Services or other appropriate social service agencies that can help the consumer investigate what federal, state or private aid might be available to that consumer; and

(4) Provide that a transfer of service from one premises to another within the utility's service area shall not be considered a discontinuation of service. [1979 c.868 §4; 1983 c.326 §3]

HIGH VOLTAGE POWER LINE REGULATION

757.800 Definitions for ORS 757.800 and 757.805. As used in this section and ORS 757.805, unless the context requires otherwise:

(1) "Authorized person" means:

(a) An employee of a utility which produces, transmits or delivers electricity.

(b) An employee of a utility which provides and whose work relates to communication services or state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a utility.

(c) An employee or agent of an industrial plant whose work relates to the electric system of the industrial plant.

(d) An employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if spe-

cifically authorized by the owners of the poles to make cable television or communication services attachments.

(e) An employee or agent of state, county or municipal agencies which have or whose work relates to overhead electric lines or circuit construction or conductors on poles or structures of any type.

(f) An employee of a transmission company as defined in ORS 758.015.

(2) "High voltage" means voltage in excess of 600 volts measured between conductors or between a conductor and the ground.

(3) "Overhead line" means all bare or insulated electric conductors installed above ground.

(4) "Person" or "business entity" means those parties who contract to perform any function or activity upon any land, building, highway or other premises.

(5) "Utility" means any electric or communication utility described by ORS 757.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to customers.

(6) "Proximity" means within 10 feet or such greater distance as may be prescribed by rule adopted pursuant to ORS chapter 654. [1989 c.672 §2; 2001 c.913 §5]

757.805 Accident prevention required for work near high voltage lines; effect of failure to comply; applicability; other remedies unaffected. (1) Any person or business entity responsible for performing any function, activity, work or operation in proximity to a high voltage overhead line shall guard effectively against accidents involving such high voltage overhead line, as required by rules adopted pursuant to ORS chapter 654.

(2) If any violation of subsection (1) of this section or rules adopted pursuant to ORS chapter 654 results in, or is a contributing cause of, a physical or electrical accident involving any high voltage overhead line, the person or business entity violating subsection (1) of this section or rules adopted pursuant to ORS chapter 654 is liable to the utility operating the high voltage overhead lines for all damages to its facilities and all costs and expenses, including damages to any third persons, incurred by the utility as a result of the accident. However, any person or business entity that has given advance notice of the function, activity or work to the utility operating the high voltage overhead line, and has otherwise substantially complied with rules adopted pursuant to ORS chapter 654, shall only be liable for such

damages in proportion to that person or business entity's comparative fault in causing or contributing to the accident.

(3) This section and ORS 757.800 do not apply to:

(a) Construction, reconstruction, operation or maintenance by an authorized person of overhead electric or communication circuits or conductors and their supporting structures or electric generation, transmission or distribution systems or communication systems.

(b) Fire, police or other emergency service workers acting under authority of a state agency or other public body while engaged in emergency operations.

(4) The provisions of this section and ORS 757.800 are not intended to displace any other remedies which may be available to the utility by statute or common law. [1989 c.672 §§3,4,5,6]

757.810 [1985 c.550 §5; renumbered 759.015 in 1989]

OREGON COMMUNITY POWER (Definitions)

757.812 Definitions for ORS 757.812 to 757.950. As used in ORS 757.812 to 757.950:

(1) "Board" means the board of directors of Oregon Community Power.

(2) "Incumbent utility" means an investor-owned utility that is the subject of a transaction described in ORS 757.814.

(3) "Investor-owned utility" means a utility that sells electricity and that is operated by a corporation with shareholders.

(4) "Rate" has the meaning given that term in ORS 756.010.

(5) "Service" has the meaning given that term in ORS 756.010.

(6) "Service territory" means the geographic area within which a utility provides electricity to customers. [2007 c.807 §1]

Note: 757.812 to 757.954 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Acquisition Review Committee)

757.814 Creation of acquisition review committee. (1)(a) Except as provided in subsection (9) of this section, the Public Utility Commission shall give notice to the cities and counties specified in paragraph (b) of this subsection whenever the commission receives notice of a proposed transaction under ORS 757.511 (2):

(A) Relating to an investor-owned utility for which approval of the Public Utility

Commission is required under ORS chapter 757; and

(B) Involving the sale of 50 percent or more of the voting shares of the utility to a person that is not an affiliated interest with the utility as defined in ORS 757.015.

(b) Notice under subsection (1) of this section shall be given to a city or county if the investor-owned utility that is the subject of the proposed transaction has service territory within the boundaries of the city or county.

(2) Upon receiving notice under subsection (1) of this section, each city or county may appoint a member to an acquisition review committee formed to represent the affected cities and counties. An acquisition review committee must be formed not more than 60 days after notice is given by the commission under subsection (1) of this section. If an acquisition review committee is not formed within 60 days after notice is given by the commission under subsection (1) of this section, the commission shall proceed with any application made under ORS 757.511 for approval of the transaction.

(3) An acquisition review committee formed under this section shall consider a proposed transaction described in subsection (1) of this section for the purpose of determining whether:

(a) Acquisition of the investor-owned utility by Oregon Community Power would be in the best interests of the customers served by the investor-owned utility; and

(b) Acquisition of the utility can be accomplished in a manner that is consistent with the policy described in ORS 757.910.

(4) An acquisition review committee created under this section may decide to enter into negotiations for the acquisition of an investor-owned utility that is the subject of a proposed transaction described in subsection (1) of this section only by the affirmative vote of members of the committee representing counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility, and the affirmative vote of members of the committee representing cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility. If an acquisition review committee determines that negotiations should commence, the committee shall:

(a) Enter into negotiations with the incumbent utility or persons that have authority to negotiate the disposition of the incumbent utility or the electric utility assets of the incumbent utility; and

(b) If the negotiations result in an agreement between the committee and the incumbent utility or persons described in paragraph (a) of this subsection, the committee shall immediately give notice to the commission and file an application with the commission under ORS 757.511 for approval of the transaction.

(5) An acquisition review committee created under this section may decide to acquire an investor-owned utility under subsection (4) of this section only by the affirmative vote of members of the committee representing counties in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility, and the affirmative vote of members of the committee representing cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility. An acquisition review committee may vote to acquire an incumbent utility under this subsection only after public notice and consultation with groups representing customers of the incumbent utility.

(6) An acquisition review committee must complete negotiations and vote to enter into an agreement not more than 150 days after notice is given to cities and counties under subsection (1) of this section. If the incumbent utility agrees in writing, the committee may request that the time limitation imposed by this section be extended by 90 days.

(7) If the commission approves acquisition of the incumbent utility by Oregon Community Power, the commission shall inform the Governor and the Governor shall activate Oregon Community Power by convening an initial Oregon Community Power Board Nominating Committee under section 7, chapter 807, Oregon Laws 2007. As soon as the first board of directors of Oregon Community Power is appointed under ORS 757.834, the board shall implement the agreement and acquire the incumbent utility or the electric utility assets of the incumbent utility in the name of Oregon Community Power.

(8) An acquisition review committee shall give notice to the commission immediately if the committee proposes to dissolve or decides not to enter into negotiations under subsection (4) of this section or if negotiations do not result in an agreement.

(9) The commission may not give notice to cities and counties under subsection (1) of this section if a person providing notice of a proposed transaction under ORS 757.511 (2) also provides to the commission written consent forms signed by persons with authority to act on behalf of counties in which reside not less than two-thirds of the customers

with billing accounts that are served by the incumbent utility and on behalf of cities in which reside not less than two-thirds of the customers with billing accounts that are served by the incumbent utility.

(10) An acquisition review committee may enter into an agreement for the acquisition of an incumbent utility or the electric utility assets of the incumbent utility only if the committee obtains approval for the acquisition from the appropriate state agencies in all states in which the incumbent utility serves retail electricity consumers.

(11) Notwithstanding any other provision of law, Oregon Community Power is responsible for and shall pay all costs relating to the acquisition of an incumbent utility, including but not limited to:

(a) The costs of acquiring the electric utility assets of the incumbent utility;

(b) The costs of acquiring any necessary generating capacity and transmission capacity dedicated to serving the customers in the service area that will be acquired, including but not limited to electricity generating assets and alternate energy generating assets under construction but not yet in service;

(c) Depreciation;

(d) Loss of revenue to the incumbent utility; and

(e) All electric utility assets necessary to reintegrate the system of the incumbent utility after detaching the portion of the utility acquired by Oregon Community Power. [2007 c.807 §2]

Note: See note under 757.812.

757.815 [1985 c.550 §6; 1987 c.447 §72; renumbered 759.020 in 1989]

(Oregon Community Power Created)

757.818 Oregon Community Power created. (1) Oregon Community Power is created as a public corporation. Oregon Community Power shall exercise and carry out all powers, rights and privileges that are conferred upon Oregon Community Power under ORS 757.812 to 757.950.

(2) Oregon Community Power is created as a public corporation in order to carry out public services in sectors of the economy in which activities or services are also provided by private enterprise. Oregon Community Power is granted all needed operating flexibility under ORS 757.812 to 757.950 in order to ensure the success of Oregon Community Power while retaining principles of public accountability and oversight.

(3) The primary mission of Oregon Community Power is to provide reliable, low-cost electricity to electricity consumers in the service territory in which Oregon Commu-

nity Power undertakes to provide electricity service. [2007 c.807 §3]

Note: See note under 757.812.

757.820 [1985 c.550 §6a; 1987 c.302 §1; renumbered 759.025 in 1989]

757.822 Laws applicable to Oregon Community Power. (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters 35 (other than ORS 35.550 to 35.575), 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than ORS 243.696), 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply to any other subdivision of state government.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286A, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010 to 282.150, 287.006, 287A.472, 288.150 to 288.165, 288.600, 288.815 and 656.017 (2) do not apply to Oregon Community Power.

(3) Oregon Community Power is not a participating public employer in the Public Employees Retirement System.

(4) Any funds held by or under the control of Oregon Community Power are not public funds, as defined in ORS 295.001. [2007 c.807 §4]

Note: See note under 757.812.

Note: 236.380 is repealed by section 32, chapter 100, Oregon Laws 2007. However, chapter 100, Oregon Laws 2007, is the subject of a referendum petition (see note under 236.380). The text of 757.822 was not amended by enactment of the Legislative Assembly to reflect the potential repeal. Editorial adjustment of 757.822 for the potential repeal of 236.380 has not been made.

Note: 287.006, 288.150 to 288.165, 288.600 and 288.815 were repealed by section 234, chapter 783, Oregon Laws 2007. The text of 757.822 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 757.822 for the repeal of 287.006, 288.150 to 288.165, 288.600 and 288.815 has not been made.

757.824 Regulatory authority of Public Utility Commission over Oregon Community Power. (1) Solely for purposes of determining the authority of the Public Utility Commission to regulate Oregon Community Power and the activities and operations of Oregon Community Power, Oregon Community Power shall be considered a consumer-owned utility, as defined in ORS 757.270, and the commission shall regulate Oregon Community Power as a consumer-owned utility.

(2) In addition to having the authority granted the commission under subsection (1)

of this section, the commission has the authority to:

(a) Regulate electricity service suppliers that conduct business with or use the facilities of Oregon Community Power;

(b) Determine a claim by an electricity service supplier that Oregon Community Power has acted in an anticompetitive manner; and

(c) Take action against Oregon Community Power to enforce consumer protection rules adopted under ORS 757.659 (3) and applicable to direct access consumers.

(3) Oregon Community Power may not be required to obtain the approval of the Public Utility Commission to make an acquisition described in ORS 757.812 to 757.950.

(4) As used in this section, "direct access" and "electricity service supplier" have the meanings given those terms in ORS 757.915. [2007 c.807 §5]

Note: See note under 757.812.

757.825 [1985 c.550 §7; 1987 c.447 §73; 1987 c.613 §2; 1989 c.5 §§9.23; 1989 c.378 §1; 1989 c.543 §1; renumbered 759.030 in 1989]

(Board of Directors)

757.830 Nominating committee. (1) There is established the Oregon Community Power Board Nominating Committee. The purpose of the nominating committee is to assist the Governor in appointing members to the board of directors of Oregon Community Power under ORS 757.834.

(2) The nominating committee shall consist of five members, as follows:

(a) One member shall be a delegate from the Citizens' Utility Board and shall represent the interests of residential electricity consumers.

(b) One member shall be a delegate from a qualified organization that represents the interests of primarily commercial electricity consumers.

(c) One member shall be a delegate from a qualified organization that represents the interests of primarily industrial electricity consumers.

(d) One member shall be a delegate from the League of Oregon Cities and shall represent the interests of municipalities and their residents.

(e) One member shall be a delegate from the Association of Oregon Counties and shall represent the interests of counties and their residents.

(3) Of the members described in subsection (2)(d) and (e) of this section, one shall be from a local government that is within the service territory of Oregon Community

Power and one shall be from a local government that is outside of the service territory of Oregon Community Power.

(4)(a) In order for the nominating committee to convene, the board of directors of Oregon Community Power shall prepare a proposed direction to convene as soon as is practicable following the earlier of the date that a vacancy occurs on the board or the date that it becomes known that a vacancy on the board will occur within six months.

(b) The proposed direction to convene shall state the qualified organizations that are to provide the delegates described in subsection (2)(b) and (c) of this section. The board shall send copies of the proposed direction to the Public Utility Commission and to each organization that served as a qualified organization at a prior convening of the nominating committee.

(c) Within 15 days after receipt of the proposed direction to convene, the commission shall review the proposed direction. The commission shall afford the opportunity for a hearing if requested by any party. If the proposed direction lists organizations that meet the qualifications of subsection (2)(b) and (c) of this section, the commission shall approve the direction. If the proposed direction does not list organizations that are qualified organizations under subsection (2)(b) and (c) of this section, the commission may modify the direction prior to approval. A determination by the commission may be appealed as a contested case under ORS chapter 183.

(5) The nominating committee shall convene as soon as is practicable after receiving an approved direction to convene under subsection (4) of this section, and shall forward the first slate of nominees to the Governor for consideration under ORS 757.834 no later than 90 days after the date an approved direction to convene is issued.

(6) The nominating committee shall nominate three individuals for each position on the board to be filled.

(7) A nominating committee that has been convened shall remain convened until each vacant position on the board is filled. The nominating committee shall forward a second slate of nominees to the Governor if requested by the Governor under ORS 757.834 (2).

(8) In forwarding nominees to the Governor, the nominating committee shall strive to select individuals who:

(a) Meet the qualifications described in ORS 757.834 (6);

(b) If appointed, would result in a board of directors that represents the geographic

diversity of Oregon Community Power's service territory; and

(c) Have the ability and experience to fulfill the principal duties of the board under ORS 757.880.

(9) As used in this section, "qualified organization" means a nonprofit organization that represents a broad class of commercial or industrial customers and that has a substantial record of representing the class before state agencies or the Legislative Assembly in matters related to public utility rates, terms and conditions and energy policy issues affecting the class. [2007 c.807 §6]

Note: See note under 757.812.

Note: Section 7, chapter 807, Oregon Laws 2007, provides:

Sec. 7. (1) Notwithstanding section 6 of this 2007 Act [757.830], the Governor shall convene the initial Oregon Community Power Board Nominating Committee for the first board of directors of Oregon Community Power on the date the Governor activates Oregon Community Power under section 2 of this 2007 Act [757.814].

(2) The nominating committee shall forward the first slate of nominees to the Governor for consideration under section 8 of this 2007 Act [757.834] within 30 days following the convening of the committee by the Governor.

(3) If necessary, the nominating committee shall forward a second slate of nominees to the Governor for consideration within 10 days after the Governor's request for a second slate of nominees under section 8 (2) of this 2007 Act.

(4) For purposes of section 6 (3) of this 2007 Act, the service territory of the incumbent utility is considered to be the service territory of Oregon Community Power. [2007 c.807 §7]

757.834 Board of directors. (1) Oregon Community Power shall be governed by a board of seven directors appointed by the Governor using the procedure set forth in this section.

(2)(a) Prior to making any appointment to the board, the Governor shall consider the nominations of the Oregon Community Power Board Nominating Committee.

(b) If the Governor reviews an initial slate of nominees made by the nominating committee and determines not to appoint a nominee, the Governor shall request that the nominating committee forward a second slate of nominees. If the Governor determines not to appoint a nominee from the second slate of nominees, the Governor may appoint any individual the Governor determines meets the qualifications of subsection (6) of this section.

(3) Notwithstanding the requirement that the Governor consider the nominations of the nominating committee prior to making an appointment, the Governor shall appoint an individual to be a board member within 120 days following the vacancy of a position on the board.

(4) Each appointment shall be subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(5) The term of office for each board member shall be four years. A board member may be nominated and appointed to successive terms, but within 150 days prior to the expiration of the term of the member, the board shall issue a proposed direction to convene the nominating committee under ORS 757.830 for the purpose of nominating individuals to fill the board position.

(6) A member of the board shall have significant experience or expertise in one or more of the following areas:

- (a) Business operations;
- (b) Utility management;
- (c) Legal or financial affairs;
- (d) Regional energy issues; or
- (e) Developing public policy.

(7) The Governor may remove any member of the board for cause, after notice and public hearing. [2007 c.807 §8]

Note: See note under 757.812.

Note: Section 9, chapter 807, Oregon Laws 2007, provides:

Sec. 9. (1) Notwithstanding section 8 (5) of this 2007 Act [757.834 (5)], the term of office for the first board of directors of Oregon Community Power shall be as follows:

(a) Two members shall be appointed for a term that ends one year following the date the Governor convenes the board;

(b) Two members shall be appointed for a term that ends two years following the date the Governor convenes the board;

(c) Two members shall be appointed for a term that ends three years following the date the Governor convenes the board; and

(d) One member shall be appointed for a term that ends four years following the date the Governor convenes the board.

(2) Consistent with subsection (1) of this section, the Governor shall designate the duration of the term of office of each member of the first board of directors at the time the Governor convenes the board. [2007 c.807 §9]

757.835 [1985 c.389 §3; 1987 c.447 §74; renumbered 759.230 in 1989]

757.840 [1987 c.1 §§1,2,3; 1989 c.5 §10; renumbered 759.235 in 1989]

757.842 Board meetings and procedures. (1) The board of directors of Oregon Community Power shall meet at least once each month to conduct the business of the board.

(2) A majority of board members shall constitute a quorum.

(3) The board shall select one of its members as chairperson.

(4) The board shall adopt bylaws establishing rules of procedure for board meetings and decisions.

(5) A member of the board shall be compensated as provided in ORS 757.886 (12).

(6) The board, not later than April 15 of each year, shall file a report with the Governor and the Legislative Assembly. The report shall explain the activities and operations of Oregon Community Power for the preceding calendar year, including a summary of the audit described in ORS 757.902. [2007 c.807 §10]

Note: See note under 757.812.

757.850 [1987 c.613 §4; 1989 c.5 §11; 1989 c.378 §2; 1989 c.543 §2; renumbered 759.195 in 1989]

(Acquisition of Incumbent Utility)

757.852 Acquisition of incumbent utility; use of eminent domain. (1) As soon as practicable after being appointed, the board of directors of Oregon Community Power shall implement the agreement entered into by an acquisition review committee under ORS 757.814 (4)(b).

(2) Notwithstanding ORS 757.890 (1), Oregon Community Power may not use the power of eminent domain to accomplish all or a part of an acquisition described in subsection (1) of this section unless the incumbent utility or the persons that have the authority to negotiate the disposition of the incumbent utility or the electric utility assets of the incumbent utility consent to the use of eminent domain for acquisition purposes. [2007 c.807 §11]

Note: See note under 757.812.

757.855 Funding of preliminary activities and negotiations. (1) Following a request by an acquisition review committee under ORS 757.862, the Public Utility Commission shall transfer from the Public Utility Commission Account to the Oregon Community Power Utility Acquisition Fund established under ORS 757.857 all amounts necessary to fund any preliminary activities needed to determine:

(a) The appropriateness or desirability of an acquisition described in ORS 757.812 to 757.950;

(b) The requirements and terms of the acquisition; and

(c) Any due diligence activities related to the acquisition and the negotiations for the acquisition.

(2) Notwithstanding any other provision of law, the commission may increase the rates of an incumbent utility in order to recover the costs incurred in negotiating an acquisition by an acquisition review committee under ORS 757.814 (4).

(3) Notwithstanding any other provision of law, the commission may assess a fee on an incumbent utility in order to fund the

transfer described in subsection (1) of this section. [2007 c.807 §12]

Note: See note under 757.812.

757.857 Oregon Community Power Utility Acquisition Fund. (1) The Oregon Community Power Utility Acquisition Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Community Power Utility Acquisition Fund shall be credited to the Oregon Community Power Utility Acquisition Fund.

(2) Moneys in the Oregon Community Power Utility Acquisition Fund are continuously appropriated to the Public Utility Commission for the purpose of transferring moneys to an acquisition review committee as described in ORS 757.855. [2007 c.807 §13]

Note: See note under 757.812.

757.860 [1987 c.302 §3; 1989 c.5 §12; renumbered 759.225 in 1989]

757.862 Request to Public Utility Commission for transfer of funds. (1) An acquisition review committee created under ORS 757.814 may request that the Public Utility Commission transfer moneys appropriated under ORS 757.857 in order to fund any preliminary activities the committee undertakes to determine:

(a) The appropriateness or desirability of an acquisition described in ORS 757.812 to 757.950;

(b) The requirements and terms of the acquisition; and

(c) Any due diligence activities related to the acquisition and the negotiations for the acquisition.

(2) An acquisition review committee shall submit a budget and plan of operations with a request under subsection (1) of this section. The commission may approve the transfer only after notice and public hearing on the request. [2007 c.807 §14]

Note: See note under 757.812.

757.864 Conduct of business after acquisition. If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, all electric utility operations undertaken by Oregon Community Power after the acquisition shall be conducted under the name of Oregon Community Power. [2007 c.807 §15]

Note: See note under 757.812.

757.868 Oregon Community Power to be successor in interest to incumbent utility; rules. (1) If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, unless otherwise required by the Oregon Constitution, Oregon Community Power shall constitute the successor in interest to the incumbent utility as

of the date of the acquisition for all purposes, including but not limited to:

(a) Allocation of territory and contracts allocating territory;

(b) City franchise fee agreements; and

(c) Contracts or obligations of any nature, to the extent the contracts or obligations apply to a successor in interest to the incumbent utility.

(2) Until the board of directors of Oregon Community Power establishes bylaws governing the procedures for conducting a ratemaking hearing and establishing rates under ORS 757.812 to 757.950 and under those procedures establishes one or more new rates or tariffs or establishes one or more changes in rates or tariffs, Oregon Community Power shall:

(a) Adopt all existing rate schedules in effect for the incumbent utility on the date of acquisition;

(b) Adopt the general rules and regulations of the incumbent utility's tariffs; and

(c) Maintain Oregon Community Power books and records in accordance with generally accepted accounting principles and with the uniform system of accounts established by the Federal Energy Regulatory Commission.

(3) If Oregon Community Power acquires an incumbent utility under ORS 757.812 to 757.950, Oregon Community Power is subject to all privilege taxes imposed by municipalities that the incumbent utility was required to pay to municipalities immediately before the acquisition. [2007 c.807 §16]

Note: See note under 757.812.

757.870 [1987 c.388 §2; 1989 c.5 §13; 1989 c.574 §6; renumbered 759.040 in 1989]

757.872 Equity and assets of incumbent utility held in trust; disclaimer of state interest. (1) Any equity of the incumbent utility, any electric utility assets of the incumbent utility or any combination of equity and assets of the incumbent utility that Oregon Community Power acquires under ORS 757.812 to 757.950 shall be held in trust by Oregon Community Power, acting as a trustee, for the exclusive purpose of carrying out the powers, rights and privileges of Oregon Community Power under ORS 757.812 to 757.950 for the benefit of the retail electricity consumers of Oregon Community Power. Notwithstanding any other provision of law, retail electricity consumers of Oregon Community Power may not pursue any judicial remedy in any court of this state for any action of Oregon Community Power, except as provided in ORS 757.812 to 757.950.

(2) The State of Oregon declares that it has no proprietary interest in Oregon Com-

munity Power or in any tangible or intangible property of any form owned or acquired by Oregon Community Power. The state disclaims any right to reclaim any contributions made to Oregon Community Power under ORS 757.812 to 757.950.

(3) Except as provided in ORS 757.812 to 757.950, Oregon Community Power may not receive any moneys from the State of Oregon other than:

- (a) Electric utility operational revenues;
- (b) Public purpose charge revenues under ORS 757.612;
- (c) Nonrecourse bond proceeds or proceeds from any other nonrecourse borrowing; or
- (d) Loans, grants, payments or other assistance that any local government as defined in ORS 174.116 would be eligible to receive. [2007 c.807 §17]

Note: See note under 757.812.

(Duties and Powers of Oregon Community Power)

757.880 Board duties. The principal duties of the board of directors of Oregon Community Power are to:

(1) Establish policy and develop consistent positions on core utility issues that promote and implement the primary mission of Oregon Community Power under ORS 757.818;

(2) Oversee the investments and operations of Oregon Community Power;

(3) Take all actions to ensure that revenues and income from electric utility operations are sufficient to satisfy all costs, including principal and interest payments on all outstanding bonds and other debt obligations issued by Oregon Community Power, and to maintain financial integrity in the operation of Oregon Community Power;

(4) Make decisions that are in the best interests of the consumers and communities within the service territory of Oregon Community Power and that are consistent with the primary mission of Oregon Community Power; and

(5) Consider the social, economic and environmental impacts of electricity generation, transmission and distribution in board decision-making. [2007 c.807 §18]

Note: See note under 757.812.

757.883 Payments in lieu of property taxes. (1) Oregon Community Power shall make payments in lieu of property taxes on all property that would otherwise be subject to assessment under ORS 308.505 to 308.665 if owned by a taxable owner. Oregon Community Power shall pay to each county in

which property of Oregon Community Power is located an amount equal to the ad valorem property taxes that would have been charged by the county if Oregon Community Power property had been assessed to a taxable owner as of January 1 of the assessment year for which payment is being made.

(2) The Department of Revenue shall determine the assessed value of Oregon Community Power property as if the property were subject to assessment under ORS 308.505 to 308.665, and shall transmit the value information as provided in ORS 308.505 to 308.665 to the appropriate county assessor. Oregon Community Power shall comply with property reporting requirements under ORS 308.505 to 308.665 as if the property were subject to assessment under ORS 308.505 to 308.665.

(3) The amount of the in lieu payment to be made to each county under this section shall be determined and certified annually by the county assessor of the county. A notice of the determination and certification shall be mailed to Oregon Community Power not later than October 15. The notice shall contain a statement of the value of the property and a complete explanation of the method used in computing the amount of the in lieu payment due under this section. Not later than November 15, Oregon Community Power shall pay the amount due to each county under this section, less a discount equivalent to that which is provided in ORS 311.505. Payment shall be made to the county treasurer. The county treasurer shall distribute the payment to the taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390. [2007 c.807 §19]

Note: See note under 757.812.

757.886 Powers of Oregon Community Power. The board of directors of Oregon Community Power shall establish the policies of Oregon Community Power to be used in the exercise of the powers enumerated for Oregon Community Power or the board, and may thereafter modify those policies. The board may delegate the exercise of powers enumerated for Oregon Community Power to a president, chief executive officer or general manager of Oregon Community Power. Delegated powers shall be exercised by the delegatee in a manner that is consistent with the policies established by the board. The powers of Oregon Community Power, as exercisable by the board of directors or by a president, chief executive officer or general manager under policies adopted by the board, are as follows:

(1) To acquire and hold, including by lease-purchase agreement, real and other property necessary or incident to the busi-

ness of Oregon Community Power, within or outside of, or partly within or partly outside of, the service territory of Oregon Community Power, and to sell or dispose of that property.

(2) To execute contracts to purchase, sell or lease assets, power, services or property.

(3) To execute contracts for the management or operation of any Oregon Community Power facilities.

(4) To issue bonds, notes or otherwise borrow moneys, incur indebtedness or issue, sell or assume evidence of indebtedness to the extent allowed under the Oregon Constitution.

(5) To sue and be sued.

(6) To refund and retire any indebtedness that may exist against or be assumed by Oregon Community Power or that may exist against the revenues of Oregon Community Power.

(7) To build, acquire, own, operate and maintain generation, transmission and distribution resources that are sufficient to maintain an adequate supply of electricity to the service territory.

(8) To enter into agreements with local governments or other state agencies or subdivisions of state government.

(9) To periodically develop least-cost plans at regular intervals. A least-cost plan may be developed only with public participation. A least-cost plan shall take into consideration economic and environmental risks of providing adequate and reliable energy for consumers, energy efficiency, renewable resources and cogeneration, in order to achieve adequate resources at the least overall cost.

(10) To oversee all aspects of Oregon Community Power operations.

(11) To hire and fire employees of Oregon Community Power.

(12) To make contracts, to set wages, to set salaries and provide compensation for services rendered by employees and by board members, to provide for life insurance, hospitalization, disability, health and welfare and retirement plans for employees and to do all things necessary and convenient for full exercise of the powers granted in this subsection. The provision of life insurance, hospitalization, disability, health and welfare and retirement plans for employees is in addition to any other right or power of Oregon Community Power to participate in those plans and does not repeal or modify any statutes except those that may be in conflict with the provision of life insurance, hospitalization, disability, health and welfare and retirement plans.

(13) To enter into contracts with the United States Government, with any other state, municipality or utility district or with any other person, for carrying out any provisions of ORS 757.812 to 757.950.

(14) To fix, maintain and collect electric energy rates as prescribed in ORS 757.812 to 757.950 and to establish and collect charges for any other commodity or service furnished, developed or sold by Oregon Community Power.

(15) To construct works across or along any street or public highway or over any lands that are the property of this state, or of any city or other subdivision of this state, subject to any franchise agreement, privilege tax or municipal regulation that would apply to the works, and to construct works across or along any stream of water or watercourse. Any works across or along any state highway shall be constructed only with the permission of the Department of Transportation. Any works across or along any county highway shall be constructed only with the permission of the county governing body. Any works across or along any city street shall be constructed only with the permission of the city governing body and upon compliance with applicable city regulations and payment of any fees called for under applicable franchise agreements, intergovernmental agreements under ORS chapter 190 or contracts providing for payment of these fees. Oregon Community Power shall restore any street or highway to its former state as near as may be practicable, and may not use the street or highway in a manner that impairs its usefulness unnecessarily.

(16) To enter into franchise agreements with cities and pay fees under negotiated franchise agreements, intergovernmental agreements under ORS chapter 190 and contracts providing for the payment of such fees, and to pay privilege taxes imposed under ORS 221.450 or other applicable privilege taxes.

(17) To exercise the power of eminent domain, as prescribed in ORS 757.852 or 757.890.

(18) To adopt bylaws as prescribed in ORS 757.905.

(19) To make payments in lieu of property taxes as prescribed in ORS 757.883.

(20) To acquire property, execute contracts or otherwise conduct business with or within the territory of any state or local government that is outside Oregon, any Indian tribe wherever located or Canada or any province of Canada.

(21) To execute any contract necessary to acquire, hedge or sell fuel or energy in any form, to manage electric utility operations,

to construct, maintain or repair any energy generation or transmission facilities or equipment, to increase capacity for energy generation or transmission, to transfer any asset owned by Oregon Community Power or to acquire any asset for use in electric utility operations conducted by Oregon Community Power.

(22) To establish any funds or accounts at depository banks or other financial institutions that are determined to be necessary, useful or convenient for the conduct of business by Oregon Community Power.

(23) To take any other actions necessary or convenient for the proper exercise of the powers granted to Oregon Community Power by ORS 757.812 to 757.950. [2007 c.807 §20]

Note: See note under 757.812.

757.890 Eminent domain. (1) Oregon Community Power may exercise the power of eminent domain for the purpose of acquiring any property, within or outside the service territory of Oregon Community Power, necessary for carrying out the electric utility operations of Oregon Community Power. Oregon Community Power may use the power of eminent domain to acquire an incumbent utility pursuant to an agreement under ORS 757.814 only as provided by ORS 747.852.

(2) Notwithstanding subsection (1) of this section, eminent domain may not be used:

(a) To acquire service territory of another electric utility; or

(b) To acquire any property for a purpose that is unrelated to electric utility operations. [2007 c.807 §21]

Note: See note under 757.812.

(Rates)

757.895 Ratemaking. (1) The board of directors of Oregon Community Power shall establish rates for the provision of electricity within the service territory of Oregon Community Power using the procedure set forth under ORS 757.897.

(2) The board shall establish a rate structure under which rates that apply to a specific class of customers are designed to recover the costs of providing electricity and related services to that class of customers.

(3) The rates adopted by the board shall be sufficient to accomplish the following purposes:

(a) To properly maintain and operate all Oregon Community Power property and facilities;

(b) To recover the overall costs of the electric utility operations of Oregon Community Power;

(c) To reflect the income tax exempt status of Oregon Community Power so that the savings from tax exemption accrue to the benefit of the customers of Oregon Community Power;

(d) To pay all franchise fees, in lieu payments, privilege taxes and other charges and assessments that are properly imposed on Oregon Community Power or the property or facilities of Oregon Community Power;

(e) To pay principal and interest on all bonds, warrants or other obligations of any character in accordance with the terms and provisions of the obligations, including but not limited to bonds issued by Oregon Community Power for an acquisition described in ORS 757.812 to 757.950;

(f) To pay any other indebtedness or obligation for which Oregon Community Power may be obligated to pay;

(g) To pay any debt administration costs associated with bonds, warrants, obligations or other indebtedness described in paragraphs (e) and (f) of this subsection;

(h) To fund operating reserves in sufficient amounts to ensure the continued efficient operation of Oregon Community Power; and

(i) To establish and maintain any special funds that Oregon Community Power is obligated to create for the purpose of paying bond issues or other obligations. [2007 c.807 §22]

Note: See note under 757.812.

757.897 Notice of ratemaking; ratemaking hearings. (1) Whenever the board of directors of Oregon Community Power determines to seek a modification in any rate imposed by the board for electricity service, the board shall give notice of a ratemaking hearing, at least 30 days in advance, as follows:

(a) In newspapers of general circulation that are published in the service territory;

(b) As a separate insert accompanying billing statements sent to customers;

(c) To persons that have requested notice of ratemaking action by the board; and

(d) By publication on the Oregon Community Power website.

(2) The notice shall state:

(a) The date, time and location of the ratemaking hearing of the board;

(b) The new rates or modifications to existing rates being proposed by the board; and

(c) Any other information deemed relevant by the board.

(3) At the time that the board issues a notice of a ratemaking hearing, the board shall publish on the Oregon Community

Power website or otherwise make available to the public the underlying utility information upon which the proposed rates are based. The board shall provide the specific information required by bylaws adopted under ORS 757.905 (1).

(4)(a) Pursuant to ORS 183.625, the board shall request, and the Office of Administrative Hearings shall assign, an administrative law judge to conduct the ratemaking hearing. The ratemaking hearing shall be conducted under ratemaking hearing procedures established by bylaws adopted under ORS 757.905 (2). The hearing shall be conducted in a manner that allows interested parties to present information and argument and to establish a record upon which the board may establish or modify rates pursuant to ORS 757.895.

(b) The administrative law judge shall ensure that the rates established at the ratemaking hearing are sufficient to accomplish all of the purposes described in ORS 757.895 (3).

(5) Notwithstanding ORS 757.822, a decision by the board to establish or modify rates may be appealed as a contested case under ORS chapter 183. [2007 c.807 §23]

Note: See note under 757.812.

(Participation by Citizens' Utility Board)

757.900 Intervention by Citizens' Utility Board in proceedings. (1) Whenever the Citizens' Utility Board of Governors determines that an Oregon Community Power proceeding may affect the interests of utility consumers, the Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.

(2) The Citizens' Utility Board shall have standing to obtain judicial or administrative review of any action of Oregon Community Power, and may intervene as of right as an interested party or otherwise participate in any proceeding that involves the review or enforcement of any action by Oregon Community Power, if the Citizens' Utility Board of Governors determines that the action may affect the interests of utility consumers. [2007 c.807 §24]

Note: See note under 757.812.

(Audits)

757.902 Annual audit of Oregon Community Power. The board of directors of Oregon Community Power shall cause an independent audit to be performed at least annually. The audit shall review and report on the financial affairs of Oregon Community Power and on any other aspects of Oregon Community Power as the board may direct. [2007 c.807 §25]

Note: See note under 757.812.

(Bylaws)

757.905 Adoption of bylaws. The board of directors of Oregon Community Power may adopt bylaws necessary to administer ORS 757.812 to 757.950, including but not limited to:

(1) Bylaws establishing the information the board must make available to the public prior to conducting a ratemaking hearing.

(2) Bylaws establishing procedures for conducting a ratemaking hearing that provide for substantially the same procedures as set forth in ORS 183.415, 183.425, 183.440 and 183.450.

(3) Bylaws to facilitate the implementation of the primary mission of Oregon Community Power under ORS 757.818. [2007 c.807 §26]

Note: See note under 757.812.

(Electricity From Bonneville Power Administration)

757.910 Policy. (1) The Legislative Assembly declares that it is the policy of the State of Oregon to:

(a) Ensure that the formation and operation of Oregon Community Power does not directly or indirectly diminish the amount of federal electric power available for purchase by consumer-owned utilities to serve their retail electricity consumers;

(b) Ensure that the formation and operation of Oregon Community Power does not, directly or indirectly, increase the lowest cost-based rates charged by the Bonneville Power Administration to consumer-owned utilities for the purchase of federal electric power above the level that would most likely have been charged absent the formation and operation of Oregon Community Power;

(c) Preserve the existing exclusive distribution rights of consumer-owned utilities;

(d) Ensure the preservation of contract rights currently existing between consumer-owned utilities and an incumbent utility;

(e) Preserve the authority of cities to impose franchise fees and privilege taxes and to execute contracts with Oregon Community Power; and

(f) Ensure that Oregon Community Power has access to benefits from the Bonneville Power Administration, as mandated by the federal Pacific Northwest Electric Power Planning and Conservation Act, that are equivalent to the benefits received by the incumbent utility at the time the utility is acquired by Oregon Community Power.

(2) As used in this section, "federal electric power" means electricity generated, dis-

tributed or sold by the Bonneville Power Administration. [2007 c.807 §27]

Note: See note under 757.812.

(Direct Access)

757.915 Definitions for ORS 757.915 to 757.930. As used in ORS 757.915 to 757.930:

(1) “Ancillary services” has the meaning given that term in ORS 757.600.

(2) “Direct access” means the ability of a retail electricity consumer to purchase electricity and ancillary services, as determined by the board of directors of Oregon Community Power, directly from an entity other than Oregon Community Power.

(3) “Economic utility investment” means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation or conservation, the full benefits of which are no longer available to consumers as a result of electing direct access, absent transition credits.

(4) “Electricity,” “electricity services” and “electricity service supplier” have the meanings given those terms in ORS 757.600.

(5) “Nonresidential electricity consumer” means a retail electricity consumer that is not a residential electricity consumer.

(6) “Portfolio access” means the ability of a retail electricity consumer to choose from a set of product and pricing options for electricity determined by the board and may include product and pricing options offered by Oregon Community Power or by an electricity service supplier.

(7) “Retail electricity consumer” means the end user of electricity for specific purposes that is served through the distribution system of Oregon Community Power, whether or not the end user purchases the electricity from Oregon Community Power.

(8) “Transition charge” and “transition credit” have the meanings given those terms in ORS 757.600.

(9) “Uneconomic utility investment” means all investments, including plants and equipment and contractual or other legal obligations, made by Oregon Community Power and properly dedicated to generation, conservation and workforce commitments, the full costs of which are no longer recoverable as a result of direct access, absent transition charges. [2007 c.807 §28]

Note: See note under 757.812.

757.918 Oregon Community Power required to allow direct access. (1) Oregon Community Power shall allow nonresidential electricity consumers direct access.

(2) Unless the board of directors of Oregon Community Power determines otherwise, Oregon Community Power shall provide all retail electricity consumers of Oregon Community Power with a regulated, cost-of-service rate option.

(3)(a) Oregon Community Power shall supply default electricity service to a non-residential electricity consumer in an emergency.

(b) The board shall establish reasonable terms and conditions for providing default service to a nonresidential electricity consumer in circumstances in which the consumer is receiving electricity services through direct access and elects instead to receive electricity services through the default service.

(4)(a) Oregon Community Power shall permit retail electricity consumers that are eligible for direct access to voluntarily aggregate their electricity loads.

(b) A retail electricity consumer that is eligible for direct access may voluntarily aggregate its electricity load with the electricity load of any other retail electricity consumer that is eligible for direct access. [2007 c.807 §29]

Note: See note under 757.812.

757.920 Rights of electricity service suppliers. (1) Every electricity service supplier is authorized to use the distribution facilities of Oregon Community Power on a nondiscriminatory basis.

(2) Oregon Community Power shall provide:

(a) Electricity service suppliers and retail electricity consumers access to the Oregon Community Power transmission facilities and distribution system that is comparable to that provided for Oregon Community Power’s own use; and

(b) Electricity service suppliers and retail electricity consumers timely access to information about the Oregon Community Power transmission facilities and distribution system, metering and loads comparable to that provided to Oregon Community Power’s own nondistribution divisions, affiliates and related parties.

(3) Oregon Community Power shall allow any electricity service supplier that has been certified by the Public Utility Commission to provide direct access to nonresidential electricity consumers. [2007 c.807 §30]

Note: See note under 757.812.

757.922 Transition credits and charges. (1) Each retail electricity consumer of Oregon Community Power shall receive a transition credit or pay a transition charge as determined under this section.

(2) The total of all transition credits or transition charges shall equal the net value of all economic utility investments and all uneconomic utility investments of Oregon Community Power.

(3) The board of directors of Oregon Community Power shall adopt one of the following methods to establish the net value described under subsection (2) of this section and all procedures connected with the adopted method:

- (a) Auction;
- (b) Administrative valuation; or
- (c) Ongoing valuation.

(4) The transition credit or transition charge that applies to a retail electricity consumer under this section may change to reflect the duration of the service option chosen by the consumer, but may not be changed because of the electricity service supplier chosen by the consumer. [2007 c.807 §31]

Note: See note under 757.812.

757.924 Portfolio access to electricity service providers. The board of directors of Oregon Community Power shall determine whether and under what conditions Oregon Community Power will offer retail electricity consumers portfolio access to electricity service suppliers. The board shall have sole authority to determine:

(1) The quality and nature of electricity services, including but not limited to different product and pricing options, that will be made available to its retail electricity consumers.

(2) The extent to which products and services will be unbundled and the rates, tariffs, terms and conditions on which they may be offered.

(3) Whether one or more pilot programs for direct access, portfolio access or other forms of access to alternative suppliers will be offered.

(4) The degree to which provision of portfolio access necessitates modification of transition credits, transition charges and the net value described in ORS 757.922 (2) on which transition credits or transition charges are based.

(5) The establishment of technical capability requirements, financial responsibility requirements and other protections for retail electricity consumers located within the Oregon Community Power service territory in dealings with electricity service suppliers.

(6) Access to or use of the Oregon Community Power transmission facilities or distribution system by retail electricity consumers or electricity service suppliers.

(7) Oregon Community Power's qualification standards for electricity service suppliers in addition to any certification standards established by the Public Utility Commission, provided that the qualification standards are uniformly applied to electricity service suppliers in a nondiscriminatory manner. [2007 c.807 §32]

Note: See note under 757.812.

(Consumer-Owned Utilities)

757.930 Distribution rights; service territories. (1) Notwithstanding any other provision of law, a consumer-owned utility has exclusive distribution rights, to the extent the distribution rights are provided by law other than ORS 757.812 to 757.950, and exclusive responsibility for the performance and oversight of:

(a) The utility's distribution system, including the acquisition, construction, financing, operation and maintenance of distribution facilities; and

(b) Metering, billing, collection and consumer response functions related to the distribution of electricity to retail electricity consumers located within the utility's service territory.

(2) ORS 757.812 to 757.950 do not:

(a) Diminish or enlarge the rights of any person under ORS 758.400 to 758.475; or

(b) Affect the administration or enforcement of ORS 758.400 to 758.475. [2007 c.807 §33]

Note: See note under 757.812.

(Financing Agreements)

757.935 Definitions for ORS 757.935 to 757.945. As used in ORS 757.935 to 757.945:

(1) "Credit enhancement agreement" means any agreement or contractual relationship between Oregon Community Power and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by ORS 757.935 to 757.945.

(2) "Financing agreement" means a bond, installment sale agreement, loan agreement, note, note agreement, short-term promissory note, commercial paper, line of credit or similar obligation or any other agreement to finance real or personal property, tangible or intangible, that is or will be owned and operated by Oregon Community Power, to otherwise borrow money, or to refinance previously executed financing agreements. [2007 c.807 §34]

Note: See note under 757.812.

757.937 Financing agreements authorized. (1) Oregon Community Power may enter into financing agreements in accordance with ORS 757.935 to 757.945 upon such terms as the board of directors of Oregon Community Power determines to be necessary or desirable. Amounts payable by Oregon Community Power under a financing agreement shall be limited to funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power. If there are insufficient available funds to pay amounts due under a financing agreement, the lender may exercise any property rights that Oregon Community Power has granted to the lender in the financing agreement against the property that was purchased with the proceeds of the financing agreement, and may apply the amounts so received toward payments scheduled to be made by Oregon Community Power under the financing agreement.

(2) Oregon Community Power may enter into a financing agreement only following adoption by the board of directors of a resolution authorizing the execution of the financing agreement or a series of similar financing agreements.

(3) Any obligation of any kind incurred by Oregon Community Power shall state on its face that it is solely an obligation of Oregon Community Power. [2007 c.807 §35]

Note: See note under 757.812.

757.940 Delegation of powers relating to financing agreements. The board of directors of Oregon Community Power may delegate to any board member, or to the chief executive officer, president, general manager or chief financial officer of Oregon Community Power, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or methods for determining variable or adjustable interest rates, denominations, methods of sale, agreements for the exchange of interest rates as an issuer under ORS 287.025 and other terms and conditions of a financing agreement that are not appropriately determined at the time of enactment or adoption of a resolution authorizing the execution of the financing agreement. The board may also delegate entering into a financing agreement or any other instrument authorized by law. This delegated authority shall be exercised subject to applicable requirements of law and any limitations and criteria as may be set forth in the resolution authorizing the execution of a financing agreement or in Oregon Community Power bylaws. [2007 c.807 §36]

Note: See note under 757.812.

Note: 287.025 was repealed by section 234, chapter 783, Oregon Laws 2007. The text of 757.940 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 757.940 for the repeal of 287.025 has not been made.

757.942 Powers of Oregon Community Power relating to financing agreements. Oregon Community Power may:

(1) Enter into agreements with third parties to hold financing agreement proceeds, payments and reserves as security for lenders, and to issue certificates of participation in the right to receive payments due from Oregon Community Power under a financing agreement. Amounts so held shall be invested at the direction of the board of directors of Oregon Community Power. Interest earned on any investments held as security for a financing agreement may, at the option of the board, be credited to the accounts held by the third party and applied in payment of sums due under a financing agreement.

(2) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that any credit enhancement agreements shall be payable solely from funds specifically pledged, budgeted for or otherwise made available by Oregon Community Power and amounts received from the exercise of property rights granted under the financing agreements.

(3) Use financing agreements to finance the costs of acquiring or refinancing real or personal property, either tangible or intangible, plus the costs of reserves and credit enhancements and the costs associated with obtaining the financing.

(4) Grant security interests in property to trustees or lenders.

(5) Make pledges for the benefit of trustees and lenders.

(6) Purchase fire and extended coverage or other casualty insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain any insurance while the financing agreement is unpaid, as long as available funds are sufficient to purchase the insurance. [2007 c.807 §37]

Note: See note under 757.812.

757.945 Consultation with State Treasurer. Oregon Community Power may consult with and obtain advice from the State Treasurer on proposed or executed financing agreements. The State Treasurer may recover from Oregon Community Power any costs incurred by the State Treasurer in providing consultation and advice. [2007 c.807 §38]

Note: See note under 757.812.

(Revenue Bonds)

757.950 Authorization to issue and sell revenue bonds. (1) Oregon Community Power may issue and sell revenue bonds in accordance with the provisions of the Uniform Revenue Bond Act under ORS 288.805 to 288.945. However, ORS 288.815 does not apply to revenue bonds issued by Oregon Community Power. Revenue bonds issued by Oregon Community Power may not be a general obligation of Oregon Community Power and may not be a charge upon any revenues or property of Oregon Community Power that is not specifically pledged thereto. Any obligation of any kind incurred by Oregon Community Power under ORS 288.805 to 288.945 is not, and may not be considered, an indebtedness of the State of Oregon.

(2) Revenue bonds or other financing agreements issued by Oregon Community Power pursuant to ORS 288.805 to 288.945 shall be considered to be bonds or obligations of a political subdivision of the State of Oregon for the purposes of all laws of this state. [2007 c.807 §39]

Note: See note under 757.812.

Note: 288.805 to 288.945 (the Uniform Revenue Bond Act) and 288.815 were repealed by section 234, chapter 783, Oregon Laws 2007. The text of 757.950 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 757.950 for the repeal of 288.805 to 288.945 and 288.815 has not been made.

(City Rights of Way)

757.954 City's authority to control, and collect charges for, use of rights of way. ORS 757.812 to 757.950 do not diminish, or authorize the adoption of rules that diminish, the authority of a city to control the use of the city's rights of way or to collect license fees, privilege taxes, rent or other charges for the use of the rights of way of the city. [2007 c.807 §42]

Note: See note under 757.812.

PENALTIES

757.990 Penalties. (1) Any person or municipality, or their agents, lessees, trustees or receivers, who omits, fails or refuses to do any act required by ORS 757.035, or fails to comply with any orders, rules or regulations of the Public Utility Commission made in pursuance of ORS 757.035, shall forfeit and pay into the State Treasury a sum of not less than \$100, nor more than \$10,000 for each such offense.

(2) Any public utility violating ORS 757.310 commits a Class A violation and upon conviction the court shall impose a fine of not less than \$100. Violation of ORS 757.310 by an officer or agent of a public

utility is punishable, upon conviction, by a fine of not less than \$50 nor more than \$100 for each offense.

(3) Any person violating ORS 757.325 shall, upon conviction, forfeit and pay to the State Treasurer not less than \$100 and not more than \$10,000 for each offense. Violation of ORS 757.325 by any agent or officer of any public utility or person is punishable, upon conviction, by a fine of not less than \$100 and not more than \$1,000 for each offense.

(4) Violation of ORS 757.330 is a Class A violation.

(5) Violation of ORS 757.445 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$20,000 for each offense.

(6) Violation of ORS 757.450 is a felony and is punishable, upon conviction, by a fine of not less than \$1,000 nor more than \$20,000, or by imprisonment in the custody of the Department of Corrections for not less than one nor more than five years, or both. [Amended by 1971 c.655 §95; 1979 c.990 §428; 1987 c.320 §245; 1999 c.1051 §224]

757.991 Civil penalty for noncompliance with gas regulations. Any person or municipality, or their agents, lessees, trustees or receivers, engaged in the management, operation, ownership or control of facilities for the transmission or distribution of gas by pipeline, or facilities for the storage or treatment of gas to be transmitted or distributed by pipeline, who fails to do any act required by ORS 757.039, or fails to comply with any orders, rules or regulations of the Public Utility Commission made in pursuance of ORS 757.039, shall forfeit and pay into the State Treasury a civil penalty not to exceed \$10,000 for each such failure for each day such failure persists, except that the maximum civil penalty shall not exceed \$500,000 for any related series of failures. [1969 c.372 §4; 1991 c.199 §1]

757.992 [Formerly 758.990; renumbered 165.990]

757.993 Penalty for violation of utility excavation notification provisions. (1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.

(2) In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$5,000 for

the first violation and not more than \$10,000 for each subsequent violation.

(3) Each violation of any rule of the Oregon Utility Notification Center shall be a separate offense. In the case of a continuing violation, each day that the violation continues shall constitute a separate violation.

(4) Penalties under this section shall not be imposed except by order following complaint as provided in ORS 756.500 to 756.610. A complaint must be filed within two years following the date of the violation.

(5) The Public Utility Commission may reduce any penalty provided in this section on such terms as the commission considers proper if:

(a) The defendant admits to the violation or violations alleged in the complaint and makes a timely request for reduction of the penalty; or

(b) The defendant submits to the commission a written request for reduction of the penalty within 15 days from the date of the penalty order.

(6) If the amount of the penalty is not paid to the commission, the Attorney General, at the request of the commission, shall bring an action in the name of the State of Oregon in the Circuit Court for Marion County to recover the penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commission.

(7) Notwithstanding any other provision of law, the commission shall pay penalties recovered under this section to the Oregon Utility Notification Center.

(8) The commission shall not seek penalties under this section except in response to a complaint alleging a violation of a rule or rules adopted by the Oregon Utility Notification Center. The commission may investigate any such complaint, and the commission shall have sole discretion to seek penalties under this section. [1995 c.691 §7]

757.994 Civil penalty for violation of statute, rule or order related to water utilities. (1) In addition to all other penalties provided by law, a person who violates any statute, rule or order of the Public Utility Commission related to water utilities is subject to a civil penalty of not more than \$500 for each violation. The commission may require that penalties imposed under this section be used for the benefit of the customers of water utilities affected by the violation.

(2) Notwithstanding ORS 183.745 (7)(d), 183.315 (6) and 756.500 to 756.610, civil penalties under this section must be imposed by the commission as provided in ORS 183.745. [2003 c.202 §3]

Note: 757.994 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 758

2007 EDITION

Utility Rights of Way and Territory Allocation; Cogeneration

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UTILITY REGULATION

RIGHTS OF WAY**758.010 Authority to construct lines and facilities; requirements and conditions.**

(1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection. [Amended by 1955 c.123 §1; 1971 c.655 §100; 1981 c.153 §76; 2001 c.664 §§3,6]

758.015 Certificate of public convenience and necessity.

(1) When any person, as defined in ORS 758.400, providing electric utility service, as defined in ORS 758.400, or any transmission company, proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commission for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the

same areas, and such other information in such form as the commission may reasonably require in determining the public convenience and necessity.

(2) The commission shall give notice and hold a public hearing on such petition. The commission, in addition to considering facts presented at such hearing, shall make the commission's own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter an order accordingly. The order shall be subject to review as in other cases. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

(3) This section shall not apply to construction of transmission lines in connection with a project for which a permit or license is otherwise obtained pursuant to state or federal law.

(4) As used in this section and ORS 758.020, "transmission company" means a person or entity that owns or operates high voltage transmission lines and is subject to the jurisdiction of the Federal Energy Regulatory Commission. "Transmission company" does not include a cooperative organized under ORS chapter 62. [1961 c.691 §19; 2001 c.913 §6]

758.020 Joint occupancy of poles.

(1) The county court, board of county commissioners or the Department of Transportation, when designating the location where poles or other aboveground facilities described in ORS 758.010 may be placed on a road or highway which fronts on the ocean or on a river or other body of water and the water frontage of the highway is being developed or maintained for its scenic or recreational value, may require all lines to occupy the opposite side of the right of way, if such joint occupancy can be maintained without undue impairment of service or damage to public life and property.

(2) If the owners of such lines are unable to agree on the terms and conditions of joint occupancy, such department, court or board shall request the Public Utility Commission to determine the practicability of such joint occupancy and the effect thereof upon adequate and safe service by the prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before making or entering an order, such commission shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610. The order of the commission is subject to judicial review as an order

in a contested case in the manner provided by ORS 756.610. In fixing terms and conditions pursuant to which joint occupancy shall be accomplished, the Public Utility Commission shall require the installation by each occupant of standards, devices and equipment reasonably necessary to protect the equipment of the other occupants from damage and the public from injury arising from such joint occupancy.

(3) The right of any public utility, telecommunications utility or transmission company to construct, maintain and operate on a public highway poles or fixtures is contingent on compliance with reasonable requirements established by the Department of Transportation, county courts, boards of county commissioners or the Public Utility Commission under authority of this section and ORS 758.010. Such rights are likewise contingent and conditioned on all facilities, equipment and installations being constructed and maintained in strict conformance with modern and approved standards. [Amended by 1971 c.655 §102; 1987 c.447 §98; 2001 c.913 §7; 2005 c.638 §11]

758.030 [Renumbered 271.440]

758.035 Commission's power to enforce joint use of facilities. (1) Every public utility, telecommunications utility, person, association or corporation having conduits, subways, street railway tracks, poles or other equipment on, over or under any street or highway shall for a reasonable compensation permit the use of the same by any public utility or telecommunications utility whenever public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other users of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, any public utility, telecommunications utility, person, association or corporation interested may apply to the Public Utility Commission, and if after investigation the commission ascertains that public convenience or necessity requires such use and that it would not result in irreparable injury to the owner or other users of such equipment, the commission shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use.

(3) The use so ordered shall be permitted and the prescribed conditions and compensation shall be the lawful conditions and compensation to be observed, followed and paid. The order of the commission is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610.

The order may be modified by the commission upon application of any interested party or upon the commission's own motion. All public utilities and telecommunications utilities shall afford all reasonable facilities and make all necessary regulations for the interchange of business, or traffic carried or their product between them, when ordered by the commission so to do. [Formerly 757.040; 1987 c.447 §99; 2005 c.638 §12]

758.040 [Renumbered 757.606]

758.050 [Renumbered 757.611]

758.060 [Amended by 1971 c.743 §426; renumbered 757.616]

758.070 [Renumbered 757.621]

758.080 [Renumbered 757.626]

758.090 [Renumbered 757.631]

758.100 [Renumbered 757.636]

758.110 [Renumbered 757.641]

UNDERGROUND ELECTRIC AND COMMUNICATIONS FACILITIES

758.210 Policy. The legislature finds that in many areas of this state landowners, utilities and public authorities desire to convert existing overhead electric and communication facilities to underground facilities by means of special assessment proceedings. The legislature declares that a public purpose will be served and that the public welfare will be promoted by providing a procedure to accomplish such conversion by special assessment proceedings and that it is in the public interest for such conversion to be accomplished as provided in ORS 758.210 to 758.270. [1969 c.385 §1]

758.215 Definitions for ORS 758.210 to 758.270. As used in ORS 758.210 to 758.270, unless the context requires otherwise:

(1) "Convert," "converting" or "conversion" means the removal of overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities at the same or different locations.

(2) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services; however:

(a) "Electric facilities" does not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

(b) "Communication facilities" does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(c) "Electric or communication facilities" does not include any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right of way of the railroad or pipeline.

(3) "Landowner" or "owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the county assessor.

(4) "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground.

(5) "Public authority" means a city or county.

(6) "Public lands and right of way" includes rights of way for streets, roads and highways and all land or interests in land owned by a public authority.

(7) "Underground assessment district" or "district" means an assessment district created as provided by ORS 758.210 to 758.270.

(8) "Underground electric or communication facilities" means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the surface in areas where utility facilities are underground in accordance with standard underground practices.

(9) "Utility" means any electric or communication utility described by ORS 757.005 or any telecommunications utility described by ORS 759.005, any plant owned or operated by a municipality, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to consumers. [1969 c.385 §2; 1971 c.360 §1; 1987 c.447 §100]

758.220 Authority for conversion to underground facilities; formation of assessment district. (1) A public authority shall have the power to require the conversion of overhead electric or communication facilities to underground facilities; to provide and receive funds to pay for such conversion; and to assess the whole or any part of the cost thereof against the real property included in the underground assessment district specially benefited by such conversion.

(2) An underground assessment district shall include an area having a frontage of not less than 400 feet upon a public street, road or highway along which overhead electric or communication facilities are located.

(3) An underground assessment district:

(a) Created by a city, may include area along city streets, county roads and state highways or any part thereof located within the district.

(b) Created by a county, may include areas along county roads, state highways or any part thereof located within the district. [1969 c.385 §3]

758.225 Petition, ordinance or resolution for conversion; contents; filing. (1) A proceeding for conversion may be initiated:

(a) By a petition signed by not less than 60 percent of the landowners within the proposed assessment district who own not less than 60 percent of the land area within the district; or

(b) By an ordinance or resolution of a public authority declaring its intention to order a conversion.

(2) A petition shall:

(a) Describe the proposed boundaries of the assessment district;

(b) Generally describe the proposed conversion; and

(c) Request that a proceeding for such conversion be taken pursuant to ORS 758.210 to 758.270.

(3) The petition shall be filed with the city recorder, county clerk or other person designated by the public authority to receive the petition and to verify the signatures. If the petition is signed by the requisite number of qualified signers, the official so designated shall execute a certificate of sufficiency and present the petition and certificate to the governing body of the city or to the county court or board of county commissioners, as the case may be. [1969 c.385 §4]

758.230 Assessment procedure; objections to conversion. (1) Upon presentation of the petition and certificate of sufficiency, or upon adoption of an ordinance or resolution, the public authority shall proceed in the manner provided by ORS 223.389.

(2) Unless the charter of a county provides otherwise, a county shall declare a proposed conversion abandoned if, after notice as provided by ORS 223.389, objections to the conversion are received by a county court or board of county commissioners signed by more than 50 percent of the landowners within the proposed assessment district who own more than 50 percent of land within the district. If a proposed conversion

is abandoned because of objections, no new proceeding for the conversion shall be undertaken within a period of one year thereafter. [1969 c.385 §5]

758.235 Applicability of local improvement laws; issuance of bonds. Unless otherwise provided by ORS 758.210 to 758.270, the provisions relating to the procedure for local improvements in cities, as set forth in ORS 223.205, 223.210 to 223.295, 223.387 to 223.399, 223.401, 223.405 to 223.485, 223.505 to 223.595, 223.610, 223.615 to 223.650 and 223.770, apply to proceedings for a conversion by a city or county under ORS 758.210 to 758.270. In a proceeding conducted by a county, where the statutes referred to in this section refer to officials of cities, the corresponding officials of the county shall perform the required functions, unless otherwise provided by order of the county court or board of county commissioners. Cities and counties may, as provided by ORS 223.205 and 223.210 to 223.295, issue improvement bonds in the total amount of the valid applications received to pay assessments in installments. [1969 c.385 §6; 1995 c.333 §20]

758.240 Contract with utility for conversion. (1) When a public authority in accordance with ORS 758.230 determines that a conversion shall be made, it may contract with the utilities supplying electric or communication service within the underground assessment district to perform the conversion. A contract shall provide:

(a) A description of the electric and communication facilities to be converted;

(b) That plans and specifications for such conversion shall be supplied or approved by the affected utility;

(c) The time and manner in which underground electric and communication facilities will be installed and overhead electric and communication facilities will be removed;

(d) The estimated cost of converting overhead facilities located on public lands and right of way to underground facilities;

(e) The estimated cost of converting related utility service facilities located on privately owned lots and parcels;

(f) The time and manner of making payments and the source of funds for such payments; and

(g) That upon completion of the work of conversion, the utility performing the conversion shall have legal title to the electric or communication facilities, which shall thereafter constitute a part of a system of the utility and be used, operated, maintained and managed by it as part of its system.

(2) Upon approval and execution of the conversion contracts by the utilities and public authority, the public authority shall direct the utilities owning overhead electric or communication facilities within the district to convert such facilities as required by the contract. [1969 c.385 §7]

758.245 Payment of costs for conversion; removal of overhead facilities. Upon completion of the conversion of the overhead electric or communication facilities on public lands and right of way to underground, the affected utility shall file a verified statement of the costs of such conversion with the public authority. The public authority shall adopt an ordinance assessing the whole or any part of the cost of the conversion against the real property in the underground assessment district specifically benefited and shall promptly thereafter mail to each landowner a statement of the amount of such costs assessed to the property of the landowner. With the statement the public authority shall mail to each landowner a notice stating that:

(1) Service from the underground facilities is available;

(2) The landowner has 90 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on the lot or parcel to underground service facilities; and

(3) After the 90-day period following the date of the mailing of the notice, the public authority will order the utilities to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area. [1969 c.385 §8]

758.250 Conversion of facilities on private lands; procedure; payment of costs.

(1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made at the expense of the landowner by the utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs or ordinances. The utility shall not be required to convert service lines on property, other than public lands and right of way, until the landowner furnishes to the utility a permit or easement authorizing the utility and its employees, agents and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the utility shall file with the public authority a verified statement of

the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter the public authority shall mail to each landowner a copy of such verified statement. [1969 c.385 §9]

758.255 Discontinuance of utility service for noncompliance with conversion provisions. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in ORS 758.250 or if such an owner fails to convert to underground service facilities within 90 days after the mailing to the owner of the notice provided by ORS 758.245, the public authority shall order the utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement. [1969 c.385 §10]

758.260 Competitive bidding for utility conversion. To the extent that the contract between the utility and the public authority provides that all or any part of the conversion work shall be performed by the utility, any statute or charter provision requiring competitive bidding and the award of a contract to the lowest responsible bidder does not apply. [1969 c.385 §11]

758.265 Overhead facilities in assessment district after conversion. Once converted, no overhead electric or communication facilities shall be installed, maintained or operated in any underground assessment district except as authorized by ORS 758.210 to 758.270. [1969 c.385 §12]

758.270 Effect of ORS 758.210 to 758.270 on existing laws and rights. ORS 758.210 to 758.270 are supplemental and cumulative of existing rights, laws, charters, ordinances and franchises and shall not abrogate or modify any franchise granted to a utility by any local government or abrogate or modify in any way existing rights, laws, charters or ordinances of any local government. [1969 c.385 §13]

LIABILITY OF ELECTRIC UTILITY FOR PRUNING AND REMOVING VEGETATION

758.280 Definitions for ORS 758.280 to 758.286. For the purposes of ORS 758.280 to 758.286:

(1) “Electric facilities” means lines, conduits, ducts, poles, wires, pipes, conductors, cables, crossarms, receivers, transmitters, transformers, instruments, machines, appliances and all other devices and apparatuses used, operated, owned or controlled by an electric utility for the purposes

of manufacturing, transforming, transmitting, distributing, selling or furnishing electricity.

(2) “Electric utility” has the meaning given that term in ORS 758.505.

(3) “Vegetation” means trees, shrubs, vines and all other plants. [2001 c.420 §1]

Note: 758.280 to 758.286 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.282 Immunity of electric utility for pruning or removing vegetation in certain cases. (1) An electric utility is immune from any civil liability for pruning or removing vegetation that is growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located, if the pruning or removal is consistent with policies of the Public Utility Commission relating to the pruning or removal of vegetation, or is consistent with a local ordinance or resolution applicable to the property that relates to the pruning or removal of vegetation, and:

(a) The vegetation has come in contact with or caused damage to electric facilities; or

(b) Pruning or removing the vegetation is necessary to protect life or property or to restore electric service.

(2) ORS 105.810 and 105.815 do not apply to any claim against an electric utility based on the pruning or removal of vegetation growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located. [2001 c.420 §2]

Note: See note under 758.280.

758.284 Immunity of electric utility for pruning or removing vegetation in other cases; notice to property owner. (1) An electric utility is immune from any civil liability for pruning or removing vegetation that is growing on property on which electric facilities are located, or growing on property that is adjacent to property on which electric facilities are located, if the pruning or removal is consistent with policies of the Public Utility Commission relating to the pruning or removal of vegetation, or is consistent with a local ordinance or resolution applicable to the property that relates to the pruning or removal of vegetation, and any of the following apply:

(a) The vegetation to be pruned or removed is hanging over electric facilities or growing in such close proximity to overhead electric facilities that the vegetation constitutes an electrical hazard under any electrical safety code adopted by the Public

Utility Commission or constitutes a danger under state or federal health and safety codes to a person working on the facilities or with access to the facilities.

(b) The vegetation to be removed is diseased, dead or dying or is close enough to electric facilities that pruning or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities. A determination under this paragraph must be made by a qualified forester or arborist if a local ordinance or resolution requires that such determinations be made by a qualified forester or arborist.

(c) The vegetation is of such size, condition and proximity to electric facilities that the vegetation can reasonably be expected to cause damage to electric facilities in the future. A determination under this paragraph must be made by a qualified forester or arborist if a local ordinance or resolution requires that such determinations be made by a qualified forester or arborist.

(2) The limitation on liability provided by this section does not apply unless the electric utility has provided notice to owners of the property where the vegetation is located. Notice may be provided by posting a flyer in a conspicuous location on the property where the vegetation is located. The flyer must:

(a) Indicate that the electric utility intends to prune or remove vegetation on the property;

(b) Include a brief statement of the nature of the work to be performed and the reason the work is needed;

(c) Include an estimate of the time period during which the work will occur; and

(d) Provide information on how the electric utility can be contacted.

(3) The limitation on liability provided by this section does not apply unless the pruning or removal complies with rules adopted by the Public Utility Commission relating to pruning or removal. In adopting rules, the commission shall give consideration to the American National Standard for Tree Care Operations adopted by the American National Standards Institute. [2001 c.420 §3]

Note: See note under 758.280.

758.286 Immunity not applicable to liability for cost of abating fires. The immunities provided by ORS 758.280 to 758.284 do not affect any liability that an electric utility may have for the costs of abating fires under ORS 477.064 to 477.120. [2001 c.420 §4]

Note: See note under 758.280.

WATER UTILITIES

758.300 Definitions for ORS 758.300 to 758.320. As used in ORS 758.300 to 758.320:

(1) "Commission" means the Public Utility Commission.

(2) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks or group care homes.

(3) "Water utility" means any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of water, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city. "Water utility" does not include a municipal corporation. [1999 c.695 §1]

Note: 758.300 to 758.320 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.302 Application for exclusive service territory. (1) A water utility may apply to the Public Utility Commission for an order designating an exclusive service territory for the water utility. The commission may designate as an exclusive service territory any area that on the date of application is being served in an adequate manner by the applicant and is not being served by any other water provider.

(2) In addition to the area described in subsection (1) of this section, a private water utility may apply for inclusion in an exclusive service territory designated for the private water utility any area adjacent to the area described in subsection (1) of this section if:

(a) The applicant plans to extend service to the adjacent area in the six months immediately following the date of the application;

(b) The adjacent area is not being served by any other water provider; and

(c) The applicant demonstrates that it is more economical and feasible to provide services to the adjacent area by an extension of the applicant's existing facilities than by an extension of the facilities of another water provider or community water supply system.

(3) An application under this section shall be made on forms provided by the commission and shall contain all information required by commission rule.

(4) Within 30 days after the filing of an application under this section, the commission shall give notice of the filing:

(a) By publication at least once weekly for two consecutive weeks in a newspaper or newspapers of general circulation in the area described in the application; and

(b) By written notice of the application to all other water providers in the areas adjacent to the area described in the application.

(5) The commission may, on its own motion, hold a hearing on the application. The commission shall hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days after the final publication of notice in the manner required by subsection (4) of this section. If a hearing is scheduled, the commission shall give notice of the time and place of the hearing in the manner provided by subsection (4) of this section for notice of the filing of an application. If the hearing is held by reason of a customer's request, the commission shall give notice of the hearing within 30 days after the request is received by the commission. The hearing shall be held at a place within or conveniently accessible to the area described in the application.

(6) The commission may make such investigations relating to an application under this section as the commission deems proper, including physical examination and evaluation of the facilities and systems of the applicant, estimates of their operating costs and revenues, and studies of such other information as the commission deems relevant.

(7) The commission shall enter an order granting or denying an application for an exclusive service territory under this section. The order must contain findings of fact supporting the order. The commission may grant an application subject to such conditions and limitations as the commission deems appropriate.

(8) ORS 756.500 to 756.610 govern the conduct of hearings under this section and any appeal of the commission's order.

(9) If the commission considers competing applications under subsection (2) of this section to extend exclusive service to the same area, there is a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [1999 c.695 §2; 2003 c.202 §4]

Note: See note under 758.300.

758.305 Exclusive service territories.

(1) Designated service territories of a water utility approved by the Public Utility Commission shall be exclusive. A water utility or community water supply system shall not provide water utility service within the designated exclusive service territory of another water utility without the express approval of the commission.

(2) A water utility shall serve only customers within its designated exclusive service territory and shall serve all applicants for service within its designated territory. The water utility may refuse service only as provided by commission rule.

(3) Upon petition by the water utility for an order, or by the commission on its own motion, a designated service territory may be expanded to include unserved areas. In reviewing a petition, the commission shall consider at least the current ability of the water utility to serve the expanded area, the demand for service in the expanded area, the impact on existing customers and the availability of alternative service. The commission may take other factors into consideration as prescribed by commission rule. Notice and hearing of the proposed expansion shall be given as provided in ORS 758.302.

(4) Upon petition by the water utility or a customer of the utility for an order, or by the commission on its own motion, a designated exclusive service territory may be decreased upon a showing that the water utility is not providing adequate service to its customers or does not have the capacity to serve the designated area. Notice of the proposed decrease of service territory shall be given as provided in ORS 758.302. [1999 c.695 §6]

Note: See note under 758.300.

758.310 Assignment or transfer of rights in exclusive service territory; approval of commission.

(1) The rights acquired by the designation of an exclusive service territory may be assigned or transferred only with the approval of the Public Utility Commission after a finding that the assignment or transfer is in the public interest. However, a hearing is not required if at least 75 percent of the affected customers agree to the proposed assignment or transfer.

(2) An order designating an exclusive service territory shall not be construed to confer any property right. However, upon the death of an applicant under an approved designation, the executor or administrator shall continue operating the water utility for the purpose of transferring such rights for a period not to exceed two years from the date of death.

(3) The territory served by a water utility under an order of the commission designating exclusive service territory shall not be altered solely as the result of a change in ownership or form of ownership. [1999 c.695 §5]

Note: See note under 758.300.

758.315 Water utility service provided by persons not designated by commission; remedy. In the event a designated exclusive service territory is served by a person not authorized by the Public Utility Commission, the commission or the water utility designated by the commission to serve the area may file an action for injunctive relief in the circuit court for any county where some or all of the designated service territory is located. The action shall proceed as in an action not triable by right to a jury. Any party to the action may appeal to the Court of Appeals from the trial court's order. An injunction ordered under this section shall be in addition to any other remedy provided by law. [1999 c.695 §7]

Note: See note under 758.300.

758.320 Application of ORS 758.300 to 758.320 to cities; effect on certain voluntary associations; existing franchise; exception. (1) The provisions of ORS 758.300 to 758.320 shall not be construed to restrict the powers granted to cities to issue franchises or to restrict the powers of condemnation of a municipality.

(2) The provisions of ORS 758.300 to 758.320 shall not be construed to restrict the formation of homeowners associations pursuant to ORS chapter 94, cooperatives pursuant to ORS chapter 62 or districts pursuant to ORS chapter 198 within the designated exclusive service territory of a water utility. A homeowners association, cooperative or district may petition the Public Utility Commission for an order excluding the association, cooperative or district from the exclusive service territory of a water utility. Upon a showing by the association, cooperative or district that exclusion is not detrimental to the public interest, the commission may issue an order excluding the association, cooperative or district from the exclusive service territory of a water utility.

(3) The commission shall recognize the service territories of a water utility that has an existing franchise on October 23, 1999, with a municipality as exclusive service territories. Upon application as provided in ORS 758.302, any such water utility may request an order from the commission to designate exclusive service territories in addition to those identified in the franchise agreement if the water utility is providing adequate and exclusive service to areas outside the areas identified in the franchise agreement.

(4) A district, as defined in ORS 198.010, that provides water utility service shall be exempt from the requirements of ORS 758.302. However, upon request of the commission, the district shall provide to the commission a map of its service territory and shall in all other respects comply with the requirements of ORS 758.300 to 758.320. [1999 c.695 §8; 2003 c.202 §6]

Note: See note under 758.300.

ELECTRIC AND GAS UTILITIES; ALLOCATION OF TERRITORIES AND CUSTOMERS

758.400 Definitions for ORS 758.015 and 758.400 to 758.475. As used in ORS 758.015 and 758.400 to 758.475 unless the context requires otherwise:

(1) "Allocated territory" means an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission or established by an order of the commission approving an application for the allocation of territory.

(2) "Person" includes individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agent, lessee, trustee or referee.

(3) "Utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users or the distribution of natural or manufactured gas to consumers through a connected and inter-related distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant or facilities for the production or transmission of electricity or gas which pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service. [Formerly 757.605; 1979 c.62 §2; 1985 c.550 §8; 1987 c.447 §101; 1999 c.59 §232]

758.405 Purpose of ORS 758.400 to 758.475. The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers affected thereby, it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility services. [Formerly 757.610]

758.410 Contracts for allocation of territories and customers; transfer of facilities. (1) Any person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating

which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "public utility" as defined in ORS 757.005 is also subject to the approval of the Public Utility Commission to the extent required by ORS chapter 757.

(3) The commission may approve a contract entered into under this section that authorizes Coos County to construct a natural gas pipeline into allocated territory in Coos County and that contains terms for the allocation of industrial customers in Coos County between the county and the other party to the contract. The contract need not specify the territory in which industrial customers subject to the allocation are located. The commission may approve the provisions of a contract under this subsection that govern allocation of industrial customers only if the commission determines that the provisions promote the purposes specified in ORS 758.405. The commission shall actively supervise the implementation of any contract entered into pursuant to this subsection to ensure that the contract continues to promote the purposes specified in ORS 758.405. A contract entered into under this subsection is not subject to ORS 758.420 (2). [Formerly 757.615; 2003 c.32 §1]

758.415 Enforceability of contract approved by commission; conditions for approval. Notwithstanding any other provisions of law, a contract entered into pursuant to ORS 758.410, when approved by the Public Utility Commission as provided in ORS 758.420 to 758.475, shall be valid and enforceable; provided, that the commission shall approve such a contract only if the commission finds, after a hearing as provided in ORS 758.420 to 758.475, that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all terri-

ories and customers affected thereby. [Formerly 757.620]

758.420 Filing of contract; hearing on contract; notice. (1) A contract entered into pursuant to ORS 758.410 shall be promptly filed with the Public Utility Commission, and the commission shall, within 30 days after such filing, give notice of such filing. If the commission chooses or if any customer or customers request a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of such hearing within 30 days of the customer's request which notice shall set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

(2) The commission shall publish notice of the filing in a newspaper or newspapers of general circulation in each of the territories affected by the contract. Each such notice shall be published at least once weekly for two successive weeks. [Formerly 757.625; 1985 c.633 §3]

758.425 Order of commission on contract. (1) On the basis of the applicant's filing or, if there is a hearing, on the record made at the hearing held pursuant to ORS 758.420, the Public Utility Commission shall enter an order either approving or disapproving the contract as filed, together with any appropriate findings of the facts supporting such order.

(2) An order of the commission under this section is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610.

(3) If the commission approves a contract and a petition for judicial review is not filed, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file a petition for judicial review expires. [Formerly 757.630; 1985 c.633 §4; 2005 c.638 §13]

758.430 Amendment of contract; approval of commission. Any contract that has been approved as provided in ORS 758.400 to 758.475 may be subsequently amended by the parties thereto, but any such amendatory agreement shall be filed with the Public Utility Commission and shall thereafter be approved or disapproved by the commission in the manner provided in ORS 758.420 and 758.425. However, no hearing is required if all affected customers approve the amendatory agreement. An amendatory agreement may be enforced in the manner provided in ORS 758.465. [Formerly 757.635; 1983 c.540 §5]

758.435 Application for allocation of territory; hearing; notice. (1) Any person providing a utility service in a territory that is not served by another person providing a similar utility service may make application to the Public Utility Commission for an order allocating such territory to it. The application may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person.

(2) The commission shall within 30 days after the filing of such application give notice of the filing. If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of the hearing within 30 days of the request which notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice of the filing shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks. Written notice of the filing shall be given to providers of similar utility service in adjacent territory.

(3) Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to be served exclusively by any person, if such city is, on such date, served by more than one person having necessary municipal or franchise authority to serve within the entire city. [Formerly 757.640; 1985 c.633 §1]

758.440 Order of commission on application. (1) On the basis of the application, or, if there is a hearing, on the record made at the hearing held pursuant to ORS 758.435, the Public Utility Commission shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of the facts supporting such order.

(2) The commission, before approving an application for the allocation of territory, shall find that the applicant is exclusively serving the territory covered by the application and in the case of an adjacent unserved area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person. [Formerly 757.645; 1985 c.633 §2]

758.445 Judicial review of order on application. An order of the Public Utility Commission under ORS 758.440 is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610.

If a petition for judicial review is not filed within the specified time, the order shall thereafter be valid and enforceable for the purposes herein specified from the date on which the right to file a petition for judicial review expires. [Formerly 757.650; 2005 c.638 §14]

758.450 Contract required for allocation of territory; prohibited activities; exceptions; third party financing. (1) Territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the Public Utility Commission.

(2) Except as provided in subsection (4) of this section, no other person shall offer, construct or extend utility service in or into an allocated territory.

(3) Except as provided in subsection (4) of this section, during the pendency of an application for an allocation of exclusively served territory, no person other than applicant shall offer, construct or extend utility service in or into the territory applied for; nor shall any person, without the express consent of the commission, offer, construct or extend utility service in or into any unserved territory which is the subject of a filing pending before the commission under ORS 758.420 or 758.435.

(4) The provisions of ORS 758.400 to 758.475 do not apply to any corporation, company, individual or association of individuals providing heat, light or power:

(a) From any energy resource to fewer than 20 customers, if it began providing service to a customer prior to July 14, 1985;

(b) From any energy resource to fewer than 20 residential customers so long as the corporation, company, individual or association of individuals serves only residential customers;

(c) From solar or wind resources to any number of customers; or

(d) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any number of customers.

(5) Nothing in subsection (4) of this section shall prohibit third party financing of acquisition or development by a utility customer of energy resources to meet the heat, light or power requirements of that customer. [Formerly 757.652; 1981 c.360 §2; 1985 c.779 §2]

758.455 Investigation by commission respecting contracts or applications; hearing procedure. (1) The Public Utility Commission may make such investigations respecting a contract or an application for the allocation of territory as the commission deems proper including the physical examinations and evaluations of the facilities and systems of the parties to the contract, esti-

mates of their operating costs and revenues and studies of such other information as the commission deems pertinent.

(2) Insofar as applicable and consistent herewith, the provisions of ORS 756.500 to 756.610 shall govern the conduct of hearings.

(3) In considering competing applications to serve the same territory, there shall be a disputable presumption that applicants have an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facilities. [Formerly 757.655]

758.460 Assignment or transfer of rights acquired by allocation; approval of commission. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that such assignment or transfer is not contrary to the public interest. However, no hearing is required if all affected customers agree to the proposed assignment or transfer.

(2) No approved contract or order approving an allocation of territory shall be construed to confer any property right; providing, however, upon the death of an individual who is a party to an approved contract or the applicant under an approved order, the executor or administrator shall continue the operation thereunder for the purpose of transferring such rights for a period of not to exceed two years from the date of death.

(3) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making such allocation. [Formerly 757.670; 1983 c.540 §6]

758.465 Enforcement procedure. In the event a contract approved by the Public Utility Commission is breached or in the event an allocated territory is served by a person not authorized by such contract, or order of the commission, the aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in said breach or invasion, for an injunction against said alleged breach or invasion. The trial of such action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the court's judgment, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [Formerly 757.675; 1979 c.284 §198; 2003 c.576 §561]

758.470 Application to cities, municipalities and cooperatives of ORS 758.400 to 758.475. (1) ORS 758.015 and 758.400 to 758.475 shall not be construed or applied to restrict the powers granted to cities to issue

franchises, or to restrict the exercise of the power of condemnation by a municipality; and when a municipality has condemned or otherwise acquired another person's equipment, plant or facilities for rendering utility service, it shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 758.015 and 758.400 to 758.475 shall not be construed to restrict the right of a municipality to provide utility service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 758.015 and 758.400 to 758.475 shall not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities. [Formerly 757.680]

758.475 Fees. Except in cases under ORS 758.430 and 758.460 where no hearing is required, to cover the costs of administering ORS 758.015 and 758.400 to 758.475 the Public Utility Commission is required to receive fees before filing any contract, application, petition, complaint, protest, appearance, motion, answer or other pleading and for holding any hearing. All fees shall be collected in accordance with the following schedule:

(1) Filing application for allocated territory under ORS 758.435 by a person having annual gross revenue derived from within the state for the calendar year 1960:

(a) In excess of \$5 million or more, a fee of two-tenths of one mill of such revenue but in no event shall such fee exceed, \$10,000.

(b) In excess of \$100,000 but less than \$5 million, \$100.

(c) Less than \$100,000, \$50.

(2) Filing a contract or application under ORS 758.015 or 758.420, \$100.

(3) Filing petition or complaint, \$25.

(4) Filing protest, appearance, motion, answer or other pleading, \$10.

(5) Filing an application for allocated territory under ORS 758.435 subsequent to an original allocation and payment of fee under subsection (1) of this section, \$100. [Formerly 757.685; 1983 c.540 §7]

TROJAN NUCLEAR PLANT

758.480 Assumption of obligations arising out of Trojan Nuclear Plant. (1) As used in this section:

(a) "Agreement" means the agreement dated October 5, 1970, and titled "Agreement for Construction, Ownership and Operation of the Trojan Nuclear Plant," as amended.

(b) “Allocated territory” has the meaning given that term in ORS 758.400.

(c) “Person” means:

(A) A person as defined in ORS 174.100;

(B) A person as defined in ORS 758.400;

(C) A public body as defined in ORS 174.109; or

(D) Any combination of entities described in subparagraphs (A), (B) and (C) of this paragraph.

(d) “Trojan obligations” means all of the obligations and liabilities of the Portland General Electric Company to pay amounts that are due or that may become due under the agreement or that are due or that may become due as a result of a requirement imposed by a federal, state or local governmental body, agency or instrumentality.

(e) “Utility service” has the meaning given that term in ORS 758.400.

(2) Any person acquiring all or a portion of any allocated territory of the Portland General Electric Company, or acquiring the right to provide utility service within the allocated territory of the Portland General Electric Company, shall assume a share of Trojan obligations that is proportionate to the total amount of allocated territory or the percentage of retail customer load for which the person has acquired the right to provide utility service, whichever is greater.

(3) The assumption of Trojan obligations described in this section shall occur without regard to whether the acquisition described in subsection (2) of this section occurs through market transactions or condemnation proceedings or by any other means.

(4) Any person assuming a share of Trojan obligations shall pay all required or necessary amounts, when due, into any decommissioning or other fund established, required or approved by any federal, state or local governmental body, agency or instrumentality for the purpose of meeting Trojan obligations. A person making payments into a fund described in this subsection may use the person’s share of the fund for the purpose of meeting the person’s Trojan obligations, subject to any limitation imposed by a federal, state or local governmental body, agency or instrumentality.

(5) The obligations imposed by subsection (2) of this section do not apply to any person acquiring allocated territory or customers of the Portland General Electric Company when:

(a) The acquisition occurs pursuant to the terms of a contract allocating territory that has been approved by the Public Utility Commission under ORS 758.400 to 758.475 and that is in effect on July 22, 2005; or

(b) The acquisition comprises less than one percent of the total allocated territory of the Portland General Electric Company or less than one-tenth of one percent of the total retail customer load of the Portland General Electric Company at the time of acquisition, whichever is greater. [2005 c.630 §1]

Note: 758.480 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 758 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

758.500 [1979 c.730 §2; 1981 c.714 §1; repealed by 1981 c.714 §5 and by 1983 c.799 §9]

COGENERATION AND SMALL POWER PRODUCTION FACILITIES

758.505 Definitions for ORS 758.505 to 758.555. As used in ORS 758.505 to 758.555:

(1) “Avoided cost” means the incremental cost to an electric utility of electric energy or energy and capacity that the utility would generate itself or purchase from another source but for the purchase from a qualifying facility.

(2) “Cogeneration facility” means a facility that:

(a) Produces, through the sequential use of energy, electric energy and useful thermal energy including but not limited to heat or steam, used for industrial, commercial, heating or cooling purposes; and

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric holding company, an affiliated interest or any combination thereof.

(3) “Commission” means the Public Utility Commission.

(4) “Electric utility” means a nonregulated utility or a public utility.

(5) “Index rate” means the lowest avoided cost approved by the commission for a generating utility for the purchase of energy or energy and capacity of similar characteristics including online date, duration of obligation and quality and degree of reliability.

(6) “Nonregulated utility” means an entity providing retail electric utility service to Oregon consumers that is a people’s utility district organized under ORS chapter 261, a municipal utility operating under ORS chapter 225 or an electric cooperative organized under ORS chapter 62.

(7) “Public utility” means a utility regulated by the commission under ORS chapter 757, that provides electric power to consumers.

(8) “Qualifying facility” means a cogeneration facility or a small power production facility.

(9) "Small power production facility" means a facility that:

(a) Produces energy primarily by the use of biomass, waste, solar energy, wind power, water power, geothermal energy or any combination thereof;

(b) Is more than 50 percent owned by a person who is not an electric utility, an electric utility holding company, an affiliated interest or any combination thereof; and

(c) Has a power production capacity that, together with any other small power production facility located at the same site and owned by the same person, is not greater than 80 megawatts. [1983 c.799 §1]

758.510 [1979 c.730 §3; 1981 c.714 §2; repealed by 1981 c.714 §7 and by 1983 c.799 §9]

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

(1) The State of Oregon has abundant renewable resources.

(2) It is the goal of Oregon to:

(a) Promote the development of a diverse array of permanently sustainable energy resources using the public and private sectors to the highest degree possible; and

(b) Insure that rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall over the term of a contract be just and reasonable to the electric consumers of the electric utility, the qualifying facility and in the public interest.

(3) It is, therefore, the policy of the State of Oregon to:

(a) Increase the marketability of electric energy produced by qualifying facilities located throughout the state for the benefit of Oregon's citizens; and

(b) Create a settled and uniform institutional climate for the qualifying facilities in Oregon. [1983 c.799 §2]

758.520 [1979 c.730 §4; 1981 c.714 §3; repealed by 1981 c.714 §9 and by 1983 c.799 §9]

758.525 Avoided cost schedules; filing; requirement to purchase energy from qualifying facilities. (1) At least once every two years each electric utility shall prepare, publish and file with the Public Utility Commission a schedule of avoided costs equaling the utility's forecasted incremental cost of electric resources over at least the next 20 years. Prices contained in the schedules filed by public utilities shall be reviewed and approved by the commission.

(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection (3) of this section, the price for such a purchase shall not be less than the utility's

avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be based on:

(a) The avoided costs calculated at the time of delivery; or

(b) The projected avoided costs calculated at the time the legal obligation to purchase the energy or energy and capacity is incurred.

(3) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555 shall be construed to require an electric utility to pay full avoided-cost prices for a purchase from a qualifying facility on which construction began before November 8, 1978, but the price for a purchase from such a facility shall be sufficient to encourage production of energy or energy and capacity.

(4) The rates of an electric utility for the sale of electricity shall not discriminate against qualifying facilities. [1983 c.799 §3]

758.530 [1979 c.730 §5; 1981 c.714 §4; repealed by 1981 c.714 §11 and by 1983 c.799 §9]

758.535 Criteria for qualifying facility; terms and conditions of energy sale. (1) The Public Utility Commission shall establish minimum criteria that a cogeneration facility or small power production facility must meet to qualify as a qualifying facility under ORS 543.610, 757.005 and 758.505 to 758.555.

(2) The terms and conditions for the purchase of energy or energy and capacity from a qualifying facility shall:

(a) Be established by rule by the commission if the purchase is by a public utility;

(b) Be adopted by an electric cooperative or people's utility district according to the applicable provision of ORS chapter 62 or 261; and

(c) Be established by a municipal utility according to the requirements of the municipality's charter and ordinance.

(3) The rules or policies adopted under subsection (2) of this section also shall:

(a) Establish safety and operating requirements necessary to adequately protect all systems, facilities and equipment of the electric utility and qualifying facility;

(b) Be consistent with applicable standards required by the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617); and

(c) Be made available to the public at the commission's office. [1983 c.799 §4]

758.540 [1979 c.730 §6; repealed by 1981 c.714 §13]

758.545 Electric utility required to make good faith effort to transmit energy; remedy. (1) If an electric utility fails to make a good faith effort to comply with a

request from a qualifying facility to transmit energy or energy and capacity produced by the qualifying facility to another electric utility or to the Bonneville Power Administration, the electric utility shall purchase the qualifying facility's energy or energy and capacity at a price which is the higher of:

- (a) The electric utility's avoided cost; or
- (b) The index rate.

(2) As used in this section, "good faith effort" shall be demonstrated by the electric utility's publication of a generally applicable, reasonable policy of the electric utility to

allow a qualifying facility to use the electric utility's transmission facilities on a cost-related basis. [1983 c.799 §5]

758.550 [1979 c.730 §7; repealed by 1983 c.799 §9]

758.555 Effect of energy sales on qualifying facility. A qualifying facility shall not become a public utility within the meaning of ORS 757.005 on account of sales made under ORS 543.610, 757.005 and 758.505 to 758.555. [1983 c.799 §6]

758.990 [Renumbered 757.992]

Chapter 759

2007 EDITION

Telecommunications Utility Regulation

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UTILITY REGULATION

GENERAL PROVISIONS

759.005 Definitions. As used in this chapter:

(1) “Competitive telecommunications provider” means a telecommunications services provider that has been classified as a competitive telecommunications provider by the Public Utility Commission pursuant to ORS 759.020.

(2) “Intrastate telecommunications service” means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(3) “Local exchange telecommunications service” means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commission.

(4) “Private telecommunications network” means a system for the provision of telecommunications service or any portion of telecommunications service, including the construction, maintenance or operation of the system, by a person for the exclusive use of that person and not for resale, directly or indirectly.

(5) “Radio common carrier” means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.

(6) “Shared telecommunications service” means the provision of telecommunications and information management services and equipment to a user group located in discrete premises in building complexes, campuses or high-rise buildings, by a commercial shared services provider or by a users’ association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to local exchange telecommunications service.

(7) “Telecommunications” means the transmission of information chosen by a person, between or among points specified by the person, without change in the form or content of the information sent or received.

(8) “Telecommunications service” means telecommunications that are offered for a fee to the public, or to such class of users as to be effectively available to the public, without regard to the facilities used to provide the telecommunications. “Telecommunications service” does not include:

(a) Services provided by radio common carrier.

(b) One-way transmission of television signals.

(c) Private telecommunications networks.

(d) Communications of the customer that take place on the customer side of on-premises equipment.

(9)(a) “Telecommunications utility” means:

(A) Any corporation, company, individual or association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, directly or indirectly to or for the public, whether or not the plant or equipment, or any portion of the plant or equipment, is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals that is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction, engineering or financing fees, and has an affiliated interest with the telecommunications utility.

(b) “Telecommunications utility” does not include:

(A) Any plant owned or operated by a municipality.

(B) Any corporation not providing intrastate telecommunications service to the public in this state, whether or not the corporation has an office in this state or has an affiliated interest with a telecommunications utility as defined in this chapter.

(C) Any person acting only as a competitive telecommunications provider.

(D) Any corporation, company, individual or association of individuals providing only telephone customer premises equipment to the public.

(10) “Toll” means switched telecommunications between exchanges carried on the public switched network. “Toll” does not include services that are an option to flat rate local or extended area service, even though the options may include charges on a per-unit basis. [1987 c.447 §1; 1989 c.5 §15; 1991 c.326 §2; 2005 c.232 §1; 2007 c.825 §1]

759.010 [1987 c.447 §2; 1989 c.17 §2; repealed by 2005 c.232 §2]

759.015 Legislative findings on universal telecommunications service. The Legislative Assembly finds and declares that it is the goal of the State of Oregon to secure and maintain high-quality universal telecommunications service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition. The Public Utility Commission shall

administer the statutes with respect to telecommunications rates and services in accordance with this policy. [Formerly 757.810]

759.016 Legislative findings on broadband services. The Legislative Assembly finds and declares:

(1) That it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations; and

(2) That the goal set forth in subsection (1) of this section may be achieved by:

(a) Expanding broadband and other telecommunications services;

(b) Creating incentives to establish and expand broadband and other telecommunications services;

(c) Undertaking telecommunications planning at the local, regional and state levels that includes participants from both the public and the private sectors;

(d) Removing barriers to the full deployment of broadband digital applications and services and providing incentives for the removal of those barriers; and

(e) Removing barriers to public-private partnerships in areas where the private sector cannot justify investments. [2003 c.775 §1]

Note: 759.016 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 759 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

759.020 Certificate of authority; application; procedure; criteria; intrastate toll service level. (1) No person, corporation, company, association of individuals or their lessees, trustees, or receivers shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

(2) Applications for certificates of authority shall be in a form prescribed by the commission and shall describe the telecommunications services the applicant proposes to provide. Notice of all applications shall, within 30 days of filing, be served by the commission upon all persons holding authority to provide telecommunications service issued under this section or providing local exchange telecommunications service.

(3) Except as provided in ORS 759.050, no certificate shall authorize any person to provide local exchange telecommunications service within the local exchange

telecommunications service area of a telecommunications utility unless such utility consents, is unable to provide the service, or fails to protest an application. This subsection shall not apply to any application for a certificate by a provider of shared telecommunications services.

(4) After notice, a hearing need not be held prior to issuance of a certificate of authority except upon the commission's own motion or unless the application is to authorize a person to provide local exchange telecommunications service in the local exchange telecommunications service area of a telecommunications utility and such utility protests. After hearing, the commission shall issue the certificate only upon a showing that the proposed service is required by the public interest.

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule, after hearings. The commission may attach reasonable conditions to such classification and may amend or revoke any such order as provided in ORS 756.568. For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(6) Any provider of intrastate toll service must inform customers of the service level furnished by that provider, according to rules of the commission. The commission, by rule, shall determine the level of intrastate toll service that is standard. Any provider of intrastate toll service must identify the service level the provider plans to furnish in an

annual report to the commission. The commission shall revoke the certification of any provider that does not consistently furnish the service level identified in the provider's annual report. [Formerly 757.815; 1991 c.326 §1; 1993 c.423 §1]

759.025 Certificates of authority for persons, companies and corporations providing services on January 1, 1986. (1) Notwithstanding ORS 759.020, the Public Utility Commission shall issue to any person, company or corporation providing intrastate telecommunications services that are subject to regulation by the commission on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986.

(2) Notwithstanding any other provision of law, the commission shall issue to any cooperative corporation, or unincorporated association providing intrastate telecommunications service on January 1, 1986, a certificate of authority to continue to provide those services on and after January 1, 1986. Such actions shall not subject such cooperative corporations or association to the commission's general powers of regulation. [Formerly 757.820]

759.027 Shared telecommunications service provider; alternative access to local exchange telecommunications services. If the Public Utility Commission finds upon notice and investigation that customers of shared telecommunications services have no alternative access to local exchange telecommunications services, the commission may require the shared telecommunications service provider to make alternative facilities or conduit space available on reasonable terms and conditions and at reasonable prices. [2005 c.232 §5]

759.030 [Formerly 757.825; 1991 c.301 §1; repealed by 2005 c.232 §6]

759.035 Duty to furnish adequate and safe service at reasonable rates. Every telecommunications utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited. [1987 c.447 §3]

REGULATION OF TELECOMMUNICATIONS SERVICES

759.036 Commission authority. Except as otherwise provided by law, the Public Utility Commission shall have authority to determine the manner and extent of the regulation of telecommunications services within the State of Oregon. [2005 c.232 §7]

759.040 Exemptions for certain unaffiliated utilities with fewer than 50,000 access lines. (1) Subject to subsection (6) of this section, ORS 759.180 to 759.190 do not apply to new or revised tariff schedules filed with the Public Utility Commission by telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(2) Subject to subsection (6) of this section, ORS 759.375 to 759.393 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(3) Subject to subsection (6) of this section, ORS 759.300 to 759.360 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(4) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon and affiliated or under common control with another public utility providing service in Oregon, and a finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from:

- (a) ORS 759.180 to 759.190.
- (b) ORS 759.375 to 759.393.
- (c) ORS 759.300 to 759.360.

(5) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon, and finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from ORS 759.175 and 759.205 to 759.215.

(6) Upon petition by the telecommunications utility or upon petition by 10 percent of the then current access line subscribers, or 500 subscribers, whichever is the lesser, of any telecommunications utility:

(a) Filed with the commission not less than 10 days prior to the proposed effective date of new or revised tariff schedules, the commission may impose all or part of the procedures of ORS 759.180 to 759.190 to any of the schedules of a telecommunications utility exempted from ORS 759.180 to 759.190 pursuant to this section.

(b) After notice and hearing and a finding that the action is required by the public in-

terest, the commission may revoke any exemption granted pursuant to this section or impose reasonable conditions upon the continued exercise of the exemption.

(7) Any telecommunications utility for which an exemption from the application of ORS 759.180 to 759.190 is provided pursuant to this section shall notify its affected customers of any price increase for intrastate telecommunications services at least 45 days prior to the proposed effective date of the increase.

(8) Any telecommunications utility for which an exemption from the application of any statute is provided pursuant to this section shall file with the commission an annual report that includes copies of the income statement and balance sheet the telecommunications utility files with the Federal Communications Commission. Each telecommunications utility described in this subsection shall notify customers that the income statement and balance sheet are on file with the commission. [Formerly 757.870; 1999 c.451 §1; 2005 c.232 §12]

759.045 Special rules for utilities exempted from regulation under ORS 759.040. The Public Utility Commission shall adopt specific rules to apply to telecommunications utilities which are exempted from certain regulation under ORS 759.040. An objective of these rules shall be to minimize the regulatory burden on these utilities to the extent this objective is feasible and consistent with the public interest. These rules shall not pertain to the statutes from which these utilities are exempted under ORS 759.040. [1991 c.658 §2]

759.050 Competitive zone service regulation. (1) As used in this section:

(a) “Competitive zone” means a telecommunications service area within all or part of a local exchange, described both by service and territory, that has been designated a competitive zone by the Public Utility Commission under subsection (2) or (4) of this section.

(b) “Competitive zone service” means a local exchange telecommunications service that the commission has authorized to be provided within a competitive zone.

(c) “Essential function” means a functional component of a competitive zone service necessary to the provision of the service by a telecommunications provider for which there is no adequate alternative in terms of quality, quantity and price to the incumbent telecommunications utility.

(d) “Telecommunications utility” and “competitive provider” mean those entities that are classified as such by the commission under ORS 759.020. “Telecommunications

provider” includes both telecommunications utilities and competitive providers.

(2)(a) Notwithstanding the provisions of ORS 759.020 (3), the commission may certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certificated telecommunications utility if the commission determines that the authorization would be in the public interest. For the purpose of determining whether the authorization would be in the public interest, the commission shall consider:

(A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.

(B) The effect on competition in the local exchange telecommunications service area.

(C) The effect on access by customers to high quality, innovative telecommunications service in the local exchange telecommunications service area.

(D) Any other facts the commission considers relevant.

(b) Upon certification of a telecommunications provider under paragraph (a) of this subsection, the commission shall establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider. Price and service competition within the meaning of ORS 759.052 may not be deemed to exist by virtue of the establishment of a competitive zone.

(c) At the time of certification of a telecommunications provider, or thereafter, the commission may impose reasonable conditions upon the authority of the telecommunications provider to provide competitive zone service within the competitive zone. Reasonable conditions include, but are not limited to, conditions:

(A) Designed to promote fair competition, such as interconnection; and

(B) Requiring contributions of the type required of a telecommunications utility on account of the provision of local exchange service, including those to the Residential Service Protection Fund or the Telecommunications Devices Access Program.

(3) Upon demand, a competitive provider of competitive zone services shall make available to the commission any information relating to competitive zone services that the commission requests. Information provided to the commission by a competitive provider under this subsection shall be confidential and may not be disclosed by the commission,

except for regulatory purposes in the context of a proceeding before the commission.

(4) Upon application by a telecommunications utility and a showing of competition within its local exchange, whether or not from certificated providers, the commission may designate all or part of the local exchange a competitive zone.

(5)(a) Except with respect to telecommunications utilities that are exempt from the provisions of ORS 759.180 to 759.190, unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations and modifications of competitive zone services offered by a telecommunications utility in the zone are not subject to ORS 759.180 to 759.190 and, at the telecommunication utility's discretion, may be made effective upon filing with the commission.

(b) The price and terms of service offered by a telecommunications utility for a competitive zone service within a competitive zone may differ from that outside of the zone. However, the price for a competitive zone service within the zone may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service within the zone and the charges for essential functions used in providing the service, but the commission may establish rates for residential local exchange telecommunications service at any level necessary to achieve the commission's universal service objectives. Within the zone, the price of a competitive zone service, or any essential function used in providing the competitive zone service, may not be higher than those prices in effect when the competitive zone was established, unless authorized by the commission.

(c) The commission may revoke the exemption of a telecommunications utility from ORS 759.180 to 759.190 if the commission finds that the utility has violated statutes, rules or conditions of the commission applicable to competitive zone services or that there has been a substantial change in the circumstances that prevailed at the time the competitive zone was first established.

(d) On the motion of a telecommunications provider or on its own motion, the commission may order a telecommunications utility to disaggregate and offer essential functions of the telecommunications utility's local exchange network.

(6) A decision of the commission, with respect to the terms and conditions under which competitive zone services may be offered within a competitive zone by a telecommunications utility, to authorize a

competitor to provide service within the local exchange service area of a telecommunications utility or to otherwise designate a competitive zone shall be subject to judicial review, but may not be stayed other than by order of the commission, except upon a showing by clear and convincing evidence that failure to stay the decision will result in irreparable harm to the aggrieved party.

(7) The exclusive remedy of a telecommunications provider aggrieved by the prices, terms of service or practices of another provider with respect to competitive zone services within a competitive zone is to file a complaint with the commission under ORS 756.500. The commission, either upon complaint or its own motion, may permanently suspend a filing made by a provider with respect to a competitive zone service or take such other action as the commission deems appropriate, except an award for damages. A claim for damages arising from a commission decision in favor of the provider on a matter alleged in the complaint shall be brought as a separate action at law.

(8) Nothing in this section shall serve to shield any telecommunications provider of local exchange telecommunications service from state or federal antitrust laws.

(9) The commission shall report annually to the Legislative Assembly:

(a) The number of competitive zones created under ORS 759.020 and 759.050;

(b) The number of competitive providers authorized under ORS 759.020 and 759.050;

(c) The number and types of competitive services made available to consumers; and

(d) Consumer comments on competitive telecommunications services. [1993 c.423 §3; 2005 c.232 §13]

759.052 Commission authority to exempt telecommunications services from regulation. (1)(a) Upon petition by any interested party and following notice and investigation, the Public Utility Commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that:

(A) Price or service competition exists;

(B) Telecommunications services can be demonstrated by the petitioner or the commission to be subject to competition; or

(C) The public interest no longer requires full regulation of the telecommunications services.

(b) The commission may attach reasonable conditions to an exemption made under paragraph (a) of this subsection and may amend or revoke any order as provided in ORS 756.568.

(2) Upon petition by a telecommunications utility, and after notice and hearing, the commission shall exempt a telecommunications service from regulation if the commission finds that price and service competition exists.

(3) Prior to making the findings required by subsection (1) or (2) of this section, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates and under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(4) A service that is deregulated under subsection (2) of this section may be reregulated, after notice and hearing, if the commission determines an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest. [2005 c.232 §8]

759.054 Price listing for product or service offered as part of local exchange telecommunications services. (1) If the Public Utility Commission determines that a product or service offered by a telecommunications utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or that a product or service is not an essential product or service, the commission may authorize the utility to file a price list with the commission.

(2) The price list shall contain the description, terms, conditions and prices of the service or product described in subsection (1) of this section. No other schedule for price listed services need be filed with the commission. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately upon filing with the commission unless a later date is specified.

(3) In determining whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates or under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission. [2005 c.232 §9]

759.056 Price listing for product or service offered as part of interexchange telecommunications services. (1) If the Public Utility Commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under conditions that the commission determines are reasonable, may authorize the utility to file a price list with the commission.

(2) The price list shall contain the description, terms, conditions and prices of the service or product described in subsection (1) of this section. No other schedule for price listed services need be filed with the commission. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately on filing with the commission unless a later date is specified.

(3) In determining whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates or under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission. [2005 c.232 §10]

759.058 Commission action on petition under ORS 759.052, 759.054 or 759.056. Within 60 days of a filing under ORS 759.052, 759.054 or 759.056, the Public Utility Commission shall either determine the appropriateness of the filing or determine that further investigation is necessary. If the commission determines that further investigation is necessary, the commission may suspend operation of the filing for a period not longer than five months from the end of the initial 60-day period. Upon a showing of good cause, any party may request extension of the suspension period for an additional three months. [2005 c.232 §11]

759.060 Information submitted by local exchange telecommunications utilities; rules exempting disclosure. (1) The Public Utility Commission, by rule, shall specify information submitted to the commission by local exchange telecommunications utilities or cooperatives that is exempt from disclosure under ORS 192.410 to 192.505 as pro-

vided in this section. In adopting rules, the commission shall consider, among other matters:

(a) Whether the information is of a type that could potentially be used to the competitive disadvantage of a local exchange telecommunications utility or cooperative.

(b) Whether the information concerns matters of a nature personal to an employee or stockholder of a local exchange telecommunications utility or an employee or member of a cooperative.

(c) Whether the information is otherwise publicly available.

(2) Information specified under subsection (1) of this section is exempt from disclosure unless the public interest requires disclosure in the particular instance.

(3) Nothing in subsection (1) of this section limits the exemptions granted to a local exchange telecommunications utility or cooperative under ORS 192.410 to 192.505. [1995 c.538 §2]

RIGHTS OF WAY

759.075 Authority to construct lines and facilities; condemnation power; procedure. (1) Any telecommunications utility may:

(a) Enter upon lands within this state for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities.

(2) Notwithstanding subsection (1) of this section, any telecommunications utility may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees which are liable to fall and constitute a hazard to its wire or line, such telecommunications utility may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution

in value to remaining timber caused by increased harvesting costs. [1987 c.447 §69]

759.080 Use of property outside limits of municipal corporation; agreement; condemnation upon failure to agree. When it is necessary or convenient, in the location of any poles or lines mentioned in ORS 759.075, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any municipal corporation, the county court or board of county commissioners of the county within which such road, street, alley or public grounds is located, may agree with the telecommunications utility upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation. If such parties are unable to agree, the telecommunications utility may condemn so much thereof as is necessary and convenient in the location and construction of the poles or lines. The provisions of ORS chapter 35 are applicable to condemnations under this section. [1987 c.447 §70]

ACCOUNTS AND RECORDS

759.100 [1987 c.447 §5; repealed by 2005 c.232 §14]

759.105 [1989 c.484 §7; renumbered 759.219 in 2005]

759.110 [1987 c.447 §6; repealed by 2005 c.232 §14]

759.115 [1987 c.447 §7; repealed by 2005 c.232 §14]

759.120 Form and manner of accounts prescribed by commission. (1) Every telecommunications utility shall keep and render to the Public Utility Commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. All forms of accounts which may be prescribed by the commission shall conform as nearly as practicable to similar forms prescribed by federal authority.

(2) Every telecommunications utility engaged directly or indirectly in any other business than that of a telecommunications utility shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this chapter shall apply with like force and effect to the accounts and records of such other business. [1987 c.447 §8]

759.125 Records and accounts prescribed by commission; prohibition on other records or accounts; exception; blanks for reports. (1) The Public Utility Commission shall prescribe the accounts and records required to be kept and every telecommunications utility is required to keep and render its accounts and records accurately and faithfully in the manner prescribed by the commission and to comply with all directions of the commission relating to such accounts and records.

(2) No telecommunications utility shall keep any other accounts or records of its telecommunications utility business transacted than those prescribed or approved by the commission except such as may be required by the laws of the United States.

(3) The commission shall cause to be prepared suitable blanks for reports for carrying out the purposes of this chapter, and shall, when necessary, furnish such blanks for reports to each telecommunications utility. [1987 c.447 §9]

759.130 Closing date of accounts; filing balance sheet; audit. (1) The accounts shall be closed annually on December 31 and a balance sheet of that date promptly taken therefrom. On or before April 1 following, such balance sheet, together with such other information as the Public Utility Commission shall prescribe, verified by an officer of the telecommunications utility, shall be filed with the commission.

(2) The commission may examine and audit any account. Items shall be allocated to the accounts in the manner prescribed by the commission. [1987 c.447 §10]

759.135 Depreciation accounts; undepreciated investment allowed in rates; conditions. (1) Every telecommunications utility shall carry a proper and adequate depreciation account. The Public Utility Commission shall ascertain and determine the proper and adequate rates of depreciation of the several classes of property of each telecommunications utility. The rates shall be such as will provide the amounts required over and above the expenses of maintenance, to keep such property in a state of efficiency corresponding to the progress of the industry. Each telecommunications utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as the commission may find to be necessary.

(2) In the following cases the commission may allow in rates, directly or indirectly, amounts on the utility's books of account which the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service:

(a) When the retirement is due to ordinary wear and tear, casualties, acts of God, acts of governmental authority; or

(b) When the commission finds that the retirement is in the public interest. [1987 c.447 §11; 1989 c.956 §3]

RATE REGULATION AND PROCEDURES; MEASURING EQUIPMENT

759.175 Filing rate schedules and data with commission. (1) Every telecommunications utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules showing all rates, tolls and charges that the utility has established and that are in force at the time for any service performed by the utility within the state, or for any service in connection with or performed by any utility controlled or operated by the utility. Schedules filed with the commission shall be open to public inspection.

(2) Every telecommunications utility shall file, with and as part of every schedule filed under subsection (1) of this section, all rules and regulations that in any manner affect the rates charged or to be charged for any service.

(3) Where a schedule of joint rates or charges is or may be in force between two or more telecommunications utilities, the schedule shall in like manner be printed and filed with the commission. [1987 c.447 §12; 2005 c.232 §15]

759.180 Hearing on reasonableness of rates; procedures; exceptions. (1)(a) Except as provided in ORS 759.195 and 759.410 and ORS 759.052, 759.054 or 759.056, whenever any telecommunications utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of the rate or schedule. The commission shall conduct the hearing upon written complaint filed by the telecommunications utility, its customer or customers, or any other proper party within 60 days of the telecommunications utility's filing. A hearing need not be held if the particular rate change is the result of an automatic adjustment clause. At the hearing the telecommunications utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable.

(b) As used in this subsection, "automatic adjustment clause" means a provision of a rate schedule, authorized pursuant to ORS 759.195 (6), that provides for rate increases, decreases or both, without prior hearing, reflecting increases, decreases or both in costs incurred by a telecommunications utility and that is subject to review by the commission at least once every two years.

(2) The commission and staff may consult at any time with, and provide technical assistance to, telecommunications utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the decisions of the commission shall be based on the record made at the hearing. [1987 c.447 §13; 1989 c.5 §16; 2005 c.232 §16]

759.182 Rate schedules for service promotions; rules. (1) A telecommunications utility may file rate schedules for service promotions that are offered by the utility for the purpose of:

(a) Increasing the use of the utility's services by present or future customers;

(b) Preventing a decrease in the use of the utility's services by present or future customers; or

(c) Inducing any person to use the utility's services instead of a competing provider's services.

(2) The rates charged under a service promotion by a telecommunications utility must be adequate to ensure that:

(a) The utility will recover an amount equal to the sum of the total service long run incremental cost of providing the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions; and

(b) The utility will recover the amount under paragraph (a) of this subsection during the average time that customers use the service.

(3) Notwithstanding ORS 759.190, service promotion rate schedules become effective upon filing with the Public Utility Commission.

(4) The commission shall adopt rules governing service promotion rate schedules filed under this section. [2001 c.309 §2]

Note: 759.182 was added to and made a part of 759.180 to 759.190 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

759.185 Suspension of rates pending hearing; time limitation; refund of revenue collected; interim rates. (1) The Public Utility Commission may, pending such investigation and determination, order the suspension of the rate or schedule of rates, provided the initial period of suspension shall not extend more than six months beyond the time when such rate or schedule would otherwise go into effect. If the commission finds that the investigation will not be completed at the expiration of the initial suspension, the commission may enter an order further suspending such rate or schedule for not more than three months beyond the last day of the initial suspension.

(2) This section does not prevent the commission and the telecommunications utility from entering into a written stipulation at any time extending any period of suspension.

(3) After full hearing, whether completed before or after such rate or schedule has gone into effect, the commission may make such order in reference thereto as would be proper in a proceeding initiated after such rate or schedule has become effective.

(4) If the commission is required to or determines to conduct a hearing on a rate or schedule of rates filed pursuant to ORS 759.180, but does not order a suspension thereof, any increased revenue collected by the telecommunications utility as a result of such rate or rate schedule becoming effective shall be received subject to being refunded. If the rate or rate schedule thereafter approved by the commission is for a lesser increase or for no increase, the telecommunications utility shall refund the amount of revenues received that exceeds the amount approved as nearly as possible to the customers from whom such excess revenues were collected, by a credit against future bills or otherwise, in such manner as the commission orders.

(5) The commission may, in a suspension order, authorize an interim rate or rate schedule under which the telecommunications utility's revenues will be increased by an amount deemed reasonable by the commission, not exceeding the amount requested by the telecommunications utility. An interim rate or rate schedule shall remain in effect until terminated by the commission. [1987 c.447 §14]

759.190 Notice of schedule change. No change shall be made in any schedule, including schedules of joint rates, except upon 30 days' notice to the Public Utility Commission. All changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 30 days prior to the time they are to take effect. However, the commission, for good cause shown, may allow changes without requiring the 30 days' notice by filing an order specifying the changes to be made and the time when they shall take effect. [1987 c.447 §15]

759.195 Price listing of services; conditions; maximum rates; essential services; justification by utility of rates for price-listed services. (1) Except as provided in subsection (6) of this section, upon petition of a telecommunications utility that provides local exchange service directly, or is affiliated with a utility that provides local exchange service, and after notice and hearing, the Public Utility Commission may au-

authorize the utility to set rates for toll and other telecommunications services by filing a price list containing the price and terms for the service. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective as determined by the commission. The commission may prescribe conditions on an authorization to establish rates by price list, including conditions relating to the sharing of revenues received by the utility that are in excess of allowances provided for in the order of authorization.

(2) Telecommunications utilities that provide telecommunications services only between exchanges and are not affiliated with a utility that provides local exchange service may establish rates by price list without special authorization from the commission.

(3) Prior to granting a petition to set rates by price list under this section, the commission shall find that pricing flexibility:

(a) Is reasonably necessary to enable the utility to respond to current and future competitive conditions for any or all telecommunications services;

(b) Will maintain the appropriate balance between the need for price flexibility and the protection of consumers;

(c) Is likely to benefit the consumers of fixed rate services; and

(d) Is unlikely to cause any undue harm to any customer class.

(4) A rate set for a service by a utility may not be lower than the long run incremental cost of providing the service.

(5) Upon its own motion the commission may fix maximum rate levels and terms of service for price listed services and for toll services on noncompetitive routes. Upon request of any affected person, the commission shall fix maximum rate levels and terms of service for price listed services not subject to competition and for toll services on noncompetitive routes.

(6) By rule, the commission shall designate local exchange services that it deems essential, and rates for such services shall be prescribed under ORS 759.180 to 759.190. The commission also may authorize automatic adjustment clauses which reflect increases, decreases, or both, in particular costs incurred by the utility. For the purposes of this subsection, "essential services" need not be essential for all classes of customers.

(7) The commission may, at any time, order a telecommunications utility to appear and establish that any of its price listed rates are just and reasonable and in conformity with the requirements of this section and the

authorization to price list issued by the commission. Price listed rates shall also be subject to complaint under ORS 756.500. [Formerly 757.850; 2005 c.232 §13a]

759.200 Inclusion of amortizations in rates; deferral of certain expenses or revenues; limitation on amounts; prohibited uses. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject to the limitations contained in subsection (5) of this section, under amortization schedules set by the commission, a rate or rate schedule may reflect the following:

(a) Amounts lawfully imposed retroactively by order of another governmental agency; or

(b) Amounts deferred under subsection (2) of this section.

(2) Upon application of a telecommunications utility or ratepayer or upon the commission's own motion and after public notice and opportunity for comment, the commission by order may authorize deferral, for later incorporation in rates, telecommunications utility expenses or revenues, the recovery or refund of which the commission finds should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate levels or to match appropriately the costs borne by and benefits received by ratepayers. The authority under this subsection is limited to the following accounts:

(a) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in jurisdictional separations approved by the Federal Communications Commission;

(b) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in depreciation rates or amortization schedules approved by the commission;

(c) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in income, excise, franchise or ad valorem taxes by the federal, state or local governments;

(d) Increases or decreases in amounts incurred by a telecommunications utility resulting from restoration of telecommunications services interrupted by floods, fires, earthquakes, storms or other acts of nature;

(e) Increases or decreases in amounts incurred by a telecommunications utility for research, development, planning and advance advertising for products and services not yet in service;

(f) Increases or decreases in amounts incurred by a telecommunications utility for

telephone plant transfers and property sales approved by the commission;

(g) Increases or decreases in amounts incurred by a telecommunications utility from affiliated interest contracts and transactions approved by the commission;

(h) Increases or decreases in amounts incurred by a telecommunications utility from attorney's fees, court settlements and court awards;

(i) Increases or decreases in amounts incurred by a telecommunications utility resulting from changes in accounting methods approved by the commission; and

(j) Increases or decreases in amounts incurred by a telecommunications utility from customer service contracts, intercompany service contracts and joint and through service arrangements.

(3) The commission may authorize deferrals under subsection (2) of this section beginning with the date of application, together with interest established by the commission. A deferral may be authorized for a period not to exceed 12 months beginning on or after the date of application.

(4) Unless subject to an automatic adjustment clause under ORS 759.180, amounts described in this section shall be allowed in rates only to the extent authorized by the commission in a proceeding to change rates and upon review of the utility's earnings at the time of application to amortize the deferral.

(5) In any one year, the overall average rate impact of the amortizations authorized under this section shall not exceed three percent of the telecommunications utility's gross revenues for the preceding calendar year.

(6) The provisions of this section may be used as a means of deferring the effect of readily identifiable and readily measurable changes in particular costs or revenues of a telecommunications utility, but shall not be used to implement a claim for an increase or decrease in the overall revenue requirement of a telecommunications utility when the amount of the change or changes would not be known until the completion of a rate case. [1989 c.929 §2]

759.205 Conformance of rates charged with schedule. No telecommunications utility shall charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in printed rate schedules as may at the time be in force, or demand, collect or receive any rate not specified in such sched-

ule. The rates named therein are the lawful rates until they are changed as provided in this chapter. [1987 c.447 §16]

759.210 Classification of service and rates; considerations. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each telecommunications utility. The classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on these considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. Each telecommunications utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 759.175 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates; and

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the telecommunications utility.

(2) The commission may prescribe any changes in the form in which the schedules are issued by any telecommunications utility as the commission finds to be expedient. The commission shall adopt rules that allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice. [1987 c.447 §17; 1989 c.5 §17; 2005 c.232 §18]

759.215 Public access to schedules. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public, shall be made available to the public.

(2) Except as provided in ORS 759.410 (8), copies of all new schedules shall be made readily accessible to the public as required by the commission 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time. [1987 c.447 §18; 2005 c.232 §19]

759.217 Effect of tax credit under ORS 315.511. The Public Utility Commission may not require a reduction in a rate or a schedule of rates as a result of a tax credit under ORS 315.511 being allowed to a telecommunications utility. [2001 c.957 §17]

759.218 Revenues and expenses of unregulated activities. (1) A telecommunications utility may not use revenues earned from, or allocate expenses to, that portion of the utility's business that is regulated under this chapter in order to subsidize activities that are not regulated by this chapter.

(2) The Public Utility Commission may not require revenues or expenses from an activity that is not regulated under this chapter to be attributed to the regulated activities of a telecommunications utility.

(3) The commission may approve a telecommunications utility rate proposal for basic local service rates that utilizes revenues from other regulated services to partially cover the costs of providing basic local service. [2005 c.232 §4]

759.219 Certain taxes as operating expense; charge pro rata to users; condition. The privilege tax authorized by ORS 221.515, or other similar exactions imposed by any municipality in this state upon telecommunications utilities for use and occupancy of streets, alleys or highways, or all of them, shall be allowed as an operating expense of the affected telecommunications utilities operating in the municipality for rate-making purposes by the Public Utility Commission. The cost of such privilege tax or other similar exactions shall be charged pro rata to the users of such telecommunications utility within the municipality unless the Public Utility Commission determines on a statewide basis that such pro rata charges would be inequitable, in whole or in part, to city ratepayers or should otherwise be borne as a statewide operating expense by the telecommunications utility. [Formerly 759.105]

759.220 Joint rates and classifications; procedure; considerations. (1) A telecommunications utility may establish reasonable through service and joint rates and classifications with other telecommunications utilities. Telecommunications utilities establishing joint rates shall establish just and reasonable regulations and practices in connection therewith and just, reasonable and equitable divisions thereof, as between the public utilities participating therein which shall not unduly prefer or prejudice any of the participating telecommunications utilities and every unjust and unreasonable rate, classification, regulation, practice and division is prohibited.

(2) The Public Utility Commission may, and shall, whenever deemed by the commission to be necessary or desirable in the public interest, after full hearing upon complaint, or upon the commission's own initiative without complaint, establish through

service, classifications and joint rates, the divisions of such rates and the terms and conditions under which such through service shall be rendered. If any tariff or schedule canceling any through service or joint rate or classification without the consent of all the telecommunications utilities party thereto, or authorization by the commission is suspended by the commission for investigation, the burden of proof is upon the telecommunications utility proposing such cancellation to show that it is consistent with the public interest.

(3) Whenever, after full hearing upon complaint or upon the commission's own initiative without complaint, the commission is of the opinion that the divisions of joint rates between the telecommunications utilities are or will be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the telecommunications utilities party thereto, whether agreed upon by such telecommunications utilities or otherwise established, the commission shall, by order, prescribe the just, reasonable and equitable divisions thereof to be received by the several telecommunications utilities. In cases where the joint rate was established pursuant to the finding or order of the commission and the divisions thereto are found by the commission to have been unjust, unreasonable or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what, for the period subsequent to the filing of the complaint or petition or the making of the order of investigation, would have been the just, reasonable and equitable division thereof to be received by the several telecommunications utilities and require adjustment to be made in accordance therewith.

(4) In so prescribing and determining the divisions of joint rates, the commission shall give due consideration, among other things, to:

(a) The efficiency with which the telecommunications utilities concerned are operated;

(b) The amount of revenue to pay their respective operating expenses, taxes and a fair return on their telecommunications utility property held for and used in service;

(c) The importance to the public of the services of such telecommunications utilities;

(d) Whether any particular participating telecommunications utility is an originating, intermediate or delivering utility; and

(e) Any other fact or circumstance which ordinarily would entitle one telecommunications utility to a greater or less proportion of the joint rate than another. [1987 c.447 §19]

759.225 Application of ORS 759.220 to unincorporated associations and cooperative corporations. Notwithstanding any other provision of law, ORS 759.220 applies to any unincorporated association or cooperative corporation providing intrastate telecommunications service. The application of ORS 759.220 to unincorporated associations and cooperative corporations:

(1) Does not allow the Public Utility Commission to establish terms, conditions, classifications or rates for services rendered to members of unincorporated associations or cooperative corporations;

(2) Does not make unincorporated associations or cooperative corporations subject to the commission's general powers of regulation;

(3) Allows the commission to regulate access charges imposed by unincorporated associations and cooperative corporations; and

(4) Requires unincorporated associations and cooperative corporations to provide information to the commission that the commission deems necessary to establish new extended service areas. [Formerly 757.860; 2001 c.853 §1]

759.230 Measured service rate for business customers; restriction. (1) Notwithstanding any other provision of this chapter, the Public Utility Commission shall not authorize a telecommunications utility to implement a rate schedule that includes optional measured service for business customers unless the rate for the service is sufficient to defray all costs that must be incurred to implement the service, including the costs of measuring and billing.

(2) As used in this section:

(a) "Local exchange telephone service" means telephone service provided within the boundaries of exchange maps filed with and approved by the commission.

(b) "Measured service" means local exchange telephone service, the rate for which is based upon the number of calls, length of calls, distance or time of day. [Formerly 757.835]

759.235 Mandatory measured service rate; prohibition. (1) The Public Utility Commission shall be prohibited from requiring any call aggregator, telephone customer or class of customers to pay for local exchange telephone service, or any portion thereof, on a mandatory measured service basis.

(2) As used in this section:

(a) "Call aggregator" has the meaning given that term in ORS 759.690.

(b) "Measured service" means charging for local exchange telephone service based

upon number of calls, length of calls, distance, time of day, or any combination thereof.

(3) Nothing in this section is intended to prohibit the commission from requiring telephone customers to pay on a mandatory measured service basis for:

(a) Land, marine, or air mobile service.

(b) Local exchange telephone service resold at a profit.

(4) The commission shall not change boundaries of local exchange service areas nor take any other actions if such changes or actions have the effect of circumventing subsections (1) and (2) of this section. [Formerly 757.840; 1997 c.317 §1]

759.240 Measuring quality of service; standards; rules. (1) The Public Utility Commission shall ascertain and prescribe for each kind of telecommunications utility suitable and convenient standard commercial units of service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the service rendered by any telecommunications utility and prescribe reasonable regulations for examination and testing of such service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for the measurements, and every telecommunications utility is required to carry into effect all orders issued by the commission relative thereto. [1987 c.447 §20]

759.245 Examination and testing of measuring appliances. (1) The Public Utility Commission may provide for the examination and testing of any and all appliances used for the measuring of any service of a telecommunications utility and may provide by rule that no such appliance shall be installed and used for the measuring of any service of any telecommunications utility until it has been examined and tested by the commission and found to be accurate.

(2) The commission shall declare and establish a reasonable fee governing the cost of such examination and test, which shall be paid to the commission by the telecommunications utility.

(3) The commission shall declare and establish reasonable fees for the testing of such appliances on the application of the customer, the fee to be paid by the customer at the time of the customer's request, but to be repaid to the customer by the commission

and to be paid by the telecommunications utility if the appliance is found defective or incorrect to the disadvantage of the customer or used beyond such reasonable limit as may be prescribed by the commission.

(4) All fees collected under the provisions of this section shall be paid by the commission into the State Treasury.

(5) The commission may purchase such materials, apparatus and standard measuring instruments for the examination and tests as the commission deems necessary. [1987 c.447 §21]

759.250 Contracts for special services; procedure for filing and approval; subsequent review and investigation. (1) A telecommunications utility may enter into a contract with any customer for the provision of a telecommunications service that the Public Utility Commission determines is a new service with limited availability, is designed to respond to a unique customer requirement or is subject to competition. Contracts shall be for a stated time period, not to exceed five years. If a contract includes competitive and noncompetitive service elements, the noncompetitive service elements shall be unbundled and priced separately from all other facilities and service elements in the contract. Such noncompetitive service elements shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms and conditions.

(2) The telecommunications utility shall file any contract with the commission no later than 90 days following its effective date. At the customer's request, the telecommunications utility shall file the contract at least 30 days in advance of the effective date. Notice of the filing of the contract shall be given by the commission to all persons who have filed with the commission a petition to receive such notice.

(3) Contracts entered into under this section are not schedules of rates, tolls or charges within the meaning of ORS 759.175. A contract entered into under this section shall be enforceable by the contracting parties according to its terms, unless the contract has been rejected by the commission as provided in this section.

(4) Notwithstanding ORS 759.175 to 759.185, the commission shall approve any contract for a telecommunications service entered into under this section if the commission finds the following:

(a) The telecommunications service is a new service with limited availability, is designed to respond to a unique customer requirement or is subject to competition. In making the determination of whether a ser-

vice is subject to competition, the commission shall consider whether the customer might reasonably have chosen an alternative to the telecommunications utility's service.

(b) The contracted price for the telecommunications service is above the long run incremental costs of providing such service during the term of the contract. In making this calculation for a contract that includes both competitive and noncompetitive service elements, the commission shall consider separately whether the competitive service elements are priced above the long run incremental costs of providing such service elements.

(c) The contracted price for the telecommunications service includes all costs of providing such service, including the rate that would be charged by a telecommunications utility to any competitive telecommunications provider for any component essential to the competitive telecommunications provider's ability to offer the telecommunications service. The commission shall determine which components of the service shall be deemed essential and the method to include prices of those components in costs of such services.

(5) The commission shall issue an order regarding any contract filed under subsection (2) of this section within 90 days of the filing. If the commission does not act within 90 days of the filing, the contract shall be deemed approved. If the commission disapproves the contract, it shall enter an order describing the ways in which the contract fails to meet the standards set forth in subsection (4) of this section and declaring the contract null and void. The telecommunications utility or customer may request that the commission hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the commission not later than 15 days after the date of service of the order, and the commission shall hold the hearing not later than 60 days after receipt of such request for hearing.

(6) Notwithstanding ORS 192.410 to 192.505, the commission shall not disclose the identity of a customer or any customer proprietary information contained in a contract filed under subsection (2) of this section without the consent of the customer and the telecommunications utility.

(7) No contract filed under subsection (2) of this section may be automatically renewed. A contract renewal shall be treated as a new contract.

(8) Nothing in this section shall be deemed state action for the purpose of exempting a telecommunications utility from

liability for anticompetitive conduct or other unlawful practices.

(9) Any contract executed prior to September 29, 1991, and approved by the commission is deemed lawful and shall be enforceable by the contracting parties according to its terms. A contract renewal shall be deemed a new contract.

(10) Nothing in this section shall restrict the commission from subsequent scrutiny of the reasonableness of contracts filed under this section for ratemaking purposes.

(11) In accordance with ORS 756.515, the commission may investigate contracts filed by a specific telecommunications utility under this section. Notwithstanding any other provision of this section, if the commission finds that contracts entered into by a telecommunications utility have not generally been in the public interest, the commission, by order, may prevent or restrict the telecommunications utility from future contracting pursuant to this section and may require the telecommunications utility to file contracts under ORS 759.175. [1991 c.527 §2]

759.255 Setting prices without regard to return on utility investment; petition; findings; conditions; application of statutes to approved plan. (1) In addition to powers vested in the Public Utility Commission under ORS 759.195, and subject to the limitations contained in subsections (2) to (4) of this section, upon petition of a telecommunications utility that provides local exchange service directly, or is affiliated with a utility that provides local exchange service, the commission, after notice and hearing, may approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility. Prices approved under the plan are not subject to the provisions of ORS 759.180 to 759.190 and shall become effective as stated in the plan.

(2) Prior to granting a petition to approve a plan under subsection (1) of this section, the commission must find that the plan is in the public interest. In making its determination the commission shall consider, among other matters, whether the plan:

(a) Ensures prices for telecommunications services that are just and reasonable;

(b) Ensures high quality of existing telecommunications services and makes new services available;

(c) Maintains the appropriate balance between the need for regulation and competition; and

(d) Simplifies regulation.

(3) If the commission approves a plan under subsection (1) of this section, the

commission shall establish objectives of the plan and conditions for review of the plan during the operation of the plan. The commission may not consider return on investment of the utility when the commission establishes objectives of the plan and conditions for review of the plan during the operation of the plan.

(4) A rate for any service in the plan authorized under subsection (1) of this section may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service and the charges of essential functions used in providing the service. However, the commission may allow a telecommunications utility to establish rates for residential local exchange service at any level necessary to achieve the commission's universal service objectives.

(5) If the commission approves a plan under subsection (1) of this section, the commission may waive, in whole or in part, compliance by the telecommunications utility with ORS 759.120, 759.125, 759.130, 759.135, 759.180 to 759.205, 759.215, 759.220, 759.285 and 759.300 to 759.393. [1995 c.399 §2; 2005 c.232 §13b]

759.257 Extended area service: Portland to Scappoose. (1) Two-way, flat rate or measured extended area service shall be provided by each telecommunications utility providing service between the Portland EAS Region and the Scappoose Exchange, as described by EAS and exchange maps filed with and approved by the Public Utility Commission.

(2) The service provided for in subsection (1) of this section may be implemented during the currently pending Portland EAS Region Expansion, but in no event shall such implementation occur later than November 1, 1998.

(3) Nothing in subsection (1) of this section authorizes a telecommunications utility to discontinue two-way, flat rate or measured extended area service in any exchange area where that service was provided prior to October 4, 1997. [1997 c.796 §2]

759.259 Extended area service: Portland to Molalla. (1) Two-way, flat rate or measured extended area service shall be provided by each telecommunications utility providing service between the Portland EAS Region and the Molalla Exchange, as described by EAS and exchange maps filed with and approved by the Public Utility Commission.

(2) The service provided for in subsection (1) of this section may be implemented during the currently pending Portland EAS Region Expansion, but in no event shall such implementation occur later than November

1, 1998, after approval by customers of the Molalla Exchange.

(3) Nothing in subsection (1) of this section authorizes a telecommunications utility to discontinue two-way, flat rate or measured extended area service in any exchange area where the service was provided prior to October 4, 1997. [1997 c.505 §2]

ILLEGAL PRACTICES

759.260 Unjust discrimination in rates.

(1) Except as provided in ORS 759.265, no telecommunications utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) That prescribed in the public schedules or tariffs then in force or established; or

(b) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances. A difference in rates or charges based upon a difference in classification pursuant to ORS 759.210 shall not constitute a violation of this paragraph.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination. [1987 c.447 §46; 1989 c.5 §22; 1993 c.18 §165]

759.265 Practices not constituting unjust discrimination. (1) ORS 759.260 does not prevent any telecommunications utility from giving free service, or reduced rates therefor, to:

(a) Its officers, directors, employees and members of their families;

(b) Former employees of such telecommunications utilities or members of their families where such former employees have become disabled in the service of such telecommunications utility or are unable from physical disqualification, including retirement, to continue in the service; or

(c) Members of families of deceased employees of such telecommunications utility.

(2) The Public Utility Commission may require any telecommunications utility to file with the commission a list, verified under oath, of all free or reduced rate privileges granted by a telecommunications utility under the provisions of this section. [1987 c.447 §47]

759.267 Service promotion activities.

A telecommunications utility may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon or a pre-

mium with the purchase of a service. ORS 759.260 and 759.265 do not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. [1993 c.204 §4]

759.270 Reducing rates for persons furnishing part of facilities; rental of customer facilities; furnishing meters and appliances.

(1) No telecommunications utility shall demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the telecommunications utility in consideration of the furnishing by such person of any part of the facilities incident thereto.

(2) This section does not prohibit any telecommunications utility from renting any customer's facilities incident to providing its services and for paying a reasonable rental therefor.

(3) This section does not require a telecommunications utility to furnish any part of such appliances which are situated in and upon the premises of any customer, except meters and appliances for measurements of any service, unless otherwise ordered by the Public Utility Commission. [1987 c.447 §48]

759.275 Undue preferences and prejudices.

(1) No telecommunications utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any telecommunications utility violating this section is guilty of unjust discrimination. [1987 c.447 §49]

759.280 Soliciting or accepting rebates or special advantage.

No person shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service whereby any such service shall, by any device, be rendered free or at a lesser rate than that named in the published schedules and tariffs in force, or whereby any service or advantage is received other than authorized in this chapter. [1987 c.447 §50]

759.285 Charging rates based on cost of property not presently providing service.

No telecommunications utility shall, directly or indirectly, by any device, charge, demand, collect or receive from any customer, rates which are derived from a rate base which includes within it any construction, building, installation or real or personal property not presently used for providing utility service to the customer. [1987 c.447 §51]

759.290 [1989 c.621 §2; repealed by 2007 c.823 §6]

ISSUANCE OF SECURITIES

759.300 "Stocks" defined. As used in ORS 759.300 to 759.360, "stocks" means stocks, stock certificates or other evidence of interest or ownership. [1987 c.447 §28]

759.305 Power to regulate issuance of telecommunications stocks. The power of telecommunications utilities to issue stocks and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state. Such power shall be exercised as provided by law and under such rules and regulations as the Public Utility Commission may prescribe. [1987 c.447 §29]

759.310 When issuance of securities void. All stocks and bonds, notes or other evidences of indebtedness and any security of a telecommunications utility shall be void when issued:

(1) Without an order of the Public Utility Commission authorizing the same then in effect except as provided in ORS 759.315 (3) or (5).

(2) With the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain; but no failure to comply with the terms or conditions of the order of authorization of the commission and no informality or defect in the application or in the proceedings in connection therewith or with the issuance of such order shall render void any stock or bond, note or other evidence of indebtedness, or security issued pursuant to and in substantial conformity with an order of the commission, except as to a person taking the same otherwise than in good faith and for value and without actual notice. [1987 c.447 §30; 1993 c.204 §1]

759.315 Purposes for which securities may be issued; order required; exceptions. (1) A telecommunications utility may issue stocks and bonds, notes and other evidences of indebtedness, and securities for the following purposes and no others, except as otherwise permitted by subsection (4) of this section:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other

money in the treasury of the telecommunications utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such telecommunications utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(2) Before issuing such securities, a telecommunications utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a telecommunications utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 759.310 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 759.300 to 759.360 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in any amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) A telecommunications utility that derives one-half or more of its gross revenue from sources outside this state does not require commission authorization to issue stocks and bonds, notes or other evidences of indebtedness and any security unless the commission finds that the authorization requirements of ORS 759.310 and subsection (2) of this section are necessary to:

(a) Prevent the telecommunications utility from issuing securities for purposes not permitted under subsection (1) of this section; or

(b) Prevent impairment of the telecommunications utility's ability to provide telecommunications utility services to its customers in this state. The commission shall adopt rules that set forth independently determined financial indicators upon which the commission must base any finding of impaired ability to provide utility telecommunications services. [1987 c.447 §31; 1993 c.204 §2; 2001 c.236 §1]

759.320 Application of ORS 759.315. ORS 759.315 does not apply to the issuance, renewal or assumption of liability on any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of acquiring specific real or personal property, if the aggregate principal amount thereof, together with all other then outstanding evidences of indebtedness issued, renewed or assumed under this section, does not exceed whichever is the greater of the following amounts:

(1) The amount of \$75,000.

(2) The amount of one-half of one percent of the sum of:

(a) The total principal amount of all bonds or other securities representing secured indebtedness of the telecommunications utility issued or assumed and then outstanding; and

(b) The capital and surplus as then stated on the books of account of the telecommunications utility. [1987 c.447 §32]

759.325 Application of ORS 759.375. ORS 759.375 does not apply to any mortgage or other encumbrance upon any real or personal property given to secure payment of any evidence of indebtedness issued under ORS 759.315. [1987 c.447 §33]

759.330 Hearings and supplemental orders for securities issuance; joint approval for issuance by utility operating in another state. (1) To enable the Public Utility Commission to determine whether the commission will issue an order under ORS 759.315, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and require

the filing of such data as the commission deems necessary. The application for such order shall be given priority and shall be disposed of by the commission within 30 days after the filing of such application, unless that period is extended with the consent of the telecommunications utility.

(2) The commission may, upon application of the telecommunications utility, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as the commission finds necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, extent to which, or the condition under which, any security theretofore authorized or its proceeds may be applied. Such supplemental orders are subject to the requirements of ORS 759.315. The period of time permitted under subsection (1) of this section for disposing of applications shall not apply to supplemental orders.

(3) If a commission or other agency is empowered by another state to regulate and control the amount and character of securities to be issued by any telecommunications utility within such other state, the commission of Oregon has power to agree with such commission or agency of such other state on the issue of stocks, bonds, notes, other evidences of indebtedness or securities by a telecommunications utility owning or operating a telecommunications utility both in such state and in this state, and has power to approve such issue jointly with such commission or agency and to issue a joint certificate of such approval. However, no such joint approval is required in order to express the consent to and approval of such issue by the State of Oregon if the issue is separately approved by the Oregon commission. [1987 c.447 §34]

759.335 Obligation of state as consequence of approval of issuance. No provision of ORS 759.300 to 759.360, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 759.300 to 759.360. [1987 c.447 §35]

759.340 Conditional approval of issuance. The Public Utility Commission may by order grant permission for the issue of stocks or bonds, notes or other evidences of indebtedness in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of the permission such condition or conditions as the commission deems reasonable and necessary. [1987 c.447 §36]

759.345 Use of proceeds from issuance; accounting. (1) No telecommunications utility shall, without the consent of the Public Utility Commission, apply the issue of any stock or bond, note or other evidence of indebtedness, or any part or proceeds thereof, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order, or a modification thereof.

(2) The commission has power to require telecommunications utilities to account for the disposition of the proceeds of all sales of stocks and bonds, notes and other evidences of indebtedness, in such form and detail as the commission deems advisable, and to establish such rules and regulations as the commission deems reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in the order. [1987 c.447 §37]

759.350 Limitation on authority of utility to guarantee debt of another. No telecommunications utility shall assume any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than 12 months after the date thereof, without first having secured from the Public Utility Commission an order authorizing it to do so. Every assumption made other than in accordance with such an order is void. [1987 c.447 §38]

759.355 Issuance or use of proceeds contrary to commission order. No telecommunications utility shall directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 759.300 to 759.360, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order, in excess of the amount in the order authorized for such purpose. [1987 c.447 §39]

759.360 Prohibited acts regarding issuance of securities. No person shall:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 759.300 to 759.360 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 759.300 to 759.360, negotiate, or cause the same to be negotiated. [1987 c.447 §40]

TRANSACTIONS OF UTILITIES

759.375 Approval prior to sale, mortgage or disposal of operative utility property. (1) A telecommunications utility doing business in Oregon shall not, without first obtaining the Public Utility Commission's approval of such transaction:

(a) Sell, lease, assign or otherwise dispose of the whole of the property of such telecommunications utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$100,000, or sell, lease, assign or otherwise dispose of any franchise, permit or right to maintain and operate such telecommunications utility or telecommunications utility property, or perform any service as a telecommunications utility;

(b) Mortgage or otherwise encumber the whole or any part of the property of such telecommunications utility necessary or useful in the performance of its duties to the public, including any franchise, permit or right to maintain and operate such telecommunications utility or telecommunications utility property, or perform any service as a telecommunications utility; or

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its

lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any telecommunications utility property, or perform any service as a telecommunications utility, or any part thereof, with any other public utility or telecommunications utility.

(2) A telecommunications utility that sells, leases, assigns or otherwise disposes of the whole of the property of such telecommunications utility necessary or useful in the performance of its duties to the public or any part thereof of a value in excess of \$25,000, but less than \$100,000, shall notify the commission of the sale within 60 days following the date of the sale.

(3) Every sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation subject to subsection (1) of this section made other than in accordance with the order of the commission authorizing the same is void.

(4) This section does not prohibit or invalidate the sale, lease or other disposition by any telecommunications utility of property which is not necessary or useful in the performance of its duties to the public. [1987 c.447 §41; 1999 c.530 §2]

759.380 Purchase of stock or property of another utility. (1) No telecommunications utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes and having a value in excess of \$10,000 of any other public utility or telecommunications utility unless authorized to do so by the Public Utility Commission.

(2) Every contract by any telecommunications utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other telecommunications utility by or through any person, partnership or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract is effective for any purpose. [1987 c.447 §42]

759.385 Contracts regarding use of utility property; filing with commission; investigation. (1) When any telecommunications utility doing business in this state, except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410, enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of the telecommunications utility in Oregon, or the use of the property of the other contracting party, or any part of the property, or for service, advice, engineering, financing, rentals, leasing or for any con-

struction or management charges with respect to any of the property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for the investigation and approval when the telecommunications utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any proposed contract described in subsection (1) of this section shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 759.390 (4) and (7).

(3) In making an investigation of the contract, the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the telecommunications utility, as well as of the corporation with which it is proposing to contract, that the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that the contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect. A determination and finding by the commission under this subsection has the same force and effect as any other determination or order of the commission.

(4) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than \$100,000. [1987 c.447 §43; 1989 c.956 §4; 1991 c.899 §1; 1999 c.809 §1; 2005 c.232 §21]

759.390 Contracts with affiliated interests; procedure; use in rate proceedings. (1) As used in this section, "affiliated interest" with a telecommunications utility means:

(a) Every person owning or holding directly or indirectly five percent or more of the voting securities of the telecommunications utility.

(b) Every person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.

(c) Every corporation five percent or more of whose voting securities are owned by any person owning five percent or more of the voting securities of the telecommuni-

cations utility or by any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.

(d) Every individual who is an officer or director of the telecommunications utility or of any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.

(e) Every corporation that has two or more officers or two or more directors in common with the telecommunications utility.

(f) Every entity, five percent or more of which is directly or indirectly owned by a telecommunications utility.

(g) Every person that the Public Utility Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of the telecommunications utility, even though the influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this section.

(h) Every person that the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of the telecommunications utility in conjunction with one or more other persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with the telecommunications utility within the meaning of this section even though no one of them alone is so affiliated.

(2) When any telecommunications utility doing business in this state, except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410, enters into any contract to make any payment, directly or indirectly, to any person having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enters any charge on the books of the utility, and the contract is to be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any telecommunications utility doing business in this state enters into any contract, oral or written, with any person having an affiliated interest relating to the

construction, operation, maintenance, leasing or use of the property of the telecommunications utility in Oregon, or the purchase of property, materials or supplies that is to be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(4) The commission promptly shall examine and investigate any contract submitted to the commission under subsection (2) or (3) of this section. If, after the investigation, the commission determines that it is fair and reasonable and not contrary to the public interest, the commission shall enter findings and order approving the contract and serve a copy of the findings and order upon the telecommunications utility. Following the commission's determination of fairness and reasonableness, any expenses and capital expenditures incurred by the telecommunications utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after the investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and order disapproving the contract and serve a copy of the findings and order upon the telecommunications utility. Except as provided in subsection (5) of this section, it is unlawful to recognize a disapproved contract for the purposes specified in this section.

(5) When any contract described in subsection (2) or (3) of this section has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (4) of this section, the commission may not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that the contract has not been approved under subsection (4) of this section.

(6) A telecommunications utility may not issue notes or loan its funds or give credit on its books or otherwise to any person having an affiliated interest, either directly or indirectly, without the approval of the commission.

(7) The action of the commission with respect to all the matters described in this section shall be by findings and order to be entered within 90 days after the matter has been submitted to the commission for con-

sideration. The telecommunications utility, or any other person affected by any findings and order of the commission under this section, may seek judicial review of the order of the commission. An order of the commission under this section is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610.

(8) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than \$100,000. [1987 c.447 §44; 1989 c.956 §5; 1991 c.899 §2; 1999 c.809 §2; 2005 c.232 §22; 2005 c.638 §16a]

759.393 Applicability of ORS 759.385 and 759.390. (1) Except as provided in subsection (2) of this section, the filing of proposed contracts under ORS 759.385 and 759.390 shall constitute a telecommunications utility's sole reporting obligation under ORS 759.385 and 759.390 and the Public Utility Commission may not require a telecommunications utility to submit annual or other cumulative reports regarding such contracts, including contracts with affiliates of the utility.

(2) On April 1 of each year, every telecommunications utility shall file with the commission a list of affiliate contracts executed in the preceding year. The list shall consist of the names of the parties to the contracts, the dollar amounts of the contracts and the dates of execution of the contracts. [1999 c.809 §3]

759.394 [1991 c.899 §4; repealed by 1999 c.809 §5]

759.395 [1987 c.447 §45; repealed by 1991 c.315 §1]

PRICE CAP REGULATION

(Generally)

759.400 Definitions. As used in ORS 759.400 to 759.455:

(1) "Basic telephone service" means local exchange telecommunications service defined as basic by rule of the Public Utility Commission.

(2) "Retail telecommunications service" means a telecommunications service provided for a fee to customers. "Retail telecommunications service" does not include a service provided by one telecommunications carrier to another telecommunications carrier, unless the carrier receiving the service is the end user of the service.

(3) "Telecommunications carrier" means any provider of retail telecommunications services, except a call aggregator as defined in ORS 759.690. [1999 c.1093 §23]

759.405 Election of regulation under ORS 759.405 and 759.410; conditions; Telecommunications Infrastructure Account; remedy for failure of utility to comply with conditions. (1) A telecommunications carrier may elect to be subject to this section and ORS 759.410. The telecommunications carrier shall notify, in writing, the Public Utility Commission of its election. Such election shall be effective 30 days after the written notification is received by the Public Utility Commission. A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall be subject to the infrastructure investment and price regulation requirements of this section and ORS 759.410 and shall not be subject to any other regulation based on earnings, rates or rate of return.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall establish in its accounts a Telecommunications Infrastructure Account. The telecommunications carrier shall commit to its Telecommunications Infrastructure Account over a four-year period amounts totaling 20 percent of the telecommunications carrier's gross regulated intrastate revenue for the calendar year immediately prior to the year the telecommunications carrier elects to be subject to this section and ORS 759.410. Of the total committed amount, 30 percent shall be credited to and made available for the purposes of the electing carrier's account on the date the telecommunications carrier's election becomes effective. An electing telecommunications carrier shall credit an equal amount on the same date in the next following year. The electing carrier shall credit to its Telecommunications Infrastructure Account an amount equal to 20 percent of the total committed amount on the same date in each of the next following two years.

(3)(a) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall expend the moneys in the telecommunications carrier's Telecommunications Infrastructure Account on a plan or plans approved by the Oregon Economic and Community Development Commission under ORS 759.430. Subject to paragraphs (c) and (d) of this subsection, the total amount of capital and other expenses associated with completing the projects shall equal the total amount of moneys available in the account.

(b) Moneys in the account shall be used primarily to ensure that rural and urban Oregonians have improved access to telecommunications technology and services. Expenditures from the account shall be used for investment in telecommunications infra-

structure and deployment of new and advanced telecommunications services.

(c)(A) Within 120 days following the effective date of a telecommunications carrier's election to be regulated under this section and ORS 759.410, but not later than January 1 of the year following the effective date of a telecommunications carrier's election, and on the same date in each of the next following three years, a telecommunications carrier serving less than one million access lines in Oregon shall transfer 40 percent of the moneys most recently credited to its Telecommunications Infrastructure Account to the Connecting Oregon Communities Fund established under ORS 759.445.

(B) Within 120 days following the effective date of a telecommunications carrier's election to be regulated under this section and ORS 759.410, but not later than January 1 of the year following the effective date of a telecommunications carrier's election, and on the same date in the next following year, a telecommunications carrier serving one million or more access lines in Oregon shall transfer 70 percent of the moneys most recently credited to its Telecommunications Infrastructure Account to the Connecting Oregon Communities Fund established under ORS 759.445.

(d) Notwithstanding ORS 285A.075 (2), if the Oregon Economic and Community Development Commission determines, following notice and a public hearing, that the telecommunications carrier is not complying with plans or plan modifications approved under ORS 759.430, following notice to the telecommunications carrier and reasonable opportunity to cure any noncompliance, the Oregon Economic and Community Development Commission may require the telecommunications carrier to transfer any or all moneys remaining in the carrier's Telecommunications Infrastructure Account, and any future amounts credited to the account, to the Connecting Oregon Communities Fund established under ORS 759.445.

(4) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515. [1999 c.1093 §24; 2001 c.104 §295]

759.410 Intent of ORS 759.410; establishing maximum and minimum price for telecommunications services; packaging services; notice of price change, new service; enforcement. (1) It is the intent of the Legislative Assembly that:

(a) The State of Oregon cease regulation of telecommunications carriers on a rate of return basis;

(b) Telecommunications carriers subject to rate of return regulation have the ability to opt out of rate of return regulation;

(c) A telecommunications carrier that opts out of rate of return regulation under this section and ORS 759.405 shall be subject to price cap regulation and the carrier under price cap regulation shall continue to meet service quality requirements; and

(d) Telecommunications carriers that opt out of rate of return regulation under this section and ORS 759.405 shall make payments to the state to support the use of advanced telecommunications services and to support deployment of advanced telecommunications services.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.405 shall be subject to price regulation as provided in this section and shall not be subject to any other retail rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return regulation.

(3) The price a telecommunications utility that elects to be subject to this section and ORS 759.405 may charge for basic telephone service shall be established by the Public Utility Commission under ORS 759.425. Subject to ORS 759.415, the regular tariff rate of intrastate switched access and retail telecommunications services regulated by the commission, other than basic telephone service, in effect on the date the carrier elects to be subject to this section and ORS 759.405 shall be the maximum price the telecommunications carrier may charge for that service.

(4) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may adjust the price for intrastate switched access or a regulated retail telecommunications service between the maximum price established under this section and a price floor equal to the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Basic telephone service shall not be subject to a price floor.

(5) The price for a new regulated retail telecommunications service introduced by a telecommunications carrier within four years after the date the carrier elects to be subject to this section and ORS 759.405 shall be subject to a price floor test by the commission to ensure that the service is not priced below the sum of the total service long run

incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Beginning on the date four years after September 1, 1999, the price of a new telecommunications service shall be subject to a price floor test by the commission to ensure that the service is not priced below the total service long run incremental cost of providing the service, without regard to whether the service is considered essential or nonessential.

(6) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may package and offer any of its retail telecommunications services with any other service at any price, provided the following conditions apply:

(a) Any regulated telecommunications service may be purchased separately at or below the maximum price.

(b) The price of the package is not less than the sum of the price floors of each regulated retail telecommunications service included in the package.

(c) The price of a package that is comprised entirely of regulated retail telecommunications services does not exceed the sum of the maximum prices for each of the services.

(d) The price of a package comprised of regulated and unregulated retail telecommunications services does not exceed the sum of the maximum prices established under this section for regulated services and the retail price charged by the carrier for the individual unregulated services in the package. A telecommunications carrier subject to regulation under this section shall provide notice to the commission within 30 days of a change in the price of an unregulated telecommunications service contained in the package.

(7) Nothing in this section or ORS 759.405 is intended to limit the ability of a telecommunications carrier to seek deregulation of telecommunications services under ORS 759.052.

(8)(a) Notice of a price change authorized under subsection (4) of this section, of the introduction of a new regulated telecommunications service or of the packaging of services, must be given to the commission within 30 days following the effective date of the price change, new service or packaged service. Notice of a new regulated telecommunications service shall indicate the retail price charged by the carrier for the service.

(b) The commission may investigate any price change authorized under subsection (4) of this section, the price of a new regulated telecommunications service or the price of a

package of services to determine that the price complies with the provisions of this section and any other applicable law. If the commission determines that the price of the service or package of services does not comply with the provisions of this section or other applicable law, the commission may order the telecommunications carrier to take such action as the commission determines necessary to bring the price into compliance with this section or other applicable law.

(9) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515.

(10) Notwithstanding any other provision of this section, the commission shall establish prices for extended area service in a manner that allows a telecommunications carrier that elects to be subject to this section and ORS 759.405 to recover all costs and lost net revenues attributable to implementing new extended area service routes. The provisions of this subsection apply to telecommunications service provided on a flat or measured basis between exchanges defined by exchange maps filed with and approved by the commission. [1999 c.1093 §25; 2001 c.966 §1; 2005 c.232 §23]

759.415 Order in rate proceeding filed prior to January 1, 1999, to establish maximum rate for affected telecommunications services; dismissal of rate proceeding filed after January 1, 1999. (1) In a rate proceeding brought by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, or by the Public Utility Commission against an electing telecommunications carrier, prior to January 1, 1999, that is on appeal on September 1, 1999, a final rate for a telecommunications service implemented as a result of the final judgment and order or negotiated settlement shall become the maximum rate for purposes of ORS 759.410.

(2) A rate proceeding brought by or against an electing telecommunications carrier, after January 1, 1999, that is pending on the effective date of the carrier's election to be subject to ORS 759.405 and 759.410, shall be dismissed by the commission or by the court if on appeal, provided the carrier elects to be subject to regulation under ORS 759.405 and 759.410 within the later of:

(a) Ninety days from the commencement of the proceeding; or

(b) Ninety days from September 1, 1999.

(3) Notwithstanding subsection (2) of this section, the parties to a rate proceeding

brought by or against an electing telecommunications carrier, after January 1, 1999, that is pending on the effective date of the carrier's election to be subject to ORS 759.405 and 759.410, may agree to continue the proceeding. [1999 c.1093 §27]

759.420 Application of ORS 759.400 to 759.455 to wholesale transactions regulated under federal law. Nothing in ORS 759.400 to 759.455 is intended to affect, alter or in any way modify wholesale transactions regulated by the federal Telecommunications Act of 1996 (Public Law 104-104) as in effect on September 1, 1999, and regulations adopted thereunder. [1999 c.1093 §26]

(Universal Service Fund)

759.425 Universal service fund; commission to establish price for basic telephone service; universal service surcharge; application to cellular services. (1) The Public Utility Commission shall establish and implement a competitively neutral and nondiscriminatory universal service fund to ensure basic telephone service is available at a reasonable and affordable rate. The Public Utility Commission may adopt rules to conform the universal service fund to section 254 of the federal Telecommunications Act of 1996 (Public Law 104-104), and to related rules adopted by the Federal Communications Commission, to the extent that the Public Utility Commission determines is appropriate. The commission may delay implementation for rural telecommunications carriers, as defined in the federal Act, for up to six months after the date the Federal Communications Commission adopts a cost methodology for rural carriers.

(2)(a) The Public Utility Commission shall establish the price a telecommunications utility may charge its customers for basic telephone service. The commission in its discretion shall periodically review and evaluate the status of telecommunications services in the state and designate the services included in basic telephone service. The commission in its discretion shall periodically review and adjust as necessary the price a telecommunications utility may charge for basic telephone service.

(b) The provisions of this subsection do not apply to the basic telephone service provided by a telecommunications utility described in ORS 759.040.

(3)(a) The Public Utility Commission shall establish a benchmark for basic telephone service as necessary for the administration and distribution of the universal service fund. The universal service fund shall provide explicit support to an eligible telecommunications carrier that is equal to the difference between the cost of providing

basic telephone service and the benchmark, less any explicit compensation received by the carrier from federal sources specifically targeted to recovery of local loop costs and less any explicit support received by the carrier from a federal universal service program.

(b) The commission in its discretion shall periodically review the benchmark and adjust it as necessary to reflect:

(A) Changes in competition in the telecommunications industry;

(B) Changes in federal universal service support; and

(C) Other relevant factors as determined by the commission.

(c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek to limit the difference between the price a telecommunications utility may charge for basic telephone service and the benchmark.

(4) Except as provided in subsections (6) and (7) of this section, there is imposed on the sale of all retail telecommunications services sold in this state a universal service surcharge. Unless otherwise provided by the Public Utility Commission by rule, the surcharge shall be a uniform percentage of the sale of retail telecommunications services in an amount sufficient to support the purpose of the universal service fund. The surcharge may be shown as a separate line item by all telecommunications carriers using language prescribed by the commission. A telecommunications carrier shall deposit amounts collected into the universal service fund according to a schedule adopted by the commission.

(5) The Public Utility Commission is authorized to establish a universal service fund, separate and distinct from the General Fund. The fund shall consist of all universal service surcharge moneys collected by telecommunications carriers and paid into the fund. The fund shall be used only for the purpose described in this section, and for payment of expenses incurred by the commission or a third party appointed by the commission to administer this section. All moneys in the fund are continuously appropriated to the commission to carry out the provisions of this section. Interest on moneys deposited in the fund shall accrue to the fund.

(6) For purposes of this section, "retail telecommunications service" does not include radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service.

(7)(a) Notwithstanding subsection (6) of this section, a person who primarily provides

radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service may request designation as an eligible telecommunications carrier by the Public Utility Commission for purposes of participation in the universal service fund.

(b) In the event a person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service seeks designation as an eligible telecommunications carrier for purposes of participation in the universal service fund, the person shall provide written notice to the Public Utility Commission requesting designation as an eligible telecommunications carrier within 60 days of the date the commission establishes the fund. Upon receiving notice, the commission may designate the person as an eligible telecommunications carrier for purposes of participation in the fund.

(c) A person who primarily provides radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service who fails to request designation as an eligible telecommunications carrier within 60 days of the date the universal service fund is established by the Public Utility Commission may not be designated as an eligible telecommunications carrier unless the person has contributed to the fund for at least one year immediately prior to requesting designation.

(8) A pay telephone provider may apply to the Public Utility Commission, on a form developed by the commission, for a refund of the universal service surcharge imposed on the provider under subsection (4) of this section for the provision of pay telephone service. [1999 c.1093 §28; 2001 c.966 §3; 2003 c.14 §§455,456; 2007 c.353 §1]

(Public Purpose Funding)

759.430 Approval of projects funded by carrier's Telecommunications Infrastructure Account; Connecting Oregon Communities Advisory Board. (1)(a) Notwithstanding ORS 285A.075 (2), the Oregon Economic and Community Development Commission shall approve plans and plan modifications for projects funded by a telecommunications carrier's Telecommunications Infrastructure Account established under ORS 759.405. Projects funded from a telecommunications carrier's Telecommunications Infrastructure Account shall be completed by the carrier and shall be substantially for the benefit of the carrier's customers. Plans approved by the commission

must be consistent with the purpose of the fund as described in ORS 759.405. The commission shall give priority to projects that provide increased bandwidth between communities, route diversity and access to advanced telecommunications services in an expedited manner. The commission shall seek to ensure that an approved project is the most technically appropriate means of addressing the circumstances presented in a project plan. The commission shall review recommendations and analysis from the Connecting Oregon Communities Advisory Board established in subsection (2) of this section prior to approving a plan. Project plans may be submitted by local communities including but not limited to local governments, community institutions, citizen groups, public and private educational institutions and business groups.

(b) Under the policies and guidance of the commission, the Economic and Community Development Department shall adopt rules for the submission of project plans by telecommunications carriers and other persons, including criteria for approval of such plans. The rules shall include criteria to determine if the telecommunications carrier reasonably should be expected to make the investment based on an economic analysis of the project. Projects that are determined to meet the criteria but are not economically self-supporting or would not be undertaken in the time frame proposed shall be given priority over similar projects that would be economically self-supporting or likely would be completed in the time frame proposed. The rules shall provide for review of the economic benefits of the proposed plan to the affected community and the potential for the proposed plan to leverage other funding sources including but not limited to federal, state and private sources.

(c) The commission also shall approve expenditures from the Public Access Account of the Connecting Oregon Communities Fund established in ORS 759.445 (4).

(2) There is established within the Economic and Community Development Department the Connecting Oregon Communities Advisory Board consisting of five members appointed by the commission. The commission shall seek advice from the Governor prior to making an appointment to the advisory board.

(3) There shall be one member of the advisory board from each of the following areas:

- (a) Eastern Oregon, including Hood River County;
- (b) Central Oregon;
- (c) Southern Oregon;

- (d) Coastal Oregon; and
- (e) The Willamette Valley.

(4) Employees of the Public Utility Commission, employees of state or local government who are responsible for purchasing telecommunications services or equipment and employees of a telecommunications carrier may not be appointed to the advisory board.

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

(6) The purpose of the advisory board is to review and make recommendations to the Oregon Economic and Community Development Commission for approval of and modifications to projects funded by a telecommunications carrier's Telecommunications Infrastructure Account under this section and ORS 759.405. The advisory board shall seek advice and comment on plans submitted by a telecommunications carrier from affected local communities including but not limited to local governments, citizens and businesses. The advisory board also shall seek advice and comment from state and federal agencies when appropriate to ensure that investments will maximize statewide public benefits and are consistent with the needs and desires of the local communities. The advisory board shall consider the needs of and impact on education, health care, economic development and the delivery of state and local governmental services when evaluating a plan.

(7) The advisory board also shall review proposals submitted to the commission under ORS 759.445 (5) and make recommendations to the commission regarding approval, modification or denial of the proposals.

(8) The advisory board shall make an annual report to the Joint Legislative Committee on Information Management and Technology on the plans and activities funded under ORS 759.405 and 759.445 (5).

(9)(a) Reasonable expenses incurred by the members of the advisory board in the performance of their duties, costs of the Economic and Community Development Department directly related to providing staff to the advisory board and costs to the department for providing technical assistance to local communities shall be paid out of the Telecommunications Infrastructure Accounts created under ORS 759.405.

(b) Following the transfer of funds required under ORS 759.405 (2) and (3), a telecommunications carrier that elects to be

subject to regulation under ORS 759.405 and 759.410 shall transfer from the remaining funds in its Telecommunications Infrastructure Account the following amounts to the Economic and Community Development Department to be used for the payment of expenses described in paragraph (a) of this subsection:

- (A) \$575,000 in 2000;
- (B) \$325,000 in 2001;
- (C) \$325,000 in 2002; and
- (D) \$325,000 in 2003.

(c) If more than one telecommunications carrier elects to be subject to regulation under ORS 759.405 and 759.410, the funding requirements described in paragraph (b) of this subsection shall be distributed pro rata among the electing carriers. [1999 c.1093 §31]

759.435 Assessment of telecommunications infrastructure and community needs; contents; report. (1) The Economic and Community Development Department, in collaboration with affected telecommunications carriers, the Connecting Oregon Communities Advisory Board, representatives of local communities and other members of the public interested in improved telecommunications services, shall conduct an assessment of telecommunications infrastructure and community telecommunications needs in local communities and across the various regions of this state. The assessment shall include:

(a) The type of telecommunications services and technology, including infrastructure, already deployed within communities and regions;

(b) The type of telecommunications technology and services desired by communities within regions;

(c) The competitiveness of the local telecommunications market, including a list of all telecommunications carriers and Internet service providers;

(d) The economic significance of desired telecommunications investments;

(e) Community and regional priority lists for telecommunications infrastructure and service investments;

(f) The ability of qualified public and nonprofit users within the community or region to aggregate demand for telecommunications services and the benefits of such aggregation;

(g) The estimated costs and implementation schedule of desired or proposed telecommunications investments;

(h) An analysis of state, federal, nonprofit and private sources of funding for the proposed improvements;

(i) The ability of the investment to be self-supporting; and

(j) The ability of a community or region to make the investments necessary to connect to the Oregon Enterprise Network, and the local and statewide benefits of such investments.

(2)(a) To the maximum extent practicable, the assessment shall recognize and include existing state, regional and local plans and information. The department may use its own staff or may contract with third parties to conduct the assessment.

(b) A copy of the assessment shall be submitted to the Oregon Economic and Community Development Commission and to the Joint Legislative Committee on Information Management and Technology. The commission shall consider the information contained in the report when adopting or amending the rules required under ORS 759.430 (1).

(3) The commission shall not approve plans under ORS 759.430 (1) until the commission has received the assessment required under this section. The department shall report to the Joint Legislative Committee on Information Management and Technology on implementation of ORS 759.430 to 759.445 prior to the approval of project plans under ORS 759.430 (1). [1999 c.1093 §32]

759.440 Additional funding for evaluating project plans. The Economic and Community Development Department may request approval from the Emergency Board for the transfer of additional funds from a telecommunications carrier's Telecommunications Infrastructure Account created under ORS 759.405 for the purpose of providing technical assistance to the department and the Oregon Economic and Community Development Commission in evaluating project plans submitted under ORS 759.430. If the request is approved, the commission by order may direct the transfer of funds from a telecommunications carrier's Telecommunications Infrastructure Account to the Economic and Community Development Department. The department may not request and the Emergency Board shall not approve a request or requests in excess of \$100,000 per year. [1999 c.1093 §32a]

759.445 Connecting Oregon Communities Fund; School Technology Account; Public Access Account. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Connecting Oregon Communities Fund. Moneys in the fund shall consist of amounts deposited in the fund under ORS 759.405 and any other moneys deposited by a telecommunications carrier that elects to be subject to ORS 759.405 and 759.410, including amounts

deposited pursuant to a performance assurance plan implemented by a telecommunications carrier in connection with an application under 47 U.S.C. 271, as in effect on January 1, 2002. Interest earned on moneys in the fund shall accrue to the fund. Moneys in the fund may be invested as provided in ORS 293.701 to 293.820. Moneys in the fund shall be used to provide access to advanced telecommunications technology in elementary schools and high schools, colleges and universities, community colleges, public television corporations, rural health care providers, public libraries and other eligible persons.

(2) Two dedicated accounts shall be established within the Connecting Oregon Communities Fund for purposes of supporting education and public access to advanced telecommunications services. The first \$25 million of the moneys deposited in the Connecting Oregon Communities Fund in both 2000 and 2001 shall be appropriated to the School Technology Account established under subsection (3) of this section. Except as provided in subsection (8) of this section, any additional moneys available in the fund shall be appropriated to the Public Access Account established under subsection (4) of this section.

(3) There is established the School Technology Account within the Connecting Oregon Communities Fund. The purpose of the School Technology Account is to improve access to advanced telecommunications services for students attending public school in kindergarten through grade 12. Moneys in the account shall be expended as provided in section 34, chapter 1093, Oregon Laws 1999.

(4)(a) There is established the Public Access Account within the Connecting Oregon Communities Fund. The purpose of the Public Access Account is to improve access to advanced telecommunications services for community colleges, universities, public libraries and rural health care providers.

(b) If funding has not been provided from other sources, the first \$3 million available in the Public Access Account shall be transferred to the Department of Higher Education for the purpose of funding the Oregon Wide Area Network project to provide and expand Internet access for the Oregon University System. The Department of Higher Education shall complete an audit of bandwidth utilization and report to the Joint Legislative Committee on Information Management and Technology during the Seventy-first Legislative Assembly in the manner provided in ORS 192.245.

(c) Following the transfer of funds described in paragraph (b) of this subsection, the next \$1 million available in the Public

Access Account shall be transferred to the Department of Higher Education for Oregon State University for the purpose of providing virtual access to persons with disabilities.

(d) Following the transfer of funds as described in paragraphs (b) and (c) of this subsection, the next \$2 million available in the Public Access Account shall be transferred to the Department of Community Colleges and Workforce Development for distribution to community colleges for the purpose of developing connectivity and distance education programs.

(e) Following the transfer of funds described in paragraphs (b) to (d) of this subsection, the next \$4 million available in the Public Access Account shall be transferred to the Department of Higher Education for video transport and network management services for the Oregon University System.

(f) Following the transfer of funds described in paragraphs (b) to (e) of this subsection, the next \$5.5 million available in the Public Access Account shall be transferred to the Oregon Public Broadcasting Corporation for the purpose of digitizing the state television network, using the Oregon Enterprise Network when possible.

(g) Following the transfer of funds described in paragraphs (b) to (f) of this subsection, the next \$500,000 available in the Public Access Account shall be transferred to the Southern Oregon Public Television Corporation for the purpose of digitizing the state television network, using the Oregon Enterprise Network when possible.

(h) Following the transfer of funds described in paragraphs (b) to (g) of this subsection, a state institution of higher education, including the Oregon Health and Science University, may apply for one-time matching funds up to \$1 million from the Public Access Account to endow a telecommunications chair for the purpose of increasing research and development of advanced telecommunications services applications. Only one chair may be endowed under this paragraph.

(5)(a) The Oregon Economic and Community Development Commission shall approve expenditure of any remaining moneys in the Public Access Account consistent with this section and ORS 759.430.

(b) Community colleges, state institutions of higher education, public libraries, public television corporations and rural health care providers may apply to the Oregon Economic and Community Development Commission for funding from the Public Access Account under this subsection.

(c) Funds received from the account shall be used for the purchase of advanced tele-

communications services, equipment or recurring costs of telecommunications connectivity. Priority shall be given to collaborative projects that improve access to advanced telecommunications services.

(d) Funds available in the Public Access Account under this subsection are continuously appropriated to the Economic and Community Development Department for the purposes described in this subsection.

(6) Public libraries and rural health care providers must apply for federal universal service support in order to be eligible for a grant from the Public Access Account.

(7) The video transport and network management services purchased with funds made available under this section shall be purchased through the Oregon Department of Administrative Services.

(8) Any moneys deposited in the Connecting Oregon Communities Fund under subsection (1) of this section pursuant to a performance assurance plan implemented by a telecommunications carrier in connection with an application under 47 U.S.C. 271, as in effect on January 1, 2002, shall be placed in the School Technology Account to be expended as provided in section 34, chapter 1093, Oregon Laws 1999. [1999 c.1093 §33; 2001 c.966 §7]

Note: Sections 34 and 37, chapter 1093, Oregon Laws 1999, provide:

Sec. 34. (1) In addition to and not in lieu of any other transfer or appropriation, for the calendar year beginning January 1, 2000, there is transferred to the Department of Education from the School Technology Account the sum of \$9,600 for each eligible school facility as defined in section 35 (1), chapter 1093, Oregon Laws 1999, which shall be expended for the purpose of providing a local area network and associated equipment to public school facilities pursuant to section 35, chapter 1093, Oregon Laws 1999.

(2) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education from the School Technology Account, to be distributed to the Oregon Association of Education Service Districts for the Oregon Public Education Network, for:

(a) The recurring costs of Internet bandwidth:

(A) \$500,000 for the calendar year beginning January 1, 2000; and

(B) \$1 million for the calendar year beginning January 1, 2001.

(b) The purchase of telecommunications equipment:

(A) \$250,000 for the calendar year beginning January 1, 2000; and

(B) \$250,000 for the calendar year beginning January 1, 2001.

(c) The purpose of an online film and video server pilot project to digitize and electronically distribute video content, \$250,000 for the calendar year beginning January 1, 2000.

(3) In addition to and not in lieu of any other transfer or appropriation, for the calendar years beginning January 1, 2000, and January 1, 2001, there is transferred to the Department of Education from the School Technology Account the sum of \$5,400 for each

eligible school facility as defined in section 36 (1), chapter 1093, Oregon Laws 1999, for the purpose of distribution to school districts and education service districts pursuant to section 36, chapter 1093, Oregon Laws 1999, for the recurring costs of telecommunications connectivity.

(4)(a) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education from the School Technology Account for the purpose of purchasing a two-way interactive distance education system for each public high school and education service district:

(A) \$3,050,000 for the calendar year beginning January 1, 2000; and

(B) \$3,050,000 for the calendar year beginning January 1, 2001.

(b) The Department of Education, in consultation with the Oregon Department of Administrative Services, shall develop an implementation plan for this subsection. The implementation plan shall include an implementation timeline and requirements for each public high school and education service district that receives a two-way interactive distance education system under this subsection. The Department of Education shall ensure that a distance education system purchased by the Department of Education meets State of Oregon information technology standards, is consistent with any related interactive video strategy of the Oregon Department of Administrative Services and is procured through a competitively bid or negotiated state contract. The Department of Education shall reimburse the Oregon Department of Administrative Services from funds made available under this subsection for costs incurred by the Oregon Department of Administrative Services in developing the implementation plan.

(5)(a) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education from the School Technology Account for the purpose of paying the recurring costs of telecommunications connectivity and video services associated with the two-way interactive distance education systems purchased with funds transferred under this section:

(A) \$550,000 for the calendar year beginning January 1, 2000; and

(B) \$550,000 for the calendar year beginning January 1, 2001.

(b) Any telecommunications or video services purchased by the Department of Education with funds transferred under this subsection shall be purchased from the Oregon Department of Administrative Services as long as such services are available through the Oregon Department of Administrative Services at a comparable level and comparable cost as can be obtained elsewhere. Purchase of services and technology from the Oregon Department of Administrative Services shall be through the Oregon Enterprise Network provided the Oregon Enterprise Network can provide the services and technology at a cost equal to or less than the price for the same or similar services and technology from other contracts or programs of the Oregon Department of Administrative Services. The Department of Education shall ensure that telecommunications and video services purchased by the Department of Education meet State of Oregon information technology standards, are consistent with any related interactive video strategy of the Oregon Department of Administrative Services and are purchased through a competitively bid or negotiated state contract.

(c) Upon request of the North Central, Malheur, Jackson or Northwest Region education service district, the Department of Education may waive the requirements of paragraph (b) of this subsection until such time as the district changes its systems to use the services available through the Oregon Department of Ad-

ministrative Services, as determined by the implementation plan established under subsection (4)(b) of this section.

(d) Upon request of a school district or education service district, the Oregon Department of Administrative Services may waive the requirements of paragraph (b) of this subsection if a state contract is not available for use by the district.

(6)(a) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Oregon Department of Administrative Services from the School Technology Account for the purchase of hub equipment necessary to support public school needs for two-way interactive video system bridging and other services:

(A) \$700,000 for the calendar year beginning January 1, 2000; and

(B) \$700,000 for the calendar year beginning January 1, 2001.

(b) The Oregon Department of Administrative Services shall reduce rates paid by school districts and education service districts to the department for video services by the amount transferred under this subsection.

(7) In addition to and not in lieu of any other transfer or appropriation, there is transferred to the Department of Education any amounts remaining in the account after the transfers described in subsections (1) to (6) of this section are made, which shall be distributed to school districts pursuant to section 37, chapter 1093, Oregon Laws 1999.

(8) Amounts described in this section shall be transferred each year only when sufficient funds are available in the School Technology Account. [1999 c.1093 §34; 2001 c.966 §8]

Sec. 37. (1) As used in this section:

(a) "ADMw" means the weighted average daily membership of the school district for the prior fiscal year as calculated under ORS 327.013.

(b) "Statewide ADMw" means the total ADMw of all school districts for the prior fiscal year as calculated under ORS 327.013.

(2) The Department of Education shall distribute grants from amounts transferred under section 34 (7), chapter 1093, Oregon Laws 1999, to school districts.

(3) Except as provided in subsection (4) of this section, a school district's grant under this section = the school district's ADMw × (the total amount transferred to the department for the grants under section 34 (7), chapter 1093, Oregon Laws 1999 ÷ the total statewide ADMw).

(4) A school district's grant under this section shall not be less than \$25,000.

(5) A school district that receives grant funds under this section shall use those funds to support telecommunications connectivity including:

(a) Building wiring and electrical power requirements;

(b) Servers, hubs and routers;

(c) Network design and installation;

(d) Video distance education equipment;

(e) Technology support staff salaries; and

(f) Other costs necessary to support telecommunications connectivity.

(6) A school district may not use grant funds received under this section for payment of debt service on bonds.

(7) The State Board of Education may adopt any rules necessary for the administration of this section. [1999 c.1093 §37; 2001 c.966 §9]

**SERVICE QUALITY STANDARDS
AND PROHIBITED ACTS**

759.450 Minimum service quality standards; rules; customer impact indices; factors; wholesale services; improvement plan; penalties; exceptions. (1) It is the intent of the Legislative Assembly that every telecommunications carrier and those telecommunications utilities and competitive telecommunications providers that provide wholesale services meet minimum service quality standards on a nondiscriminatory basis.

(2) The Public Utility Commission shall determine minimum service quality standards that relate to the provision of retail telecommunications services to ensure safe and adequate service. Except as provided in subsections (8) and (9) of this section, minimum service quality standards adopted under this section shall apply to all telecommunications carriers. The commission by rule shall review and revise the minimum service quality standards as necessary to ensure safe and adequate retail telecommunications services.

(3) The minimum service quality standards for providing retail telecommunications services adopted by the commission shall relate directly to specific customer impact indices including but not limited to held orders, trouble reports, repair intervals and carrier inquiry response times. In adopting minimum service quality standards, the commission shall, for each standard adopted, consider the following:

- (a) General industry practice and achievement;
- (b) National data for similar standards;
- (c) Normal operating conditions;
- (d) The historic purpose for which the telecommunications network was constructed;
- (e) Technological improvements and trends; and
- (f) Other factors as determined by the commission.

(4) Consistent with the federal Telecommunications Act of 1996 (Public Law 104-104), as amended and in effect on September 1, 1999, the commission may establish minimum service quality standards related to providing wholesale, interconnection, transport and termination services provided by a telecommunications carrier and those telecommunications utilities and competitive telecommunications providers that provide wholesale telecommunications services.

(5) The commission shall require a telecommunications carrier, telecommunications utility or competitive telecommunications

provider that is not meeting the minimum service quality standards to submit a plan for improving performance to meet the standards. The commission shall review and approve or disapprove the plan. If the carrier, utility or provider does not meet the goals of its improvement plan within six months or if the plan is disapproved by the commission, penalties may be assessed against the carrier, utility or provider on the basis of the carrier's, utility's or provider's service quality measured against the minimum service quality standards and, if assessed, shall be assessed according to the provisions of ORS 759.990.

(6) Prior to commencing an action under this section and ORS 759.990, the commission shall allow a telecommunications carrier, telecommunications utility or competitive telecommunications provider an opportunity to demonstrate that a violation of a minimum service quality standard is the result of the failure of a person providing telecommunications interconnection service to meet the person's interconnection obligations.

(7) Total annual penalties imposed on a telecommunications utility under this section shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services for the calendar year preceding the year in which the penalties are assessed. Total annual penalties imposed on a competitive telecommunications provider under this section shall not exceed two percent of the provider's gross revenue from the sale of telecommunications services in this state for the calendar year preceding the year in which the penalties are imposed.

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

(a) Radio communications service, radio paging service, commercial mobile radio service, personal communications service or cellular communications service; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) Telecommunications utilities and groups of affiliated telecommunications utilities that serve fewer than 50,000 access lines in Oregon are exempt from any minimum service quality standard adopted under this section that would require the utility or group to measure carrier inquiry response time. [1999 c.1093 §29; 2001 c.95 §1]

759.455 Prohibited acts; commission action on allegation of violation; penalties; judicial review. (1) Unless exempt from compliance under section 251(f) of the federal Telecommunications Act of 1996 (47 U.S.C. 251(f)), a telecommunications utility shall not:

(a) Discriminate against another provider of retail telecommunications services by unreasonably refusing or delaying access to the telecommunications utility's local exchange services.

(b) Discriminate against another provider of retail telecommunications services by providing access to required facilities on terms or conditions less favorable than those the telecommunications utility provides to itself and its affiliates. A telecommunications facility, feature or function is a required facility if:

(A) Access to a proprietary facility, feature or function is necessary; and

(B) Failure to provide access to the facility, feature or function would impair a telecommunications carrier seeking access from providing the services the carrier is seeking to provide.

(c) Unreasonably degrade or impair the speed, quality or efficiency of access or any other service, product or facility provided to another provider of telecommunications services.

(d) Fail to disclose in a timely and uniform manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, services or software that will meet the specifications of the telecommunications utility's local exchange network.

(e) Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider of telecommunications services.

(f) Use basic exchange services rates, directly or indirectly, to subsidize or offset the cost of other products or services offered by the telecommunications utility.

(g) Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

(h) Fail to provide a service, product or facility in accordance with applicable contracts, and tariffs and rules of the Public Utility Commission.

(i) Impose unreasonable or discriminatory restrictions on network elements or the resale of its services, except that:

(A) The telecommunications utility may require that residential service not be resold as a different class of service; and

(B) The commission may prohibit the resale of services the commission has approved for provision to a not-for-profit entity at rates below those offered to the general public.

(j) Provide telephone service to a person acting as a telecommunications provider if the commission has ordered the telecommunications utility to discontinue telephone service to the person.

(2) A complaint alleging a violation of subsection (1) of this section shall be heard by the Public Utility Commission or, at the commission's discretion, by an Administrative Law Judge designated by the commission. A hearing under this subsection shall be conducted in an expedited manner consistent with the following:

(a) The complaint shall be served upon the telecommunications carrier and filed with the commission.

(b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than 10 days after receipt of the complaint. Copies of the answer or responsive pleading shall be served upon the complainant and upon the commission.

(c) A prehearing conference shall be held not later than 15 days after the complaint is filed. Hearing on the complaint shall commence not later than 30 days after the complaint is filed. Within 45 days after the complaint is filed, the commission shall either prepare a final decision or approve as final the decision of the Administrative Law Judge. The final decision shall be issued as an order of the commission in the manner provided under ORS 756.558.

(3) If the commission or Administrative Law Judge finds that a violation of this section has occurred, the commission shall, within five business days, order the telecommunications utility to remedy the violation within a specified period of time. The commission may prescribe specific action to be taken by the utility, including but not limited to submitting a plan for preventing future violations. If the violation continues beyond the time period specified in the commission's order, the commission on its own motion or upon the motion of an interested party may seek penalties as provided in ORS 759.990 or otherwise may seek enforcement under ORS 756.160 or 756.180, or both.

(4) Total annual penalties imposed on a telecommunications utility under this section and ORS 759.450 shall not exceed two percent of the utility's gross intrastate revenue from the sale of telecommunications services for the year preceding the year in which the violation occurred.

(5) An order of the commission under this section is subject to judicial review as an order in a contested case in the manner provided by ORS 756.610.

(6) The Court of Appeals shall give proceedings under this section priority over all

other matters before the court. [1999 c.1093 §38; 2005 c.638 §17]

ALLOCATION OF TERRITORIES (Generally)

759.500 Definitions for ORS 759.500 to 759.570. As used in ORS 759.500 to 759.570, unless the context requires otherwise:

(1) “Allocated territory” means a geographic area for which the Public Utility Commission has allocated to no more than one person the authority to provide local exchange telecommunications service, the boundaries of which are set forth on an exchange map filed with and approved by the commission.

(2) “Person” includes:

(a) An individual, firm, partnership, corporation, association, cooperative or municipality; or

(b) The agent, lessee, trustee or referee of an individual or entity listed in paragraph (a) of this subsection.

(3) “Local exchange telecommunications service” has the meaning given that term in ORS 759.005, except that “local exchange telecommunications service” does not include service provided through or by the use of any equipment, plant or facilities:

(a) For the provision of telecommunications services that pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar telecommunications service;

(b) For the provision of local exchange telecommunications service, as defined in ORS 759.005, commonly known as “private lines” or “farmer lines”; or

(c) For the provision of shared telecommunications service. [1987 c.447 §53; 2005 c.232 §24; 2007 c.825 §2]

759.505 [1987 c.447 §54; repealed by 2005 c.232 §32]

759.506 Purpose of allocated territory laws. (1) The purpose of establishing allocated territories under ORS 759.500 to 759.570 is to ensure that telecommunications utilities, cooperative corporations and municipalities certified by the Public Utility Commission to provide local exchange telecommunications service:

(a) Provide adequate and safe service to the customers of this state; and

(b) Serve all customers in an adequate and nondiscriminatory manner.

(2) The obligations described in this section may be referenced as carrier of last resort obligations. [2005 c.232 §26]

759.510 [1987 c.447 §55; repealed by 2005 c.232 §32]

759.515 [1987 c.447 §56; repealed by 2005 c.232 §32]

759.520 [1987 c.447 §57; repealed by 2005 c.232 §32]

759.525 [1987 c.447 §58; 2005 c.22 §509; repealed by 2005 c.232 §32]

759.530 [1987 c.447 §59; repealed by 2005 c.232 §32]

759.535 Application to serve unserved territory; hearing; notice. (1) A telecommunications utility, cooperative corporation or municipality that desires to provide local exchange telecommunications service in a territory that is not served by another person providing a similar local exchange telecommunications service may apply to the Public Utility Commission for an order allocating the territory to the applicant. The application shall include an exchange map that shows the unserved territory that the applicant is requesting to serve.

(2) The commission shall within 30 days after the filing of the application give notice of the filing. If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of the hearing within 30 days of the request. The notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice of the filing shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks. Written notice of the filing shall be given to providers of similar local exchange telecommunications service in adjacent territory. [1987 c.447 §60; 2005 c.232 §28]

759.540 [1987 c.447 §61; repealed by 2005 c.232 §32]

759.545 [1987 c.447 §62; repealed by 2005 c.232 §32]

759.550 [1987 c.447 §63; repealed by 2005 c.232 §32]

759.555 [1987 c.447 §64; repealed by 2005 c.232 §32]

759.560 Assignment or transfer of allocated territory. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that the assignment or transfer is not contrary to the public interest.

(2) The commission may approve a transfer of territory previously allocated only upon receipt of an application for allocation that is jointly filed by the transferor and the transferee. The application shall include exchange maps that show how the applicants want the commission to allocate the territory. The commission shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of fact supporting the order.

(3)(a) An order approving an allocation of territory may not be construed to confer any property right.

(b) Notwithstanding paragraph (a) of this subsection, upon the death of an individual to whom territory was allocated or who was an applicant under an approved order, the executor or administrator of the estate of the individual shall continue the operation of local exchange telecommunications service for the purpose of transferring territorial allocation rights. The executor or administrator shall continue the operation for a period not to exceed two years from the date of death.

(4) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making the allocation.

(5) The commission may by rule establish requirements for notice to affected persons of the assignment or transfer of allocated territory. [1987 c.447 §65; 2005 c.232 §29]

759.565 Injunction against unauthorized provision of service. In the event an allocated territory is served by a person that is not authorized by the Public Utility Commission to provide local exchange telecommunications service in the territory, an aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in the unauthorized provision of service, for an injunction against the alleged unauthorized provision of service. The trial of the action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the circuit court's judgment, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law. [1987 c.447 §66; 2003 c.576 §562; 2005 c.232 §30]

759.570 Application of law to local government. (1) ORS 759.500 to 759.570 may not be construed or applied to restrict the powers granted to cities to issue franchises or to restrict the exercise of the power of condemnation by a municipality. If a municipality condemns or otherwise acquires equipment, plant or facilities from another person for rendering local exchange telecommunications service, the municipality acquires all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 759.500 to 759.570 may not be construed to restrict the right of a municipality to provide local exchange telecommunications service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 759.500 to 759.570 may not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities. [1987 c.447 §67; 2005 c.232 §31]

759.575 [1987 c.447 §68; repealed by 1993 c.204 §5]

(Unserved Territory)

759.580 Power of commission to require service to unserved territory. The Public Utility Commission has power to require any telecommunications utility, after a public hearing of all parties interested, to extend its line, plant or system into, and to render service to, a locality not already served when the existing public convenience and necessity requires such extension and service. However, no such extension of service shall be required until the telecommunications utility has been granted such reasonable franchises as may be necessary for the extension of service and unless the conditions are such as to reasonably justify the necessary investment by the telecommunications utility in extending its line, plant or system into such locality and furnishing such service. [1987 c.447 §4]

759.585 Definitions for ORS 759.585 to 759.595. As used in ORS 759.585 to 759.595, "unserved person" means a person:

(1) Who does not have local exchange telecommunications service;

(2) Who is applying for residential service or business service with five or fewer lines; and

(3) Who, for the initiation of such service, would be required to pay line extension charges. [1989 c.574 §2; 1991 c.307 §1]

759.590 Application for service by unserved person; rules. (1) An unserved person may file an application with the Public Utility Commission for an order directing another telecommunications utility to provide local exchange service to the unserved person.

(2) The commission shall adopt rules which prescribe the form of an application filed under subsection (1) of this section and which provide for reasonable notice and opportunity for hearing to all telecommunications utilities affected by an application. [1989 c.574 §3; 1991 c.307 §2]

759.595 Criteria for granting application for service; effect on other territorial allocation. (1) The Public Utility Commission shall grant an application filed under ORS 759.590 if the commission finds that:

(a) The telecommunications utility in whose territory the unserved person is located has declined to serve without line extension charges;

(b) Another telecommunications utility has agreed to provide local exchange telecommunications service to the unserved person with no line extension charge or with line extension charges lower than those offered by the telecommunications utility in whose territory the unserved person is located; and

(c) Approval of the application is not contrary to the public interest.

(2) Any order of the commission issued under subsection (1) of this section shall not have the effect of changing any territory allocated under ORS 758.400 to 758.475 that is being provided with local exchange telecommunications service. [1989 c.574 §4; 1991 c.307 §3]

759.600 [1989 c.574 §5; repealed by 1991 c.307 §4]

ATTACHMENT REGULATION

759.650 Definitions for ORS 759.650 to 759.675. As used in ORS 759.650 to 759.675, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or people's utility district.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association which is authorized to construct attachments upon, along, under or across the public ways.

(3) "People's utility district" means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

(4) "Public utility" has the meaning for that term provided in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

(5) "Telecommunications utility" means any telecommunications utility as defined in ORS 759.005 and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government. [1987 c.447 §22; 1989 c.5 §18]

759.655 Authority of commission to regulate attachments. The Public Utility Commission of Oregon shall have the authority to regulate in the public interest the rates, terms and conditions for attachments by licensees to poles or other facilities of telecommunications utilities. All rates, terms and conditions made, demanded or received by any telecommunications utility for any attachment by a licensee shall be just, fair and reasonable. [1987 c.447 §23]

759.660 Fixing charges or rates; criteria; costs of hearing. (1) Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee or people's utility district or a telecommunications utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commission shall consider the interest of the customers of the licensee, as well as the interest of the customers of the telecommunications utility or people's utility district which owns the facility upon which the attachment is made.

(2) When the order applies to a people's utility district, the order also shall provide for payment by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable. [1987 c.414 §166d; 1987 c.447 §24; 1989 c.5 §19]

759.665 Considerations in determining just and reasonable rate. A just and reasonable rate shall assure the telecommunications utility or people's utility district the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation, of the telecommunications utility or people's utility district attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities and uses which remain available to the owner or owners of the subject facilities. [1987 c.447 §25]

759.670 Presumption of reasonableness of rates set by agreement. Agreements regarding rates, terms and conditions of attachments shall be deemed to be just, fair and reasonable unless the Public Utility Commission finds upon complaint by a telecommunications utility, people's utility district or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and fail to comply with the provisions hereof. [1987 c.447 §26; 1989 c.5 §20]

759.675 Regulatory procedure. The procedures of the Public Utility Commission for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the commission. [1987 c.447 §27; 1989 c.5 §21]

OPERATOR SERVICE PROVIDERS

759.690 Operator service provider duties to service users; rules. (1) As used in this section:

(a) "Call aggregator" means a person who furnishes a telephone for use by the public, including but not limited to hotels, hospitals, colleges, airports, public pay station owners and pay station agents.

(b) "Contract" means an agreement between an operator service provider and a call aggregator to automatically connect users of telephones to the operator service provider when certain operator-assisted long distance calls are made.

(c) "Operator service" includes but is not limited to billing or completion of third-number, person-to-person, collect or credit card calls.

(d) "Operator service provider" means a person who furnishes operator service under contract with a call aggregator.

(2) Each operator service provider shall:

(a) Notify all callers at the beginning of the call of the provider's name.

(b) Disclose rate and service information to the caller when requested.

(c) Maintain a current list of emergency numbers for each service territory it serves.

(d) Transfer an emergency call to the appropriate emergency number when requested.

(e) Transfer a call to, or instruct the caller how to reach, the originating local exchange company's operator service upon request of the caller, free of charge.

(f) Not transfer a call to another operator service provider without the caller's notification and consent.

(g) Not bill or collect for calls not completed to the caller's destination. Where

technical limitations of the network prevent the identification of incomplete calls, each operator service provider shall issue credits for such calls upon the request of the caller.

(3) Each call aggregator who has a contract with an operator service provider shall post in the immediate vicinity of each telephone available to the public the name of the operator service provider, a toll-free customer service number, a statement that rate quotes are available upon request and instructions on how the caller may access other operator service providers.

(4) Neither the operator service provider nor the call aggregator shall block or prevent a telephone user's access to the user's operator service provider of choice. In order to prevent fraudulent use of its services, an operator service provider or a call aggregator may block access if the provider obtains a waiver for such purpose from the Public Utility Commission.

(5) The provisions of this section shall be carried out in such manner as the commission, by rule, may prescribe. [1989 c.623 §2]

RESIDENTIAL SERVICE PROTECTION

Note: Sections 2 to 8 and 16, chapter 290, Oregon Laws 1987, provide:

Sec. 2. The Legislative Assembly declares that it is the policy of this state to assure that adequate, affordable residential telecommunication service is available to all citizens of this state. [1987 c.290 §2]

Sec. 3. In carrying out the provisions of section 2 of this 1987 Act, the Public Utility Commission may require telecommunications public utilities to assure that time payment plans for deposits and installation charges or such other options as may be appropriate for a particular telecommunications public utility are made available. [1987 c.290 §3]

Sec. 4. In carrying out the provisions of section 2 of this 1987 Act the Public Utility Commission may:

(1) Notwithstanding ORS 757.310, approve a different rate for local exchange residential telecommunication service for low income customers than the rate charged to other residential customers. However, any such rate is subject to all other provisions of this chapter.

(2) Establish plans, or require telecommunications public utilities to establish plans, to educate customers regarding the options available for obtaining telecommunication services. [1987 c.290 §4]

Sec. 5. (1) In carrying out the provisions of section 2 of this 1987 Act, the Public Utility Commission shall establish rules to prohibit the termination of local exchange residential service when such termination would significantly endanger the physical health of the residential customer.

(2) The commission shall provide by rule a method for determining when the termination of local exchange residential service would significantly endanger the physical health of the residential customer.

(3)(a) The commission shall require that each telecommunications public utility:

(A) Accept medical statements by licensed physicians and licensed nurse practitioners as sufficient evidence of significant endangerment of health; and

(B) Establish procedures for submitting and receiving such medical statements.

(b) A medical statement submitted under this subsection shall be valid for such period as the commission, by rule, may prescribe.

(4) Rules adopted by the commission pursuant to this section shall not apply to telecommunication service other than local exchange residential service.

(5) A customer submitting a medical certificate as provided in this section is not excused from paying for telecommunication service. Customers are required to enter into a time payment agreement with the utility if an overdue balance exists. Local exchange service is subject to termination if a customer refuses to enter into or fails to abide by terms of a payment agreement.

(6) Nothing in this section prevents the termination of local exchange residential service if the telecommunications public utility providing the service does not have the technical ability to terminate toll telecommunication service without also terminating local exchange telecommunication service. [1987 c.290 §5]

Sec. 6. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall establish a plan to provide assistance to low income customers through differential rates or otherwise. The plan of assistance shall be designed to use, to the maximum extent possible, the available funding offered by the Federal Communications Commission, and may provide different levels of assistance to low income customers based upon differences in local exchange rates. The plan established by the commission shall prescribe the amount of assistance to be provided and the time and manner of payment.

(2) For the purpose of establishing a plan to provide assistance to low income customers under this section, the commission shall require all public utilities, cooperative corporations and unincorporated associations providing local exchange telecommunication service to participate in the plan, except as provided in subsection (3) of this section.

(3) In lieu of participation in the commission's plan to assist low income customers, a public utility, cooperative corporation or unincorporated association providing local exchange telecommunication service may apply to the commission to establish an alternative plan for the purpose of carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, for its own customers. The commission shall adopt standards for determining the adequacy of alternative plans.

(4) The commission may contract with any governmental agency to assist the commission in the administration of any assistance plan adopted pursuant to this section.

(5)(a) As used in sections 2 to 6, chapter 290, Oregon Laws 1987, "low income customer" means an individual determined by the commission:

(A) To be receiving benefits from the federal food stamp program or from another low income public assistance program for which eligibility requirements limit participation to individuals with income that does not exceed 135 percent of federal poverty guidelines; or

(B) To be a resident of a long term care facility, as defined in ORS 442.015, or a residential care facility, as defined in ORS 443.400:

(i) Who receives medical assistance under ORS chapter 414; and

(ii) Who has income that does not exceed 135 percent of federal poverty guidelines.

(b) The commission must be able to verify the continuing participation of a low income customer in a program described in paragraph (a) of this subsection. [1987 c.290 §6; 1991 c.622 §1; 2007 c.29 §1]

Sec. 7. (1) In order to fund the programs provided in sections 2 to 6 and 9 to 14, chapter 290, Oregon Laws 1987, the Public Utility Commission shall develop and implement a system for assessing a surcharge in an amount not to exceed 35 cents per month against each paying retail subscriber who has telecommunications service with access to the telecommunications relay service. The surcharge shall be applied on a telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity of customer premises equipment connected to each circuit. For providers of central office based services, the surcharge shall be applied to each line that has unrestricted connection to the telecommunications relay service. These central office based service lines that have restricted access to the telecommunications relay service shall be charged based on software design. For cellular, wireless or other radio common carriers, the surcharge shall be applied on a per instrument basis, but applies only to subscribers whose place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

(2) The surcharge imposed by subsection (1) of this section does not apply to:

(a) Services upon which the state is prohibited from imposing the surcharge by the Constitution or laws of the United States or the Constitution or laws of the State of Oregon.

(b) Interconnection between telecommunications utilities, telecommunications cooperatives, competitive telecommunications services providers certified pursuant to ORS 759.020, radio common carriers and interexchange carriers.

(3) The commission annually shall review the surcharge and the balance in the Residential Service Protection Fund and may make adjustments to the amount of the surcharge to ensure that the fund has adequate resources but that the fund balance does not exceed six months of projected expenses.

(4) Moneys collected pursuant to the surcharge shall not be considered in any proceeding to establish rates for telecommunication service.

(5) The commission shall direct telecommunications public utilities to identify separately in bills to customers for service the surcharge imposed pursuant to this section. [1987 c.290 §7; 1991 c.622 §2; 1991 c.872 §8; 1993 c.231 §1; 1995 c.79 §387; 1995 c.451 §1; 2001 c.408 §2]

Sec. 8. The Residential Service Protection Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by moneys in the fund shall be credited to the fund. All moneys in the fund are appropriated to the Public Utility Commission to carry out the provisions of chapter 290, Oregon Laws 1987. [1987 c.290 §8; 1989 c.966 §74; 1991 c.622 §3; 1991 c.872 §1; 1993 c.231 §2]

Sec. 16. Chapter 290, Oregon Laws 1987, is repealed January 1, 2010. [1987 c.290 §16; 1991 c.622 §4; 1997 c.481 §1; 2001 c.408 §1]

Note: Sections 1 and 2, chapter 204, Oregon Laws 2005, provide:

Sec. 1. Section 2 of this 2005 Act is added to and made a part of sections 2 to 6, chapter 290, Oregon Laws 1987. [2005 c.204 §1]

Sec. 2. (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall adopt rules to prohibit the termination of local exchange residential service if the termination would significantly endanger a customer, or a person in the household of the customer, who is:

(a) At risk of domestic violence, as defined in ORS 135.230;

(b) At risk of unwanted sexual contact, as defined in ORS 163.305;

(c) A person with a disability, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005 (1)(a), (d) or (e);

(d) An elderly person, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS 124.005 (1)(a), (d) or (e); or

(e) A victim of stalking, as described in ORS 163.732.

(2) A customer may establish that termination of local exchange residential service would significantly endanger the customer, or a person in the household of the customer, by providing a telecommunications public utility with an affidavit signed by the customer stating that termination would place the customer, or a person in the household of the customer, at significant risk of domestic violence, as defined in ORS 135.230, or of unwanted sexual contact, as defined in ORS 163.305. The customer must attach to the affidavit a copy of an order issued under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040 or 163.738 that restrains another person from contact with the customer, or a person in the household of the customer, or a copy of any other court order that restrains another person from contact with the customer, or a person in the household of the customer, by reason of a risk described in subsection (1) of this section or by reason of stalking.

(3) The commission shall require that each telecommunications public utility establish procedures for submitting and receiving affidavits under subsection (2) of this section.

(4) This section does not apply to termination of any telecommunication service other than local exchange residential service.

(5) A customer submitting an affidavit as provided by subsection (2) of this section is not excused from paying for telecommunication service. Customers are required to enter into a reasonable payment agreement with the telecommunications public utility if an overdue balance exists. Local exchange residential service may be terminated if a customer refuses to enter into or fails to abide by the terms of a reasonable payment agreement.

(6) Nothing in this section prevents the termination of local exchange residential service if the telecommunications public utility providing the service does not have the technical ability to terminate toll telecommunication service without also terminating local exchange residential service. [2005 c.204 §2; 2007 c.70 §359]

ASSISTIVE TELECOMMUNICATION DEVICES FOR PERSONS WITH DISABILITIES

Note: Sections 9 to 16, chapter 290, Oregon Laws 1987, provide:

Sec. 9. As used in sections 9 to 14, chapter 290, Oregon Laws 1987, unless the context requires otherwise:

(1) "Adaptive equipment" means equipment that permits a person with a disability, other than a person who is hard of hearing or speech impaired, to communicate effectively on the telephone.

(2) "Applicant" means a person who applies for an assistive telecommunication device, adaptive equipment or a signal device.

(3) "Assistive telecommunication device" means a device that utilizes a keyboard, acoustic coupler, display screen, Braille display, speakerphone or amplifier to enable people who are deaf, deaf-blind, severely hard of hearing or severely speech impaired to communicate effectively on the telephone.

(4) "Audiologist" means a person who has a master's or doctoral degree in audiology and a Certificate of Clinical Competence in audiology from the American Speech-Language-Hearing Association.

(5) "Deaf" means a profound hearing loss, as determined by an audiologist or a vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(6) "Deaf-blind" means a hearing loss and a visual impairment, as determined by a licensed physician and by an audiologist or a vocational rehabilitation counselor of the Department of Human Services, that require use of an assistive telecommunication device to communicate effectively on the telephone.

(7) "Disability" means a physical condition, as determined by a licensed physician or vocational rehabilitation counselor of the Department of Human Services, other than hearing or speech impairment that requires use of adaptive equipment to utilize the telephone.

(8) "Hearing aid specialist" means a person licensed to deal in hearing aids under ORS chapter 694.

(9) "Physician" means an applicant's primary care physician or a medical specialist who is able to determine an applicant's disability and to whom the applicant was referred by the primary care physician.

(10) "Recipient" means a person who receives adaptive equipment, an assistive telecommunication device or a signal device.

(11) "Severely hard of hearing" means a hearing loss, as determined by an audiologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(12) "Severely speech impaired" means a speech disability, as determined by a speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(13) "Signal device" means a mechanical device that alerts a person who is deaf, deaf-blind or severely hard of hearing of an incoming telephone call.

(14) "Speech-language pathologist" means a person who has a master's degree or equivalency in speech-language pathology and a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

(15) "Telecommunications relay center" means a facility authorized by the Public Utility Commission to provide telecommunications relay service.

(16) "Telecommunications relay service" means the provision of voice and teletype communication between users of some assistive telecommunication devices and other parties. [1987 c.290 §9; 1991 c.872 §2; 1995 c.280 §32; 1995 c.451 §2; 1999 c.384 §1; 2007 c.28 §1; 2007 c.70 §353]

Sec. 10. It is recognized that a large number of people in this state, through no fault of their own, are unable to utilize telecommunication equipment due to the inability to hear or speak well enough or due to other disabilities. It is also recognized that present technology is available, but at significant cost, that would allow these people to utilize telecommunication equipment in their daily activities. There is, therefore, a need to make available such technology in the form of assistive telecommunication devices and a telecommunications relay service for people who are deaf, severely hard of hearing or severely speech impaired or adaptive equipment for people with disabilities at no additional cost beyond normal telephone service. The provision of assistive telecommunication devices and a telecommunications relay service or adaptive equipment would allow those formerly unable to use telecommu-

nication systems to more fully participate in the activities and programs offered by government and other community agencies, as well as in their family and social activities. The assistive telecommunication devices or adaptive equipment would be provided on a loan basis to each recipient, to be returned if the recipient moves out of the state. [1987 c.290 §10; 1991 c.872 §3; 1999 c.384 §2; 2007 c.70 §354]

Sec. 11. (1) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute assistive telecommunication devices to persons who are deaf, severely hard of hearing, severely speech impaired or deaf-blind and establish a dual party relay system making telephone service generally available to persons who are deaf, severely hard of hearing, severely speech impaired or deaf-blind.

(2) With the advice of the Telecommunication Devices Access Program Advisory Committee, the Public Utility Commission shall establish and administer a statewide program to purchase and distribute adaptive equipment to make telephone service generally available to persons with physical disabilities. [1987 c.290 §11; 1991 c.872 §4; 1999 c.384 §3; 2007 c.70 §355]

Sec. 12. (1) A Telecommunication Devices Access Program Advisory Committee shall be established to advise the Public Utility Commission concerning matters of general development, implementation and administration of the Telecommunication Devices Access Program.

(2) The Telecommunication Devices Access Program Advisory Committee shall include:

(a) Nine consumers including seven who are deaf or hard of hearing, one who is speech impaired and one who has a disability;

(b) One professional in the field of speech impairment, hearing impairment or deafness or disability;

(c) One member of the Public Utility Commission or a designee of the commission; and

(d) One representative from those telephone companies interested in providing telecommunication devices access relay services. [1987 c.290 §12; 1991 c.872 §5; 2007 c.70 §356]

Sec. 13. (1) The Public Utility Commission shall employ a coordinator for the Telecommunication Devices Access Program, who shall be primarily responsible for:

(a) The distribution and maintenance of assistive telecommunication devices and adaptive equipment;

(b) The provision of telecommunications relay services and monitoring of those service providers; and

(c) Community outreach to locate potential beneficiaries of the Telecommunication Devices Access Program.

(2) The commission may contract with any governmental agency, or other entity the commission considers to be qualified, to assist the commission in the administration of sections 9 to 14, chapter 290, Oregon Laws 1987. [1987 c.290 §13; 1991 c.872 §6; 1999 c.384 §4]

Sec. 14. (1)(a) In order to be eligible to receive assistive telecommunication devices or adaptive equipment, individuals must be certified as deaf, severely hard of hearing, severely speech impaired or deaf-blind by a licensed physician, audiologist, hearing aid specialist, speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services. Certification implies that the individual cannot use the telephone for expressive or receptive communication.

(b) No more than one assistive telecommunication device or adaptive equipment device shall be provided to a household. However, two assistive telecommunica-

tion devices or adaptive equipment devices may be provided to a household if more than one eligible person permanently resides in the household. Households without any assistive telecommunication devices or adaptive equipment shall be given priority over households with one assistive telecommunication device or adaptive equipment device when such devices are distributed.

(c) Sections 9 to 14, chapter 290, Oregon Laws 1987, do not require a telecommunications utility to provide an assistive telecommunication device to any person in violation of ORS 646.730.

(2)(a) In order to be eligible to receive adaptive equipment, individuals must be certified to have the required disability by a person or agency designated by the Public Utility Commission to make such certifications. Certification implies that the individual is unable to use the telephone.

(b) Sections 9 to 14, chapter 290, Oregon Laws 1987, do not require a telecommunications utility to provide adaptive equipment to any person in violation of ORS 646.730. [1987 c.290 §14; 1989 c.115 §1; 1991 c.872 §7; 1995 c.280 §33; 1999 c.384 §5; 2007 c.28 §2; 2007 c.70 §357]

Sec. 15. The program of distribution provided in sections 9 to 14 of this Act is to be phased in over a period ending January 1, 1992. [1987 c.290 §15]

Sec. 16. Chapter 290, Oregon Laws 1987, is repealed January 1, 2010. [1987 c.290 §16; 1991 c.622 §4; 1997 c.481 §1; 2001 c.408 §1]

INFORMATION SERVICE PROVIDERS

759.700 Definitions for ORS 759.700 to 759.720. As used in ORS 759.700 to 759.720:

(1) "Information provider" means any person, company or corporation that operates an information delivery service on a pay-per-call basis.

(2) "Information delivery service" means any telephone-recorded messages, interactive programs or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code. Where a preexisting written contract exists between the customer and the information provider, this definition does not apply. [1991 c.672 §7]

759.705 Program message preamble; information to be included. (1) An information provider that does business in this state shall include a preamble in its program messages.

(2) The preamble must:

(a) Describe the service that the program provides.

(b) Advise the caller of the price per call, including:

(A) Any per minute charge;

(B) Any flat rate charge;

(C) Any minimum charge;

(D) The maximum charge possible for the service as determined from multiplying maximum duration in minutes by the cost per minute, unless the call has a possible indefinite duration, in which case the charge for one hour of use shall be stated;

(E) Whether calls that may last more than 20 minutes are interactive or have a possible indefinite duration; and

(F) The maximum possible charges for any pay-per-call numbers to which the caller may be referred by the information provider.

(c) Advise that the billing will begin shortly after the end of the preamble. A reasonable length of time shall be allotted after the preamble to give consumers an opportunity to disconnect before the program message starts.

(3) All preambles must be clearly articulated in the language used in advertisements for the telephone number and the language used within the body of the program. The language in the preamble shall be spoken in a normal cadence and at a volume equal to that of the program message.

(4) When an information provider's program message consists only of a polling application that permits the caller to register an opinion or to vote on a matter by completing a call, or results in a flat charge of \$2 or less, this section does not apply. [1991 c.672 §2]

759.710 Pay-per-call information; disclosure. (1) An information provider that advertises pay-per-call services that are broadcast by radio or television, contained in home videos or that appear on movie screens must include an announcement that accurately represents the price of the service being advertised. The announcement must be clearly articulated in the language used in the body of the program or any other language spoken in the advertisement. These price disclosures shall be spoken in a normal cadence and at a volume equal to that used to announce the telephone number in the advertisement. The advertisement must state the price of the service each time the telephone number of the information provider appears in the advertisement.

(2) An information provider that advertises pay-per-call services that are broadcast by television, contained in home videos or that appear on movie screens must include, in clearly visible letters and numbers set against a contrasting background, the cost of calling the advertised number. Visual disclosure of the cost of the call must be displayed adjacent to the advertised telephone number each time the number appears in the advertisement. The lettering of the visual disclosure of the cost of the call must be the same size and typeface as that of the advertised telephone number.

(3) Except as provided in subsection (5) of this section, an information provider that advertises pay-per-call services that appear in printed material must include, in clearly vis-

ible letters and numbers set against a contrasting background, the cost of calling the advertised telephone number. The printed disclosure of the cost of the call must be displayed adjacent to the advertised number each time the number appears in the advertisement. The lettering of the visual disclosure of the cost of the call must be the same size and typeface as that of the advertised telephone number.

(4) Except as provided in subsection (5) of this section, an information provider that advertises pay-per-call services must include the price or cost, including:

- (a) Any per minute charge;
- (b) Any flat rate charge;
- (c) Any minimum charge;

(d) The maximum charge possible for the service as determined by multiplying maximum duration in minutes by the cost per minute, unless the call has a possible indefinite duration, in which case the charge for one hour of use shall be stated;

(e) An indication whether calls are interactive or have a possible indefinite duration; and

(f) The maximum possible charges for all pay-per-call numbers to which the caller will be referred by the telephone number being advertised.

(5) An information provider that advertises pay-per-call services in telephone directory classified advertising must include a conspicuous disclosure in the advertisement that the call is a pay-per-call service. [1991 c.672 §3]

759.715 Information service blocking; suspension or termination of telephone service for nonpayment of information service charges. (1) Local exchange carriers shall make information delivery service blocking available to all customers as soon as such a system becomes technically available to local exchange carriers. Local exchange carriers shall notify customers of such a blocking service when available.

(2) A customer's local or long distance service shall not be suspended or terminated for nonpayment of information delivery service charges. The Public Utility Commission through orders and rules shall require telephone utilities providing billing services for information providers to adequately inform consumers of their rights concerning information providers. [1991 c.672 §§5,6]

759.720 Action against information provider for failure to comply with law; remedies; customer liability for charges. (1) Any customer, telecommunications utility or local exchange carrier who suffers damages from a violation of ORS 646.608, 646.639

and 759.700 to 759.720 by an information provider has a cause of action against such information provider. The court may award the greater of three times the actual damages or \$500, or order an injunction or restitution. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) When an information provider has failed to comply with any provision of ORS 646.608, 646.639 and 759.700 to 759.720, any obligation by a customer that may have arisen from the dialing of a pay-per-call telephone number is void and unenforceable.

(4) Any obligation that may have arisen from the dialing of a pay-per-call telephone number is void and unenforceable if made by:

(a) An unemancipated child under 18 years of age; or

(b) A person whose physician substantiates that:

(A) The person has a mental or emotional disorder generally recognized in the medical or psychological community that makes the person incapable of rational judgments and comprehending the consequences of the person's action; and

(B) The disorder was diagnosed before the obligation was incurred.

(5) Upon written notification to the information provider or the billing agent for the information provider that a bill for information delivery services is void and unenforceable under subsection (2) or (4) of this section, no further billing or collection activities shall be undertaken in regard to that obligation.

(6) The telecommunications utility or local exchange carrier may require the customer to take pay-per-call telephone blocking service after the initial obligation has been voided. [1991 c.672 §4; 1993 c.513 §1; 1995 c.696 §49]

UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS CARRIERS

759.730 Unauthorized changes in telecommunications carriers ("slamming"); rules. (1) The Public Utility Commission may by rule assume primary responsibility for resolving consumer complaints relating to changes in a consumer's telecommunications carrier, as defined in ORS 759.400, in violation of federal laws, federal regulations or Federal Communications Commission orders.

(2) If the Public Utility Commission assumes primary responsibility for resolving consumer complaints relating to changes in a consumer's telecommunications carrier under this section, the commission shall by rule:

(a) Establish a complaint process for consumers who have had changes in telecommunications carriers;

(b) Establish a process for investigating complaints under this section; and

(c) Establish appropriate remedies for consumers who have had changes in telecommunications carriers in violation of federal laws, federal regulations or Federal Communications Commission orders.

(3) Rules adopted by the Public Utility Commission under this section must be consistent with federal laws, federal regulations and Federal Communications Commission orders relating to resolution of consumer complaints arising out of changes in telecommunications carriers, and may not impose more stringent conditions or penalties for changes in telecommunications carriers than the conditions and penalties imposed by federal laws, federal regulations or Federal Communications Commission orders for changes in telecommunications carriers.

(4) The Public Utility Commission may not adopt rules under this section that are applicable to radio common carriers.

(5) Nothing in this section affects the ability of the Attorney General to seek remedies under ORS 646.605 to 646.652 to the extent that an unauthorized change in telecommunications carriers constitutes an unlawful practice under ORS 646.605 to 646.652. [2003 c.642 §2]

DAMAGES

759.900 Liability of utility; effect on other remedies; liability for personal injury or property damage. (1) Any telecommunications utility which does, or causes or permits to be done, any matter, act or thing prohibited by this chapter or ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(4) This section does not apply with respect to the liability of any telecommunications utility for personal injury or property damage. [1989 c.827 §4; 1995 c.696 §51]

OREGON TELECOMMUNICATIONS COORDINATING COUNCIL

Note: Sections 1 and 2, chapter 699, Oregon Laws 2001, provide:

Sec. 1. (1) There is established the Oregon Telecommunications Coordinating Council consisting of 20 members.

(2) The Governor shall appoint one member to represent each of the following entities, and in making the appointments under this subsection shall give consideration to recommendations made by the entity the member is to represent:

- (a) The Central Oregon Telecommunications Task Force.
- (b) CoastNet.
- (c) The Eastern Oregon Telecommunications Consortium.
- (d) The Fiber South Consortium.
- (e) Frontier Telenet.
- (f) The Gorge Teleconsortium.
- (g) The Regional Fiber Consortium (Lane and Klamath Counties).
- (h) The North Coast Telecommunications Consortium.
- (i) The South Coast Telecommunications Consortium.
- (j) The Southern Oregon Telecommunications and Technology Council.

(3) The Governor shall appoint two members of the Oregon Telecommunications Coordinating Council to represent the counties of this state. The Governor shall give consideration to recommendations made by the Association of Oregon Counties in making the appointments under this subsection.

(4) The Governor shall appoint two members of the Oregon Telecommunications Coordinating Council to represent the cities of this state. The Governor shall give consideration to recommendations made by the League of Oregon Cities in making the appointments under this subsection.

(5) The Governor shall appoint two members of the Oregon Telecommunications Coordinating Council to represent telecommunication utilities and Internet service providers in this state. The Governor shall give consideration to recommendations made by the Oregon Telecommunications Association in making the appointments under this subsection.

(6) The Governor shall appoint one member of the Oregon Telecommunications Coordinating Council to represent Oregon tribes. The Governor shall give consideration to recommendations made by the Commission on Indian Services in making the appointment under this subsection.

(7) The Governor shall appoint one member of the Oregon Telecommunications Coordinating Council to represent elementary and secondary schools. The Governor shall give consideration to recommendations made by the Oregon School Boards Association in making the appointment under this subsection.

(8) The Governor shall appoint one member of the Oregon Telecommunications Coordinating Council to represent community colleges. The Governor shall give consideration to recommendations made by the Oregon Community College Association in making the appointment under this subsection.

(9) The Governor shall appoint one member of the Oregon Telecommunications Coordinating Council to represent the Oregon University System. The Governor shall give consideration to recommendations made by the Chancellor of the Oregon University System in making the appointment under this subsection.

(10) The Oregon Telecommunications Coordinating Council may by a majority vote of the council add members to the council to represent telecommunication consortia coming into existence after January 1, 2003, or to represent citizen groups recognized by the council.

(11) If no additional funds are required, the Economic and Community Development Department, the Oregon Department of Administrative Services, the League of Oregon Cities and the Association of Oregon Counties may provide staff to the Oregon Telecommunications Coordinating Council.

(12) Members of the Oregon Telecommunications Coordinating Council are not entitled to compensation, but may be paid expenses if funding is available from contributions under subsection (15) of this section.

(13) The Oregon Telecommunications Coordinating Council shall study alternative approaches to providing coordinated statewide, regional and local telecommunication services, including providing services to unserved or underserved areas of the state. In addition, the council shall study the manner in which telecommunication investments can be coordinated to facilitate partnerships between the public sector and the private sector and between state and local governments. The council shall report its findings and recommendations to the Governor and to the Joint Legislative Committee on Information Management and Technology before each legislative session.

(14) All agencies of state government, as defined in ORS 174.111, are directed to assist the Oregon Telecommunications Coordinating Council in the performance of its functions and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the council consider necessary to perform their functions.

(15) The Oregon Telecommunications Coordinating Council may accept contributions of funds and assistance from the United States or its agencies or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the council. All such funds are to aid in financing the functions of the council and shall be deposited in the General Fund of the State Treasury to the credit of separate accounts for the council to disburse for the purpose for which contributed in the same manner as funds appropriated for the council.

(16) Official action by the Oregon Telecommunications Coordinating Council requires the approval of a majority of the members. The council may recommend legislation, and all legislation recommended by the council must indicate that it is introduced at the request of the council. Legislation recommended by the council must be submitted to the Joint Legislative Committee on Information Management and Technology. The legislation shall be prepared in time for pre-session filing at regular sessions of the Legislative Assembly.

(17) The Oregon Telecommunications Coordinating Council shall:

- (a) Encourage the work of regional telecommunication consortia that have emerged throughout the state.

(b) Encourage state agencies to utilize telecommunications.

(c) Encourage efforts to provide cost-effective, quality workforce development training using telecommunications infrastructure and facilities to access distance learning opportunities.

(d) Encourage schools, education service districts and local education agencies in unserved areas to promote broadband access for the surrounding community.

(e) Encourage public and private entities to seek opportunities for partnership with educational institutions that will stimulate the use of broadband technologies through community projects and public education.

(f) Recommend ways for the State of Oregon to support innovative efforts that build effective and cost-efficient delivery of distance education supported by telecommunications.

(g) Encourage the Oregon Telehealth Alliance to continue the work of the council's Telehealth Committee.

(h) Facilitate public and private organizations working together in partnership to promote the use of telecommunications infrastructure and new technology. [2001 c.699 §1; 2003 c.775 §3; 2005 c.350 §1]

Sec. 2. Section 1, chapter 699, Oregon Laws 2001, is repealed on January 2, 2010. [2001 c.699 §2; 2003 c.775 §6; 2005 c.350 §2]

Note: Section 4, chapter 775, Oregon Laws 2003, provides:

Sec. 4. (1) The Oregon Telecommunications Coordinating Council shall collaborate with health care education providers and members of the health care industry to develop and implement a plan that:

(a) Ensures that the education and health care communities are able to connect by broadband and other telecommunications infrastructures necessary for distance learning.

(b) Encourages cooperative activities among the education and health care communities for the purpose of establishing and implementing curriculum applications that are necessary to fully utilize the connected networks.

(c) Fully utilizes the resources of the education and health care networks.

(2) The plan developed under this section shall include determinations about the technical and financial resources needed to implement the plan.

(3) The Economic and Community Development Department may seek funding from the federal government and private sources to develop and implement the plan described in this section. [2003 c.775 §4]

Note: Section 3, chapter 350, Oregon Laws 2005, provides:

Sec. 3. (1) The Oregon Telecommunications Coordinating Council shall report to the Seventy-fourth Legislative Assembly, in the manner provided by ORS 192.245, no later than February 1, 2007. The report shall include information on the implementation of the plan described in section 4, chapter 775, Oregon Laws 2003.

(2) The Oregon Telecommunications Coordinating Council shall report to the Seventy-fifth Legislative Assembly, in the manner provided by ORS 192.245, no later than February 1, 2009. The report shall include information on the implementation of the plan described in section 4, chapter 775, Oregon Laws 2003. [2005 c.350 §3]

PENALTIES

759.990 Penalties. (1) Any telecommunications utility violating ORS 759.260 commits a Class A violation, and upon conviction the court shall impose a fine of not less than \$100. Violation of ORS 759.260 by an officer or agent of a telecommunications utility is a Class D violation.

(2) Any person violating ORS 759.275 shall, upon conviction, forfeit and pay to the State Treasurer not less than \$100 and not more than \$10,000 for each offense. Violation of ORS 759.275 by any agent or officer of any telecommunications utility or person is punishable, upon conviction, by a fine of not less than \$100 and not more than \$1,000 for each offense.

(3) Violation of ORS 759.280 is a Class A violation.

(4) Violation of ORS 759.355 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$20,000 for each offense.

(5) Violation of ORS 759.360 is a felony and is punishable, upon conviction, by a fine of not less than \$1,000 nor more than \$20,000, or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(6) A telecommunications carrier, as defined in ORS 759.400, shall forfeit a sum of not less than \$100 nor more than \$50,000 for each time that the carrier:

(a) Violates any statute administered by the Public Utility Commission;

(b) Commits any prohibited act, or fails to perform any duty enjoined upon the carrier by the commission;

(c) Fails to obey any lawful requirement or order made by the commission; or

(d) Fails to obey any judgment made by any court upon the application of the commission.

(7) In construing and enforcing subsection (6) of this section, the act, omission or failure of any officer, agent or other person acting on behalf of or employed by a telecommunications carrier and acting within the scope of the person's employment shall in every case be deemed to be the act, omission or failure of such telecommunications carrier.

(8) Except when provided by law that a penalty, fine, forfeiture or other sum be paid to the aggrieved party, all penalties, fines, forfeitures or other sums collected or paid

under subsection (6) of this section shall be [1987 c.447 §52; 1999 c.1051 §225; 1999 c.1093 §39; 2003
paid into the General Fund and credited to c.576 §563]
the Public Utility Commission Account. _____

Chapter 772

2007 EDITION

Rights of Way for Public Uses

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UTILITY REGULATION

772.005 [Repealed by 1971 c.655 §250]

**CONDEMNATION OF PROPERTY BY
PRIVATE CORPORATIONS
GENERALLY**

772.010 Right of entry for survey of proposed right of way; notice required. (1) A corporation organized for the construction of a railway, sewer or canal or of any ditch or flume for the conducting of water for irrigation or domestic purposes, or for the purpose of selling water to the public for general purposes for public use, or for conducting potable or waste water by means of pipe laid upon or under the surface of the ground; or desiring to use electrical power in the operation of any railway, shall have a right to enter upon any land, between the termini thereof or elsewhere, for the purpose of examining, locating or surveying the lines of such electric or other railway, sewer, canal, ditch, flume or pipeline, for the purpose of surveying or measuring any lands or rights appurtenant thereto needed for such purposes, doing no unnecessary damage thereby.

(2) Prior to entering upon private land under this section, a person who intends to enter upon the land shall first provide written notice by first class mail to the record owner of the private property of such intent to enter. [Amended by 1971 c.655 §232; 1999 c.629 §1]

772.015 Condemnation of lands for rights of way and necessary facilities. Any corporation mentioned in ORS 772.010 may condemn so much land as may be necessary for the lines of such railway, sewer, canal, ditch, flume or pipeline, not exceeding 100 feet in width, besides a sufficient quantity of land for toolhouses, workshops, materials for construction, timber excepted, and a right through such adjacent land to enable such corporation to construct and repair its lines, poles, towers, wires, underground wires, supports and necessary equipment, railway, sewer, canal, ditch, flume or other pipeline, and to make proper drains. [Amended by 1971 c.655 §233; 1999 c.629 §2]

772.020 Condemnation of additional land for railway purposes. (1) Any railway corporation mentioned in ORS 772.010 may condemn a sufficient quantity of land in addition to that specified in ORS 772.015, for necessary sidetracks, spur tracks and laterals reasonably necessary for manufacturing establishments, also for depot and water stations, cuttings and embankments, and for the proper construction, security and convenient operation of its road.

(2) Any such railway corporation may cross, intersect, join and unite its railway with any other railway at any point in its

route, and upon the grounds of such other railway corporation, and make the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of its connection and may condemn to make such crossings. The railway which is or may be intersected by new railways, may unite with the owners of such new railways in forming the intersection and connection, and grant the facilities mentioned in this subsection.

772.025 Approval of railroad crossing, intersection or connection. (1) Whenever any railroad corporation, authorized by ORS 772.020 to condemn the right to cross or connect with any other right of way or constructed line of railroad, is unable to agree with the owner of the line which it desires to cross, it may apply to the Department of Transportation in the manner provided by ORS 824.228 to 824.232.

(2) Upon such application and upon notice and hearing as provided in ORS chapter 183 for contested cases, the department shall determine the right to crossing, intersection or connection, the mode and manner thereof and the compensation to be paid therefor.

(3) No agreement for the crossing of one railroad by another shall be valid without the approval of the department. [Amended by 1971 c.655 §234; 1995 c.733 §97; 1997 c.275 §23]

772.030 Condemnation of right of way through canyon or pass for joint use by railroads. (1) Any railroad company whose right of way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its railroad in common with the railroad first located.

(2) Any railroad company authorized by law to condemn property for right of way or any other corporate purpose, may commence an action for condemnation of a right of way through any canyon, pass or defile for the purpose of its railroad, where right of way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its railroad.

(3) Thereupon like proceedings shall be had as are provided by the laws of this state for the condemnation of land for right of way and other railroad purposes. At the time of rendering judgment for damages, the court or judge thereof shall enter a judgment authorizing the railroad to occupy and use the right of way, roadbed and track, if necessary, in common with the railroad company already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [Amended by 2003 c.576 §564]

772.035 Acquisition of water rights by corporations for canal, irrigation, domestic or stock purposes. Any corporation organized in whole or in part for the construction of a canal for navigating or manufacturing purposes or of any ditch or flume for the purpose of conveying water for irrigating, domestic or stock purposes may condemn such waterways, water rights or privileges, or otherwise acquire established water rights or privileges, or those initiated by performing any acts required, provided or permitted by law, as may be necessary or convenient for the purpose of supplying, operating, constructing or maintaining the same.

772.040 Condemnation rights of pipe corporations. Except in cities, any corporation organized for conducting water by means of pipe laid upon or under the surface of the ground may, so far as may be necessary for the laying and keeping in repair its water pipes, condemn the use of so much land as may be necessary, and may make whatever cuts and excavations as soon as practicable after condemnation.

772.045 Right to cut timber and build aqueducts. Any railway corporation mentioned in ORS 772.010 may cut down any standing timber in danger of falling upon its line or railway, making compensation therefor as provided in ORS 772.055 for lands taken for the use of the corporation. [Amended by 1971 c.655 §235]

772.050 Condemnation of riparian rights and for reservoirs. Any corporation mentioned in ORS 772.010 may also condemn:

(1) The rights of riparian proprietors in any lake or stream, to enable such corporation to develop, manufacture or furnish electrical energy for the operation of any railway in this state.

(2) Lands for the sites of reservoirs for storing water for future use, and for rights of way for feeders carrying water to reservoirs, and for ditches, canals, flumes or pipelines carrying the same away. [Amended by 1971 c.655 §236]

772.055 Condemnation procedure. No condemnation of private property shall be made under ORS 772.010 to 772.020 or 772.030 to 772.050 until compensation is made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner provided in ORS chapter 35.

772.060 Condemnation rights for change of grade or location of railway, canal or pipes. Any corporation may change the grade or location of its railway, canal or pipes for the purpose of avoiding annoyances to public travel or dangerous or deficient

curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes. For the accomplishment of such change it has the same right to enter upon, examine, survey and appropriate the necessary lands and materials as in the original location and construction of such railway, canal or water pipes. [Amended by 1971 c.655 §237]

772.065 Appropriation of county road or property in lieu thereof by agreement with county court. (1) Whenever it is necessary for any corporation mentioned in ORS 772.010 to appropriate all or part of any county road or highway for right of way, the corporation may appropriate so much of the road as may be necessary, and in lieu thereof may condemn or otherwise acquire property contiguous to or as near adjacent to the road as possible in an amount equal to the property to be appropriated.

(2) Upon construction by the corporation of a county road or highway on the property so acquired in a manner conformable in the material character of the construction of said highways appropriated and upon the same grade or such other grade as may be agreed upon by the corporation and the county court or board of county commissioners of the county in which the road is located, and upon the acceptance by the county court or board of such newly constructed road, and on the conveyance of same to the county, the corporation shall then become the owner and entitled to the possession of so much of the county road or highway so appropriated.

(3) ORS 772.065 and 772.070 do not apply to roads or streets within any platted or incorporated city or town, or any addition thereto.

772.070 Procedure on dispute between county and corporation. (1) If the county court or board of county commissioners and corporation cannot agree upon the matters of appropriation under ORS 772.065, the dispute shall be referred to the Public Utility Commission.

(2) The commission, after notice and hearing, shall by order determine the terms and conditions upon which the corporation may appropriate the county road or highway. [Amended by 1971 c.655 §238]

772.100 [Repealed by 1971 c.655 §250]

APPROPRIATION OF PUBLIC LANDS FOR RAILROADS

772.105 Authority to appropriate. (1) When it is necessary or convenient in the location of any railway to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of a municipal corporation, the county court of

the county wherein such road, street, alley or public grounds is located, may agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation. If the parties are unable to agree, the corporation may appropriate so much thereof as is necessary and convenient in the location and construction of the road.

(2) Whenever a private corporation is authorized to appropriate any public highway or grounds as mentioned in subsection (1) of this section, within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, alley or public grounds, within such town as the local authorities designate. If the local authorities fail to make such designation within a reasonable time when requested, the corporation may make such appropriation without reference thereto. [Amended by 1971 c.655 §239]

772.110 [Repealed by 1971 c.655 §250]

772.115 [Repealed by 1971 c.655 §250]

772.120 [Repealed by 1971 c.655 §250]

772.125 [Amended by 1953 c.160 §3; repealed by 1971 c.655 §250]

772.130 [Repealed by 1971 c.655 §250]

772.135 [Repealed by 1971 c.655 §250]

772.140 [Repealed by 1971 c.655 §250]

772.145 [Repealed by 1971 c.655 §250]

772.150 [Repealed by 1971 c.655 §250]

772.155 [Repealed by 1971 c.655 §250]

772.160 [Repealed by 1971 c.655 §250]

CONDEMNATION BY PUBLIC UTILITIES AND ELECTRICAL COOPERATIVE ASSOCIATIONS

772.205 Definitions for ORS 772.210 and 772.215. As used in ORS 772.210 and 772.215, unless the context requires otherwise:

(1) "Electrical cooperative association" means a cooperative association which is subject to a tax on gross revenue derived from the use or operation of transmission and distribution lines pursuant to ORS 308.805 to 308.820.

(2) "Public utility" has the meaning given that term in ORS 757.005.

(3) "Service facilities" include any line, wire, pipe, conduit, main, pump, pole, tower, fixture, structure, shop, office or building for any use or purpose reasonably necessary and incident to the conduct of the business of a public utility.

(4) "Transmission company" has the meaning given that term in ORS 758.015. [Amended by 1971 c.655 §240; 1977 c.225 §1; 2001 c.913 §8]

772.210 Right of entry and condemnation of lands for construction of service facilities. (1) Any public utility, electrical cooperative association or transmission company may:

(a) Enter upon lands within this state in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of service facilities. If the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, any public utility or transmission company organized for the purpose of building, maintaining and operating a line of poles and wires for the transmission of electricity for lighting or power purposes may condemn such trees for a width not exceeding 300 feet, as may be necessary or convenient for such purpose.

(2) Notwithstanding subsection (1) of this section, any public utility, electrical cooperative association or transmission company may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, such public utility or transmission company may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) Notwithstanding subsection (1) of this section, a water or gas public utility may condemn such lands, not exceeding 50 feet in width, as may be necessary or convenient for purposes of constructing, laying, maintaining and operating its lines, including necessary equipment therefor.

(4) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. [Amended by 1963 c.138 §1; 1971 c.655 §241; 1977 c.225 §2; 2001 c.913 §9; 2003 c.477 §10]

772.215 Appropriation of public lands.

When it is necessary or convenient, in the location of any poles or lines mentioned in ORS 772.210, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any municipal corporation, the county court or board of county commissioners of the county within which such road, street, alley or public grounds is located, may agree with the public utility or electrical cooperative association upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation. If such parties are unable to agree, the public utility or electrical cooperative association may condemn so much thereof as is necessary and convenient in the location and construction of the poles or lines. The provisions of ORS chapter 35 are applicable to condemnations under this section. [Amended by 1971 c.655 §242; 1971 c.741 §24; 1977 c.225 §3]

772.220 [Repealed by 1971 c.655 §250]

CONDEMNATION FOR DRAINAGE OR IRRIGATION

772.305 Condemnation of right of way for drainage or irrigation. (1) The United States, the state, or any person, firm, cooperative, association or corporation, shall have the right of way across and upon public, private and corporate lands or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines or other means of securing, storing and conveying water for irrigation or for drainage, or any other beneficial purpose, upon payment of just compensation therefor.

(2) But such right of way shall in all cases be so constructed, obtained, located and exercised in a manner consistent with proper and economical and engineering construction, so as not to unnecessarily impair practical use of any other right of way, highway or public or private road, nor to unnecessarily injure any public or private property.

(3) Such right of way may be acquired in the manner provided by law for the taking of private property for public use. If a water right permit is required under the applicable provisions of ORS chapter 537 in order to use, store or convey water within the right of way, a person, firm, cooperative, association or corporation may not acquire a right of way under this subsection before obtaining a water right permit or obtaining a final order of the Water Resources Department approving an application for a water right permit.

(4) In determining just compensation under subsection (1) of this section for a right of way across forestlands, consideration shall be given, but not limited to, the effect of the right of way on:

(a) Access to the whole of the affected parcel;

(b) Ease and method of timber harvesting or other commercial uses of the affected parcel; and

(c) Any agricultural or silvicultural activities on the affected parcel, including but not limited to application of chemicals, cultivation or harvesting activities and movement of equipment associated with any of the above activities. [Amended by 1989 c.509 §1; 1995 c.365 §8]

772.310 Right to enlarge existing irrigation system. (1) When the United States, the state, or any person, firm or corporation desires to convey water for irrigation, drainage or for any other beneficial purpose, and there is a canal or ditch already constructed that can be enlarged to convey the required quantity of water, then the United States, the state, or any such person, firm or corporation, or the owner or owners of the land through which a new canal or ditch would have to be constructed to convey the quantity of water necessary, may enlarge the canal or ditch already constructed, by compensating the owner of the canal or ditch to be enlarged for the damages, if any, caused by the enlargement.

(2) The enlargement may be made at any time between October 1 and March 1, but not any other times, unless upon agreement in writing with the owner or owners of the canal or ditch.

(3) If a water right permit is required under the applicable provisions of ORS chapter 537 in order to use, store or convey water within the enlargement, a person, firm, cooperative, association or corporation may not acquire an enlargement under this section before obtaining a water right permit or obtaining a final order of the Water Resources Department approving an application for a water right permit. [Amended by 1989 c.509 §2; 1995 c.365 §9]

772.315 [Repealed by 1971 c.655 §250]

CONDEMNATION BY CORPORATIONS FOR REDUCTION OF ORES, MINING, QUARRIES, LUMBERING AND TRANSPORTATION OF MINING PRODUCTS

772.405 Condemnation by corporations for reduction of ores. (1) Every corporation organized for the construction and operation of mills, smelters and other works for the reduction of ores authorized to do business

within the state may condemn lands and property for the discharge and natural distribution of smoke, fumes and dust from such works in the manner provided by ORS chapter 35.

(2) The use of lands by such corporation for the purpose of the discharge and natural distribution of smoke, fumes and dust from any such mill, smelter or other works for the reduction of ores, under the conditions prescribed in this section hereby is declared to be a public use.

(3) The right of eminent domain shall not be exercised by such corporation:

(a) Beyond a radius of four miles from such mill, smelter or other works for the reduction of ores.

(b) On any land situated within a radius of five miles of the corporate limits of any city in the state.

(c) Until after such corporation has acquired the right to use 50 percent of the area of the lands within a radius of four miles from the mill, smelter or other works for the reduction of ores.

772.410 Right of entry and condemnation by mining, quarrying and lumber corporations. Any corporation organized for the purpose of opening or operating any gold, silver, or copper vein or lode, or any coal or other mine, or any marble, stone or other quarry, or for cutting or transporting timber, lumber, or cordwood, or for the manufacture of lumber:

(1) May construct and operate railroads, skid roads, tramways, chutes, pipelines and flumes between such points as may be indicated in their articles of incorporation.

(2) May enter upon any land between such points in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line of such railroads, skid roads, tramways, chutes, pipelines and flumes, doing no unnecessary damage thereby.

(3) May condemn so much of said land as may be necessary for the purposes of this section, not exceeding 60 feet in width by a condemnation action as prescribed by ORS chapter 35. [Amended by 1953 c.559 §3; 2003 c.477 §11]

772.415 Public benefit and use of facilities constructed under ORS 772.410. (1) Railroads, skid roads, tramways, chutes, pipelines or flumes constructed under ORS 772.410 shall be deemed to be for public benefit.

(2) Such railroad shall afford to all persons equal facilities for the transportation of freight upon payment or tender of reasonable

compensation therefor, but shall not be required to carry passengers.

(3) Such skidway, tramway, chute, pipeline or flume shall afford to all persons equal facilities in the use thereof for the purpose to which they are adapted, upon tender or payment of the reasonable compensation for such use. [Amended by 1953 c.559 §3]

772.420 Condemnation for transportation of minerals; conditions of reversion.

(1) Any person requiring land for a right of way for the transportation of the products of mines located in this state may acquire such land for such purposes in the manner and subject to the rights, privileges and liabilities under ORS 376.505 to 376.540.

(2) Lands acquired under this section shall not revert to the original owner, the heirs and assigns of the original owner, until their use as contemplated in this section has ceased for a period of five years.

CONDEMNATION BY PIPELINE AND GAS COMPANIES

772.505 Definitions for ORS 772.505 to 772.520. As used in ORS 772.505 to 772.520, unless the context otherwise requires:

(1) "Pipeline" includes pipes, lines, natural gas mains or lines and their appurtenances, including but not limited to pumps and pumping stations, used in transporting or distributing fluids, including petroleum and petroleum products or natural gases.

(2) "Pipeline company" includes any corporation, partnership or limited partnership, transporting, selling or distributing fluids, including petroleum products, or natural gases and those organized for constructing, laying, maintaining or operating pipelines, which are engaged, or which propose to engage in, the transportation of such fluids or natural gases. [Amended by 1971 c.655 §242a; 1989 c.821 §1]

772.510 Right of entry and condemnation by pipeline companies. (1) Any pipeline company that is a common carrier and that is regulated as to its rates or practices by the United States or any agency thereof, may enter in the manner provided by ORS 35.220 upon lands within this state outside the boundaries of incorporated cities.

(2) This right may be exercised for the purpose of examining, surveying and locating a route for any pipeline, but it shall not be done so as to create unnecessary damage.

(3) These pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their pipeline company purposes, by proceedings for condemnation as prescribed by ORS

(3) These pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their pipeline company purposes, by proceedings for condemnation as prescribed by ORS

chapter 35. [Amended by 1971 c.655 §243; 1989 c.821 §2; 2003 c.477 §12]

772.515 Regulation concerning location of facilities. (1) Whenever such pipelines are laid along a public road, they shall be placed as closely as practicable to the extreme outside edge of the right of way of such road.

(2) With the exception of pumping, compressor, regulator or meter station buildings, no pipes or pipelines shall pass under any building in this state. Such pipes or pipelines shall not pass through or under any cemetery except by the consent of the owner thereof.

(3) When cultivated lands are appropriated under ORS 772.510, such pipes and pipelines shall be well buried under ground, in conformance with federal pipeline safety regulations in effect at the time of construction, and such surface shall be properly and promptly restored by such pipeline company unless otherwise consented to by the owner of such land.

(4) When unimproved lands of another are appropriated under ORS 772.510 and such lands thereafter become cultivated or improved, such pipes or pipelines shall be buried by the pipeline company as provided in subsection (3) of this section, within a reasonable time after notice by the owner of such lands, or the agent of the owner, to the pipeline company or its agent. [Amended by 1989 c.821 §3]

772.520 Resolution showing route and termini of pipeline. (1) Prior to the filing of any condemnation action under ORS 772.510, the pipeline company shall adopt a resolution showing the approximate route and termini of the proposed pipeline, or the extension or branch of any existing pipeline.

(2) A copy of this resolution, certified by the pipeline company, shall be filed in the office of the Secretary of State, in the office of each county clerk of those counties where such pipeline, extension or branch of an existing pipeline is proposed to be constructed, and also in the office of the Public Utility Commission. [Amended by 1989 c.821 §4]

772.525 [Repealed by 1971 c.655 §250]

772.555 [Repealed by 1971 c.655 §250]

772.560 [Repealed by 1971 c.655 §250]

772.605 [Repealed by 1971 c.655 §250]

CONDEMNATION FOR UNDERGROUND NATURAL GAS STORAGE

772.610 Definitions for ORS 772.610 to 772.625. As used in ORS 772.610 to 772.625, unless the context otherwise requires:

(1) "Natural gas company" means every corporation, company, association, joint

stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution or underground storage of natural gas.

(2) "Pipeline" has the meaning given that term in ORS 772.505 (1).

(3) "Underground reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom, but excluding a "pool."

(4) "Underground storage" means the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir. [1977 c.296 §8; 1989 c.821 §5]

772.615 Condemnation for underground reservoirs; applicability of ORS chapter 35. Any natural gas company may condemn for its use for the underground reservoir, as well as other property or interests in property which may be necessary to adequately maintain and utilize the underground reservoir for the underground storage of natural gas, including easements and rights of way for access to and egress from the underground storage reservoir. The provisions of ORS chapter 35 and ORS 520.340 and 520.350 are applicable to any condemnation action brought under this section. [1977 c.296 §9]

772.620 Placement of pipeline facilities. (1) Whenever a pipeline or appurtenance used in conjunction with the underground storage of natural gas in an underground reservoir is laid along a public road, it shall be placed as closely as practicable to the extreme outside edge of the right of way of the road.

(2) Such pipeline or appurtenance shall not be located under or pass through or under any cemetery, church, college, schoolhouse, residence, business or storehouse, or through or under any building in this state, except by the consent of the owner thereof.

(3) When cultivated lands are appropriated under ORS 772.615, such pipelines shall be well buried underground, at least 20 inches under the surface, which shall be properly and promptly restored by the natural gas company unless otherwise consented to by the owner of the land.

(4) When unimproved lands are appropriated under ORS 772.615 and thereafter become cultivated or improved, such pipelines shall be buried by the natural gas company as provided in subsection (3) of this section, within a reasonable time after notice by the owner of such lands, or the agent of the

owner, to the natural gas company or its agent. [1977 c.296 §10]

772.625 Resolution showing proposed route and termini of pipeline. (1) Prior to the filing of any condemnation action under ORS 772.615, the natural gas company shall adopt a resolution showing the approximate route and termini of any proposed pipeline, or the extension or branch of any existing pipeline, to be used in conjunction with the underground storage of natural gas, and showing the location and formation of any

underground reservoir to be used for the underground storage of natural gas.

(2) A copy of this resolution shall be filed in the office of the Secretary of State, and also in the office of the county clerk of each county or counties where such pipeline, extension or branch of an existing pipeline, or underground reservoir is proposed to be constructed or utilized for the underground storage of natural gas, and also published in a newspaper of general circulation in each county. [1977 c.296 §11]

UTILITY REGULATION

Chapter 774

2007 EDITION

Citizens' Utility Board

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UTILITY REGULATION

774.010 Definitions. As used in this chapter, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Board" means the Citizens' Utility Board of Governors.

(2) "Consumer" or "utility consumer" means any natural person 18 years of age or older who is a resident of the State of Oregon.

(3) "District" means an electoral district for members of the Citizens' Utility Board of Governors.

(4) "Member" means a member of the Citizens' Utility Board.

(5) "Utility" means any utility regulated by the Public Utility Commission pursuant to ORS chapters 757 and 759, which furnishes electric, telephone, gas or heating service. However, "utility" does not include any municipality, cooperative, or people's utility district. [1985 c.1 §2; 1987 c.447 §102]

774.020 Policy. The people of the State of Oregon hereby find that utility consumers need an effective advocate to assure that public policies affecting the quality and price of utility services reflect their needs and interests, that utility consumers have the right to form an organization which will represent their interests before legislative, administrative and judicial bodies, and that utility consumers need a convenient manner of contributing to the funding of such an organization so that it can advocate forcefully and vigorously on their behalf concerning all matters of public policy affecting their health, welfare and economic well-being. [1985 c.1 §1]

774.030 Citizens' Utility Board; powers. (1) The Citizens' Utility Board is hereby created as an independent nonprofit public corporation and is authorized to carry out the provisions of this chapter.

(2) The Citizens' Utility Board has perpetual succession and it may sue and be sued, and may in its own name purchase and dispose of any interest in real and personal property, and shall have such other powers as are granted to corporations by ORS 65.077. No part of its net earnings shall inure to the benefit of any individual or member of the Citizens' Utility Board.

(3) The Citizens' Utility Board shall have all rights and powers necessary to represent and protect the interests of utility consumers, including but not limited to the following powers:

(a) To conduct, fund or contract for research, studies, plans, investigations, demonstration projects and surveys.

(b) To represent the interests of utility consumers before legislative, administrative and judicial bodies.

(c) To accept grants, contributions and appropriations from any source, and to contract for services.

(d) To adopt and modify bylaws governing the activities of the Citizens' Utility Board. [1985 c.1 §3; 1989 c.1010 §179]

774.040 Membership on board. (1) All consumers are eligible for membership in the Citizens' Utility Board. A consumer shall become a member of the Citizens' Utility Board upon contribution of at least \$5 but not more than \$100 per year to the Citizens' Utility Board. Each member shall be entitled to cast one vote for the election of the Citizens' Utility Board of Governors. The board shall establish a method whereby economically disadvantaged individuals may become members of the Citizens' Utility Board without full payment of the yearly contribution.

(2) Each year the Citizens' Utility Board shall cause to be prepared, by a certified public accountant authorized to do business in this state, an audit of its financial affairs. The audit is a public record subject to inspection in the manner provided in ORS 192.410 to 192.505. [1985 c.1 §9]

774.060 Board of Governors; duties; executive committee. The Citizens' Utility Board of Governors shall manage the affairs of the Citizens' Utility Board. The board may delegate to an executive committee composed of not fewer than five members of the board the authority as would be allowed by ORS 65.354. [1985 c.1 §4; 1989 c.1010 §180]

774.070 Election of board; term; qualifications; statement of financial interest; disqualification of candidate; recall; vacancies. (1) The Citizens' Utility Board of Governors shall be comprised of three persons elected from each congressional district described in ORS 188.135 by a majority of the votes cast by members residing in that district. The election shall be conducted by mail ballot in such manner as the Citizens' Utility Board of Governors may prescribe.

(2) The term of office of a member of the Citizens' Utility Board of Governors is four years. No person may serve more than two consecutive terms on the Citizens' Utility Board of Governors.

(3) Each candidate and each member of the Citizens' Utility Board of Governors must be a member of the Citizens' Utility Board and must be a resident of the district from which the candidate seeks to be or is elected.

(4) At least 45 days before an election each candidate shall file with the Citizens' Utility Board of Governors a statement of fi-

nancial interests, which shall contain the information in such form as the Citizens' Utility Board of Governors shall determine. Each candidate shall maintain a complete record of contributions received and expenditures made with regard to an election campaign. Each candidate shall make the records available for public inspection at such reasonable times as the Citizens' Utility Board of Governors considers appropriate.

(5) No member who is employed by a utility shall be eligible for appointment or election to the Citizens' Utility Board of Governors, and no member of the Citizens' Utility Board of Governors who obtains employment by a utility may maintain a position on the Citizens' Utility Board of Governors. While on the board, no director elected under this section may hold elective public office, be a candidate for any elective public office, or be a state public official. No person who owns or controls, either singly or in combination with any immediate family member, utility stocks or bonds of a total value in excess of \$3,000 is eligible to serve as an elected member of the Citizens' Utility Board of Governors.

(6) The Citizens' Utility Board of Governors may disqualify any candidate or member of the Citizens' Utility Board of Governors for any violation of this chapter or of the bylaws of the Citizens' Utility Board.

(7) Upon petition signed by 20 percent of the members in a district for the recall of a member of the Citizens' Utility Board of Governors elected from the district, the Citizens' Utility Board of Governors shall mail ballots to each member in the district, submitting the question whether the member of the Citizens' Utility Board of Governors shall be recalled. If a majority of the members voting at the election vote in favor of the recall, then the member of the Citizens' Utility Board of Governors shall be recalled. Elections and recall proceedings shall be conducted in a manner as the Citizens' Utility Board of Governors may prescribe. Ballots for all election and recall proceedings shall be counted at a regular meeting of the Citizens' Utility Board of Governors.

(8) The remaining members of the Citizens' Utility Board of Governors shall have the power to fill vacancies on the Citizens' Utility Board of Governors. [1985 c.1 §6; 1997 c.249 §222]

774.110 Meetings. All meetings of the Citizens' Utility Board of Governors shall be open to the public, except under the same circumstances in which a public agency would be allowed to hold executive meetings under ORS 192.660. [1985 c.1 §8]

774.120 Inclusion of information in utility billings; frequency; notice; duty of utility to forward board mail. (1) Upon request by the Citizens' Utility Board pursuant to this section, each utility shall include in billings to a utility consumer materials prepared and furnished by the Citizens' Utility Board, not exceeding in folded size the dimensions of the envelope customarily used by such utility to send billings to its customers.

(2) The Citizens' Utility Board shall not intentionally make any false material statement in any material submitted to a utility for inclusion with a billing. If the utility believes that the Citizens' Utility Board has intentionally made false material statements in an enclosure, it may file a complaint with the Public Utility Commission of Oregon within five days of receipt. The Public Utility Commission of Oregon must review the complaint within 10 days, and if the commission determines that the Citizens' Utility Board has intentionally made false material statements, the commission shall give the Citizens' Utility Board of Governors written notification that specifies any false material statements made and the reasons why the commission determines the statements to be false.

(3) No utility shall be required to enclose Citizens' Utility Board material with a billing more than six times in any calendar year.

(4) The Citizens' Utility Board shall notify a utility of its intention to include under the provisions of this chapter any material in any specified periodic billing or billings not fewer than 30 calendar days prior to the mailing of the periodic billings and shall supply the utility with the material not fewer than 20 calendar days prior to the mailing of the periodic billings.

(5) All material submitted by the Citizens' Utility Board for inclusion in a utility billing must include the return address of the Citizens' Utility Board. A utility is not required to deliver or forward to the Citizens' Utility Board material intended for the Citizens' Utility Board mistakenly sent to the utility. However, a utility shall retain such materials for a period of 60 days from the date of receipt. The utility shall notify the Citizens' Utility Board that such materials have been received and make these materials available to the Citizens' Utility Board on demand. [1985 c.1 §10]

774.130 Mailing costs; reimbursement. (1) The Citizens' Utility Board shall not be required to pay any postage charges for materials submitted by the Citizens' Utility Board for inclusion in a utility billing if such materials weigh four-tenths of one ounce avoirdupois or less. If the materials submit-

ted weigh over four-tenths of one ounce avoirdupois, then the Citizens' Utility Board shall reimburse the utility for a portion of the postage costs which is equal to that portion of the Citizens' Utility Board material over four-tenths of one ounce avoirdupois in proportion to the total weight of the billing. In addition to postage costs, the Citizens' Utility Board shall reimburse such other reasonable costs, as determined by the Public Utility Commission of Oregon, incurred by a utility in complying with ORS 774.120.

(2) Reimbursement of a utility by the Citizens' Utility Board shall be made within 60 days of the date the utility submits to the Citizens' Utility Board an itemized statement of the costs incurred by the utility. In no event shall such reimbursement exceed the fair market value for the services provided by the utility. [1985 c.1 §11]

774.140 Interference with mailings or contributions. (1) No utility, nor any of its employees, officers, members of the board of directors, agents, contractors or assignees, shall in any manner interfere with, delay, alter or otherwise discourage the distribution of any material or statement authorized by the provisions of this chapter for inclusion in periodic utility billings, nor in any manner interfere with, hamper, hinder or otherwise infringe upon a utility consumer's right to contribute to Citizens' Utility Board, nor in any manner hamper, hinder, harass, penalize or retaliate against any utility consumer because of the consumer's contribution to, or participation in, any activities of the Citizens' Utility Board.

(2) No utility may change its mailing, accounting, or billing procedures if such change will hamper, hinder, or otherwise interfere with the ability of the Citizens' Utility Board to distribute materials or statements authorized by this chapter. [1985 c.1 §12]

774.160 Disposition of complaints. Citizens' Utility Board may submit to the appropriate agency any complaint it receives regarding a utility company. Public agencies shall periodically inform Citizens' Utility Board of any action taken on complaints received pursuant to this section. [1985 c.1 §13]

774.180 Intervention in agency proceedings affecting utility consumers; standing to obtain judicial or administrative review. Notwithstanding any other provision of law:

(1) Whenever the board determines that any agency proceeding may affect the interests of utility consumers, Citizens' Utility Board may intervene as of right as an interested party or otherwise participate in the proceeding.

(2) Citizens' Utility Board shall have standing to obtain judicial or administrative review of any agency action, and may intervene as of right as a party or otherwise participate in any proceeding which involves the review or enforcement of any action by an agency, if the board determines that the action may affect the interests of utility consumers. [1985 c.1 §14]

774.190 Applicability of certain laws to board; protection from liability. (1) ORS 279.835 to 279.855 and ORS chapters 278, 279A, 279B, 279C, 282, 283, 291, 292, 293, 295 and 297 do not apply to Citizens' Utility Board or to the administration and enforcement of this chapter. An employee of Citizens' Utility Board shall not be considered an "employee" as the term is defined in the public employees retirement laws. Citizens' Utility Board and its employees shall be exempt from the provisions of the State Personnel Relations Law.

(2) ORS chapter 183 does not apply to determinations and actions by the board.

(3) The board, and any of the officers, employees, agents or members of Citizens' Utility Board shall be provided the same protections from liability as the board, officers, employees, agents, or members of any nonprofit corporation of the State of Oregon. [1985 c.1 §15; 2003 c.794 §330]

774.210 Remedies; attorney fees. (1) Any utility, and any of its employees, officers, members of the board of directors, agents, contractors or assignees which does, or causes or permits to be done, any matter, act or other thing prohibited by this chapter, or omits to do any act, matter or other thing required to be done by this chapter, is liable for any injury to Citizens' Utility Board and to any other person in the amount of damages sustained in consequence of such violation. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) Citizens' Utility Board may obtain equitable relief, without bond, to enjoin any violation of this chapter.

(3) Any recovery or enforcement obtained under this section shall be in addition to any other recovery or enforcement under this section or under any statute or common law. Any recovery under this section shall be in addition to recovery by the state of the penalty or fine prescribed for such violation by this chapter. The rights and remedies provided by this chapter shall be in addition to all other rights and remedies available under law. [1985 c.1 §16; 1995 c.618 §136]

774.250 Severability. If any section, portion, clause or phrase of this chapter is for any reason held to be invalid or unconstitu-

tional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this chapter are severable. [1985 c.1 §18]

774.990 Penalty. Willful violation of ORS 774.120 (1) or (5) or 774.140 is a Class A misdemeanor. [1985 c.1 §17]

CHAPTER 775

[Reserved for expansion]

Chapter 183

2007 EDITION

Administrative Procedures Act; Legislative Review of Rules; Civil Penalties

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183.025 [Formerly 182.065; 1993 c.729 §4; 2003 c.749 §8; renumbered 183.750 in 2003]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

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

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

ADMINISTRATIVE PROCEDURES ACT (General Provisions)

183.310 Definitions for chapter. As used in this chapter:

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

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

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

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

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

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

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

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

(4) “Hearing officer” includes an administrative law judge.

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

(6)(a) “Order” means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency.

“Order” includes any agency determination or decision issued in connection with a contested case proceeding. “Order” includes:

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

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

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

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

(A) Precedes final agency action; or

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

(7) “Party” means:

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

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

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

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

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

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

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

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

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

do not substantially affect the interests of the public.

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

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

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

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

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

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1; 2003 c.75 §71; 2005 c.523 §8; 2007 c.288 §9]

Note: See note under 183.417.

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

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

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

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

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

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

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

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

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

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

Note: The amendments to 183.315 by section 8, chapter 239, Oregon Laws 2007, become operative July 1, 2008. See section 16, chapter 239, Oregon Laws 2007. The text that is operative until July 1, 2008, including amendments by section 10, chapter 288, Oregon Laws 2007, is set forth for the user's convenience.

183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision.

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

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

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

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

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

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

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190.

Note: See note under 183.417.

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

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

(Adoption of Rules)

183.325 Delegation of rulemaking authority to named officer or employee.

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

183.330 Description of organization; service of order; rules coordinator; effect of not putting order in writing.

(1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

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

(a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;

(b) Provide information to the public on all rulemaking proceedings of the agency; and

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

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

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

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

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

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

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

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

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

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

183.333 Policy statement; public involvement in development of policy and drafting of rules; advisory committees.

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

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

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

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

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding. [2003 c.749 §4; 2005 c.807 §4]

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

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

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

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

(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(d) When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

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

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which

the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

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

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

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

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

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

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

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

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

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

(a) A statement of its findings that its failure to act promptly will result in serious

prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

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

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

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

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

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

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

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

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

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

(c) Correcting spelling;

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

(e) Correcting statutory or rule references; or

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

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

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

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

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

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

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

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

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

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

cation in the bulletin referred to in ORS 183.360.

(b) In addition to all other requirements with which rule adoptions must comply, a rule is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.715.

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

(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph (b) of this subsection, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long as the non-compliance did not substantially prejudice the interests of persons to be affected by the rule.

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

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

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

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

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

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this sec-

tion, notice shall be given to the chair or cochair of any interim or session committee with authority over the subject matter of the rule.

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

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

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

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

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

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

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

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

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

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

agency may adopt those rules or regulations under the procedure prescribed in this section.

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

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

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

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

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

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

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

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

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

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

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified

of the agency's intention to adopt, amend or repeal a rule.

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

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

183.355 Filing and taking effect of rules; filing of executive orders; copies.

(1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

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

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

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

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

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

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13; 1991 c.169 §2; 2003 c.794 §207]

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

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

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

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

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency

officer or employee from whom information and a copy of any proposed rule may be obtained;

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

(c) Contains executive orders of the Governor; and

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

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

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "OAR" with appropriate numerical indications. [1957 c.717 §4 (1),(2),(3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16; 1993 c.729 §13; 1995 c.79 §62; 2001 c.104 §63; 2003 c.168 §3]

183.362 Program for biennial publication of Oregon Administrative Rules. (1) Notwithstanding ORS 183.360, the Secretary of State may implement a program for the publication of the Oregon Administrative Rules not less than once every two years with annual supplements. The Secretary of State may implement a program under this section only if the Secretary of State publishes the full text of proposed administrative rules in the manner specified by this section.

(2) Except as provided in subsection (3) of this section, upon implementing a program under this section the Secretary of State shall require that an agency submit the full text of the proposed rule in addition to information required to be published under the provisions of ORS 183.335 (1). Except as provided in subsection (3) of this section, the Secretary of State shall publish the full text of the proposed rule in the bulletin referred to in ORS 183.360.

(3) The Secretary of State may waive the submission of the full text of a proposed administrative rule and decline to publish the full text of the proposed rule in the bulletin referred to in ORS 183.360 if:

(a) The proposed rule is unusually voluminous; and

(b) In addition to the information provided by the agency under the provisions of ORS 183.335 (2) the agency identifies a location where the rule is available for inspection and copying.

(4) If the adopted rule submitted to the Secretary of State under the provisions of ORS 183.355 is different from the proposed rule submitted to the Secretary of State un-

der a program implemented under this section, the Secretary of State shall publish in the bulletin referred to in ORS 183.360 either the full text of the rule as adopted or a list of the changes made in the proposed rule before the agency adopted the rule. [1993 c.729 §12]

Note: 183.362 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

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

(3) Pursuant to ORS 183.360 (2)(b), the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

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

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

(b) Provide technical assistance to state agencies; and

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

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

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

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

Note: 183.365 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative

action. See Preface to Oregon Revised Statutes for further explanation.

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

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

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

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

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

(a) The continued need for the rule;

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

(c) The complexity of the rule;

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

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

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

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the man-

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

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

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

- (a) The rule under review;
- (b) The statutory provisions authorizing the rule; and
- (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

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

- (a) Violates constitutional provisions;
- (b) Exceeds the statutory authority of the agency; or
- (c) Was adopted without compliance with applicable rulemaking procedures.

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

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

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

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended; and

(d) Whether there is continued need for the rule.

(2) An agency shall utilize available information in complying with the requirements of subsection (1) of this section.

(3) If an agency appoints an advisory committee pursuant to ORS 183.333 for consideration of a rule subject to the requirements of this section, the agency shall provide the advisory committee with a report on a review of the rule conducted under this section.

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

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

- (a) Rules adopted to implement court orders or the settlement of civil proceedings;
- (b) Rules that adopt federal laws or rules by reference;
- (c) Rules adopted to implement legislatively approved fee changes; or
- (d) Rules adopted to correct errors or omissions. [2005 c.807 §3]

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

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

(Contested Cases)

183.411 Delegation of final order authority. Unless otherwise provided by law, an agency may delegate authority to enter a final order in a proceeding or class of proceedings to an officer or employee of the agency, or to a class of officers or employees

of the agency. A delegation of authority under this section must be made in writing before the issuance of any order pursuant to the delegation and must be retained in the agency's records. [2007 c.116 §2]

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

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

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

(a) The time and place of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: See note under 183.417.

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

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

(3) Notice under this section must include:

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

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

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

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

(e) A statement indicating whether and under what circumstances an order by default may be entered. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1; 1997 c.837 §2; 1999 c.849 §§27,28; 2003 c.75 §29; 2007 c.288 §2]

Note: See note under 183.417.

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

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

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

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

on the ground that the informal disposition was obtained by fraud or duress.

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

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

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

(7) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut the communication. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, the administrative law judge must comply with ORS 183.685.

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

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

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

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

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

(g) Proposed findings and exceptions.

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

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

Note: Section 19, chapter 288, Oregon Laws 2007, provides:

Sec. 19. Section 4 of this 2007 Act [ORS 183.417] and the amendments to ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410 by sections 1, 2 and 5 to 18 of this 2007 Act apply only to contested case proceedings commenced by the giving of notice as described in ORS 183.415 on or after the effective date of this 2007 Act [January 1, 2008]. Any contested case proceeding commenced by the giving of notice as described in ORS 183.415 before the effective date of this 2007 Act shall continue to be governed by ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410, as in effect immediately before the effective date of this 2007 Act. [2007 c.288 §19]

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

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

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

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

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

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

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

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

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

receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

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

183.445 Subpoena by agency or attorney of record of party when agency not subject to ORS 183.440.

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

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

183.450 Evidence in contested cases. In contested cases:

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

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

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

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

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

183.452 Representation of agencies at contested case hearings.

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

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

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

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

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

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

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

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

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

(d) Admissibility of evidence; and

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

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

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

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

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

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

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

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

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

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

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

(f) The State Fire Marshal in the Department of State Police.

(g) The Department of State Lands for proceedings regarding the issuance or denial

of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

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

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

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

(L) The Bureau of Labor and Industries.

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

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

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

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

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

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

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

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

(d) Admissibility of evidence; and

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

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

entitled to judicial review of the agency action.

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

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

183.458 Nonattorney representation of parties in certain contested case hearings. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support or public assistance as defined in ORS 411.010, a party may be represented by any of the following persons:

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

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

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

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

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

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

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

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded

to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

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

183.464 Proposed order by hearing officer; amendment by agency; exemptions.

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

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

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

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

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

183.470 Orders in contested cases. In a contested case:

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

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

and as to each ultimate fact required to support the agency's order.

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

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

(Judicial Review)

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

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

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

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4; 1997 c.837 §5; 2007 c.288 §11]

Note: See note under 183.417.

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such

date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petitioner shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay, the agency may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as

specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that the agency elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, the agency shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, and the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if the court finds that either the fairness of the proceedings or the correctness of the action may have been

impaired by a material error in procedure or a failure to follow prescribed procedure, including a failure by the presiding officer to comply with the requirements of ORS 183.417 (8).

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2; 1989 c.453 §1; 1991 c.331 §44; 2007 c.659 §§2,5]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency

delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4) At any time subsequent to the filing of the petition for review and prior to the date set for hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(6) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3; 1999 c.113 §1]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's register.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment in the register of the court pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7; 1981 c.178 §11; 1985 c.540 §39; 2003 c.576 §193]

183.486 Form and scope of decision of reviewing court. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Appeals From Circuit Courts)

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the judgment of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76; 2003 c.576 §394]

(Alternative Dispute Resolution)

183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making proc-

ess in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Mark O. Hatfield School of Government, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Mark O. Hatfield School of Government and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and

(c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall work cooperatively in designing

the program under ORS 36.179 that is intended to provide services to, apply to or involve any state agency.

(b) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall enter into an interagency agreement that includes, but is not limited to, provisions on appropriate roles, reporting requirements and coordination of services provided to state agencies by the Mark O. Hatfield School of Government pursuant to ORS 36.179.

(c) Before providing dispute resolution services in a specific matter to a state agency under ORS 36.179, the Mark O. Hatfield School of Government shall notify the Department of Justice of any proposal to provide such services.

(7) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(8) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

(9) An agency may use the services of an employee of another agency or of the federal government to serve as a mediator or facilitator, and may provide the services of an agency employee to another agency or to the federal government to serve as a mediator or facilitator. An agency may enter into an agreement with another agency or with the federal government to determine reimbursement for services of an employee acting as a mediator or facilitator under the provisions of this subsection. This subsection does not apply to mediation under ORS 243.650 to 243.782. [1993 c.647 §2; 1995 c.515 §2; 1997 c.706 §5; 1997 c.801 §42; 1997 c.837 §7; 2001 c.581 §2; 2003 c.791 §§27,27a; 2005 c.334 §§1,2; 2005 c.817 §6]

Note: 183.502 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

(Housing Cost Impact Statement)

183.530 Housing cost impact statement required for certain proposed rules. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The State Department of Energy. [1995 c.652 §2]

Note: 183.530 to 183.538 were added to and made a part of ORS chapter 183 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. The State Housing Council shall adopt rules prescribing the form to be used when preparing the estimate and other such rules necessary to the implementation of this section and ORS 183.530 and 183.538.

(2) A housing cost impact statement:

(a) For an agency listed in ORS 183.530 shall be incorporated in the:

(A) Fiscal impact statement required by ORS 183.335 (2)(b)(E) for permanent rule adoption; or

(B) Statements required by ORS 183.335 (5) for temporary rule adoption.

(b) Shall not be required for the adoption of any procedural rule by an agency listed in ORS 183.530. [1995 c.652 §3; 1997 c.249 §54]

Note: See note under 183.530.

183.538 Effect of failure to prepare housing cost impact statement; judicial review. (1) Notwithstanding ORS 183.335 (12), 183.400 (4) or any other provision of law, the failure to prepare a housing cost impact statement shall not affect the validity or effective date of any rule or ordinance or any amendment to a rule or ordinance.

(2) If a rule or ordinance or any amendment to a rule or ordinance is challenged based on the failure to prepare a housing cost impact statement, the court or other reviewing authority shall remand the proposed rule or ordinance or any amendment to a rule or ordinance to the adopting or repeal-

ing entity if it determines that a housing cost impact statement is required.

(3) The court or other reviewing authority shall determine only whether a housing cost impact statement was prepared and shall not make any determination as to the sufficiency of the housing cost impact statement. [1995 c.652 §4; 2001 c.220 §4]

Note: See note under 183.530.

(Effects of Rules on Small Business)

183.540 Reduction of economic impact on small business. If the statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) shows that a rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards;

(4) Exempting small businesses from any or all requirements of the rule; or

(5) Otherwise establishing less intrusive or less costly alternatives applicable to small business. [1981 c.755 §4; 2003 c.749 §7; 2005 c.807 §6]

183.545 [1981 c.755 §5; repealed by 2003 c.749 §17]

183.550 [1981 c.755 §6; repealed by 2003 c.749 §17]

183.560 [2001 c.374 §1; 2003 c.740 §1; renumbered 183.700 in 2003]

183.562 [2001 c.374 §2; renumbered 183.702 in 2003]

(Office of Administrative Hearings)

183.600 Definitions. For the purposes of ORS 183.600 to 183.690:

(1) “Chief administrative law judge” means the person employed under ORS 183.610 to organize and manage the Office of Administrative Hearings.

(2) “Office” means the Office of Administrative Hearings established under ORS 183.605. [1999 c.849 §2; 2003 c.75 §1]

183.605 Office of Administrative Hearings. (1) The Office of Administrative Hearings is established within the Employment Department. The office shall be managed by the chief administrative law judge employed under ORS 183.610. The office shall make administrative law judges available to agencies under ORS 183.600 to 183.690. Administrative law judges assigned from the office under ORS 183.600 to 183.690 may:

(a) Conduct contested case proceedings on behalf of agencies in the manner provided by ORS 183.600 to 183.690;

(b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and

(c) Perform such other duties as may be authorized under ORS 183.600 to 183.690.

(2) All persons serving as administrative law judges in the office must meet the standards and training requirements of ORS 183.680. [1999 c.849 §3; 2003 c.75 §2]

183.610 Chief administrative law judge.

(1) The Director of the Employment Department shall employ a person to serve as chief administrative law judge for the Office of Administrative Hearings. The director shall consider recommendations by the Office of Administrative Hearings Oversight Committee in hiring a chief administrative law judge. The person employed to serve as chief administrative law judge must be an active member of the Oregon State Bar. The chief administrative law judge has all the powers necessary and convenient to organize and manage the office. Subject to the State Personnel Relations Law, the chief administrative law judge shall employ all persons necessary for the administration of the office, prescribe the duties of those employees and fix their compensation. The chief administrative law judge shall serve for a term of four years. Notwithstanding ORS 236.140, the chief administrative law judge may be removed during a term only for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria for appointment.

(2) The chief administrative law judge shall employ administrative law judges. The chief administrative law judge shall ensure that administrative law judges employed for the office receive all training necessary to meet the standards required under the program created under ORS 183.680.

(3) The chief administrative law judge shall take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office. [1999 c.849 §4; 2003 c.75 §3]

183.615 Administrative law judges; duties; qualifications; rules. (1) An administrative law judge employed by or contracting with the chief administrative law judge shall conduct hearings on behalf of agencies as assigned by the chief administrative law judge. An administrative law judge shall be impartial in the performance of the administrative law judge’s duties and shall remain fair in all hearings conducted by the admin-

administrative law judge. An administrative law judge shall develop the record in contested case proceedings in the manner provided by ORS 183.417 (8).

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief administrative law judge as administrative law judges. The chief administrative law judge by rule may establish additional qualifications for administrative law judges employed for the office. [1999 c.849 §5; 2003 c.75 §4; 2007 c.659 §§3,6]

183.620 Contract administrative law judges. (1) The chief administrative law judge for the Office of Administrative Hearings may contract for the services of persons to act as administrative law judges.

(2) Contract administrative law judges shall meet the same qualifications as administrative law judges regularly employed by the chief administrative law judge and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for administrative law judges regularly employed by the chief administrative law judge and conducting similar hearings. [1999 c.849 §6; 2003 c.75 §5]

183.625 Assignment of administrative law judges; conduct of hearings. (1) In assigning an administrative law judge to conduct hearings on behalf of an agency, the chief administrative law judge shall, whenever practicable, assign an administrative law judge that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to use administrative law judges assigned from the Office of Administrative Hearings to conduct hearings must delegate responsibility for the conduct of the hearing to an administrative law judge assigned from the Office of Administrative Hearings, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize an administrative law judge assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use administrative law judges assigned from the office may contract with the chief administrative law judge for the assignment of an administrative law judge from the office for the purpose of conducting one or more contested cases on behalf of the agency. [1999 c.849 §7; 2003 c.75 §6]

183.630 Model rules of procedure; exemptions; depositions. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief administrative law judge, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) Except as may be expressly granted by the agency to an administrative law judge assigned from the office, or as may be expressly provided for by law, an administrative law judge conducting a hearing for an agency under ORS 183.600 to 183.690 may not authorize a party to take a deposition that is to be paid for by the agency. [1999 c.849 §8; 2003 c.75 §7]

183.635 Agencies required to use administrative law judges from Office of Administrative Hearings; exceptions. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

- (a) Attorney General.
- (b) Boards of stewards appointed by the Oregon Racing Commission.
- (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.
- (d) Department of Corrections.
- (e) Department of Education, State Board of Education and Superintendent of Public Instruction.
- (f) Department of Higher Education and institutions of higher education listed in ORS 352.002.
- (g) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (h) Department of Revenue.

- (i) Department of State Police.
- (j) Employment Appeals Board.
- (k) Employment Relations Board.
- (L) Energy Facility Siting Council.
- (m) Fair Dismissal Appeals Board.
- (n) Governor.
- (o) Land Conservation and Development Commission.
- (p) Land Use Board of Appeals.
- (q) Local government boundary commissions created pursuant to ORS 199.430.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) Public Utility Commission.
- (u) Secretary of State.
- (v) State Accident Insurance Fund Corporation.
- (w) State Apprenticeship and Training Council.
- (x) State Board of Parole and Post-Prison Supervision.
- (y) State Land Board.
- (z) State Treasurer.
- (aa) Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS chapter 59;
- (b) ORS 200.005 to 200.075;
- (c) ORS chapter 455;
- (d) ORS chapter 674;
- (e) ORS chapters 706 to 716;
- (f) ORS chapter 717;
- (g) ORS chapters 722, 723, 725 and 726; and
- (h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470. [1999 c.849 §9; 2001 c.900 §46; 2003 c.75 §8; 2005 c.22 §131; 2005 c.26 §18; 2007 c.239 §9]

Note: The amendments to 183.635 by section 9, chapter 239, Oregon Laws 2007, become operative July 1, 2008. See section 16, chapter 239, Oregon Laws 2007. The text that is operative until July 1, 2008, is set forth for the user's convenience.

183.635 (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

- (a) Attorney General.
- (b) Boards of stewards appointed by the Oregon Racing Commission.
- (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.
- (d) Department of Corrections.
- (e) Department of Education, State Board of Education and Superintendent of Public Instruction.
- (f) Department of Higher Education and institutions of higher education listed in ORS 352.002.
- (g) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (h) Department of Revenue.
- (i) Department of State Police.
- (j) Employment Appeals Board.
- (k) Employment Relations Board.
- (L) Energy Facility Siting Council.
- (m) Fair Dismissal Appeals Board.
- (n) Governor.
- (o) Land Conservation and Development Commission.
- (p) Land Use Board of Appeals.
- (q) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) Public Utility Commission.
- (u) Secretary of State.
- (v) State Accident Insurance Fund Corporation.
- (w) State Apprenticeship and Training Council.
- (x) State Board of Parole and Post-Prison Supervision.
- (y) State Land Board.
- (z) State Treasurer.
- (aa) Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS chapter 59;
- (b) ORS 200.005 to 200.075;
- (c) ORS chapter 455;
- (d) ORS chapter 674;
- (e) ORS chapters 706 to 716;
- (f) ORS chapter 717;
- (g) ORS chapters 722, 723, 725 and 726; and
- (h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

- (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- (b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

183.640 Use of Office of Administrative Hearings by exempt agencies and by political subdivisions. (1) Upon request of an agency, the chief administrative law judge for the Office of Administrative Hearings may assign administrative law judges from the office to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of administrative law judges assigned from the office under ORS 183.635.

(2) The chief administrative law judge may contract with any political subdivision of this state to provide the services of administrative law judges to the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision. [1999 c. 849 §10; 2003 c.75 §9]

183.645 Request for change of administrative law judge; rules. (1) After assignment of an administrative law judge from the Office of Administrative Hearings to conduct a hearing on behalf of an agency, the chief administrative law judge shall assign a different administrative law judge for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief administrative law judge may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of administrative law judge under subsection (1) of this section may be granted by the chief administrative law judge without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to an administrative law judge assigned after a request for a different administrative law judge has been granted under subsection (1) of this section, the chief administrative law judge shall assign a different administrative law judge only upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, a different administrative law judge may not be assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges, except upon a showing of good cause. [1999 c.849 §11; 2001 c.294 §8; 2003 c.75 §10]

183.650 Form of order; modification of form of order by agency; finding of historical fact. (1) In any contested case hearing conducted by an administrative law judge assigned from the Office of Administrative Hearings, the administrative law judge shall prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The administrative law judge shall also prepare and serve a proposed order in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings only if the agency determines that the finding of historical fact made by the administrative law judge is not supported by a preponderance of the evidence in the record. For the purposes of this section, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) If a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding

of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the administrative law judge, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment. [1999 c.849 §12; 2003 c.75 §11]

183.655 Fees. The chief administrative law judge for the Office of Administrative Hearings shall establish a schedule of fees for services rendered by administrative law judges assigned from the office. The fee charged shall be in an amount calculated to recover the cost of providing the administrative law judge, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief administrative law judge under this section shall be paid into the Office of Administrative Hearings Operating Account created under ORS 183.660. [1999 c.849 §13; 2003 c.75 §12]

183.660 Office of Administrative Hearings Operating Account. (1) The Office of Administrative Hearings Operating Account is created within the General Fund. The account shall consist of moneys paid into the account under ORS 183.655. Moneys credited to the account are continuously appropriated to the chief administrative law judge for the Office of Administrative Hearings created under ORS 183.605 for the purpose of paying expenses incurred in the administration of the office.

(2) At the discretion of the chief administrative law judge, petty cash funds may be established and maintained for the purpose of administering the duties of the office. [1999 c.849 §14; 2003 c.75 §13]

183.665 Estimates of office expenses. The chief administrative law judge for the Office of Administrative Hearings shall estimate in advance the expenses that the office will incur during each biennium and shall notify each agency required to use the office's services of the agency's share of the anticipated expenses for periods within the biennium. [1999 c.849 §15; 2003 c.75 §14]

183.670 Rules. Subject to the provisions of the State Personnel Relations Law, the chief administrative law judge for the Office of Administrative Hearings may adopt rules to:

(1) Organize and manage the Office of Administrative Hearings established under ORS 183.605.

(2) Facilitate the performance of the duties of administrative law judges assigned from the office.

(3) Establish qualifications for persons employed as administrative law judges by the office.

(4) Establish standards and procedures for the evaluation and training of administrative law judges employed by the office, consistent with standards and training requirements established under ORS 183.680. [1999 c.849 §16; 2003 c.75 §15]

183.675 Alternative dispute resolution. ORS 183.600 to 183.690 do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of an administrative law judge from the Office of Administrative Hearings. [1999 c.849 §16a; 2003 c.75 §16]

183.680 Standards and training program. (1) The chief administrative law judge for the Office of Administrative Hearings, working in coordination with the Attorney General, shall design and implement a standards and training program for administrative law judges employed by the office and for persons seeking to be employed as administrative law judges by the office. The program shall include:

(a) The establishment of an ethical code for persons employed as administrative law judges by the office.

(b) Training for administrative law judges employed by the office that is designed to assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.

(2) The program established by the chief administrative law judge under this section may include:

(a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief administrative law judge for administrative law judges employed by the office.

(b) The certification of courses offered by other persons for the purpose of any training required by the chief administrative law judge for administrative law judges employed by the office.

(c) The provision of specialized training for administrative law judges in subject matter areas affecting particular agencies required to use administrative law judges assigned from the office.

(3) The chief administrative law judge is bound by the ethical code established under this section and must satisfactorily complete training required of administrative law judges employed by the office other than specialized training in subject matter areas

affecting particular agencies. [1999 c.849 §19; 2003 c.75 §17]

183.685 Ex parte communications. (1)

An administrative law judge assigned from the Office of Administrative Hearings who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A copy of any written response to the communication made by the administrative law judge;

(d) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, an administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to an administrative law judge while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to an administrative law judge, or to any agent of an administrative law judge, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of the agency that is using the administrative law judge to conduct the hearing.

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

(a) Communications made to an administrative law judge by other administrative law judges;

(b) Communications made to an administrative law judge by any person employed by the office to assist the administrative law judge; or

(c) Communications made to an administrative law judge by an assistant attorney general if the communications are made in response to a request from the administrative law judge and the assistant attorney general is not advising the agency that is conducting the hearing. [1999 c.849 §20; 2003 c.75 §18]

183.690 Office of Administrative Hearings Oversight Committee. (1) The Office of Administrative Hearings Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief administrative law judge for the Office of Administrative Hearings employed under ORS 183.610 shall serve as an ex officio member of the committee. The chief administrative law judge may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position

shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study the operations of the Office of Administrative Hearings;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Office of Administrative Hearings;

(c) Make any recommendations for additional legislation governing the operations of the Office of Administrative Hearings; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose. [1999 c.849 §21; 2003 c.75 §19; 2005 c.22 §132]

PERMITS AND LICENSES

183.700 Permits subject to ORS 183.702. (1) As used in this section and ORS 183.702, "permit" means an individual and particularized license, permit, certificate, approval, registration or similar form of permission required by law to pursue any activity specified in this section, for which an agency must weigh information, make specific findings and make determinations on a case-by-case basis for each applicant.

(2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

(a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790, 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035, 468B.040, 468B.045, 468B.050 and 468B.095.

(b) The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.

(c) The Water Resources Department under ORS chapters 537 and 540, except those permits issued under ORS 537.747 to 537.765.

(d) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

(e) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140.

(f) The Department of Transportation pursuant to ORS 374.312. [Formerly 183.560]

Note: 183.700 and 183.702 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.702 Statement of criteria and procedures for evaluating permit application; documentation of decision on application; required signature. (1) At the time a person applies for a permit specified in ORS 183.700, the issuing agency shall offer a document to that applicant that specifies the criteria and procedures for evaluating a permit application.

(2) The agencies specified in ORS 183.700 must document in writing the basis for all decisions to deny a permit specified in ORS 183.700, including citation to the criteria applied by the agency and the manner in which agency standards were utilized in applying the criteria. The documentation required under this section shall be made part of the record for the decision on the permit application.

(3) At least one officer or employee of the issuing agency who has authority to sign orders on behalf of the agency, or the officer or employee responsible for the decision to deny a permit specified in ORS 183.700, shall sign the documentation required under subsection (2) of this section.

(4) The issuing agency shall provide to the applicant a copy of the documentation required under subsection (2) of this section. [Formerly 183.562]

Note: See note under 183.700.

183.705 Extended term for renewed licenses; fees; continuing education; rules. (1) Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on an annual basis under the laws administered by the agency also may offer those licenses with terms of two, three, four or five years. Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on a biennial basis under the laws administered by the agency also may offer those licenses with

terms of three, four or five years. Extended terms may be offered only for renewed licenses and may not be offered for initial applications for licenses.

(2) An agency may offer an extended term under this section for a license issued by the agency only after adopting a rule authorizing the extended term. An agency may adopt a rule authorizing an extended term only if the agency finds that the extended term is consistent with public safety and with the objectives of the licensing requirement. An agency by rule may prohibit extended terms based on prior license discipline of an applicant.

(3) An applicant must meet all qualifications established by the agency to be granted an extended term.

(4) An agency may not offer an extended term under this section if:

(a) Another agency or a local government, as defined by ORS 174.116, is authorized by statute to make a recommendation on the issuance of the license;

(b) The agency or the local government, as defined by ORS 174.116, that has authority to make a recommendation on the issuance of the license has recommended against the issuance of the license; and

(c) The recommendation of the agency or the local government, as defined by ORS 174.116, is based on licensing criteria established by statute or by rule.

(5) An extended term granted under this section may be revoked by an agency if the agency determines that the licensee is subject to discipline under the licensing criteria applicable to the licensee. An agency offering extended terms under this section by rule may establish other grounds for revoking an extended term under this section.

(6) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase the annual or biennial license fee established by statute by a percentage no greater than necessary to ensure that there is no revenue loss by reason of the extended term.

(7) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase any annual or biennial continuing education requirement established by statute as necessary to ensure that there is no reduction in the continuing education requirement for licensees by reason of the extended term. [2005 c.76 §2; 2007 c.768 §1]

LEGISLATIVE REVIEW OF RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) “Committee” means the Legislative Counsel Committee.

(2) “Rule” has the meaning given in ORS 183.310.

(3) “State agency” has the meaning given to “agency” in ORS 183.310. [Formerly 171.705]

Note: 183.710 to 183.725 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.715 Submission of adopted rule to Legislative Counsel required; exception.

(1) A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1). The copy of an amended rule that is submitted to the Legislative Counsel must show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating published standards or a specialty code by reference is not required to file a copy of those standards with the Legislative Counsel if:

(a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce; and

(b) The rule filed with the Legislative Counsel identifies the location of the standards or a specialty code so incorporated and makes them available to the Legislative Counsel on the request of the Legislative Counsel. [Formerly 171.707; 1991 c.94 §1; 1999 c.167 §1; 2005 c.18 §2]

Note: See note under 183.710.

183.720 Procedure for review of agency rule; reports on rules claimed to be duplicative or conflicting.

(1) The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the committee, and if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. If the Legislative Counsel determines that a rule is not within the intent and scope of the enabling legislation purporting to authorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the Legislative Counsel shall also send a copy of the determination to the state agency. The Legislative Counsel may request that the state agency respond in writing to the determinations or appear at the meeting of the committee at which the committee will consider the determinations. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7) A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule adopted by a federal agency. Upon receipt of the written request, the Legislative Counsel shall prepare a report to the committee that contains:

(a) A copy of the request, including copies of the two rules that the requester asserts are conflicting or duplicative; and

(b) Legislative Counsel's analysis of the requirements of the two rules.

(8) Upon receipt of a report under subsection (7) of this section, the committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned and to the person requesting the review. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709; 1993 c.729 §7; 1997 c.602 §4; 2001 c.156 §1]

Note: See note under 183.710.

183.722 Required agency response to Legislative Counsel determination. (1) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided a copy of that determination to the state agency pursuant to 183.720 (6), the state agency shall either make a written response to the determination or appear at the meeting of the Legislative Counsel Committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel Committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the state agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the state agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services, the state

agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the agency to the determinations. [1997 c.602 §7; 1999 c.31 §2]

Note: See note under 183.710.

183.725 Report of Legislative Counsel Committee to agencies and Legislative Assembly. (1) The Legislative Counsel Committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the agency.

(2) The committee shall report to the Legislative Assembly at each regular session on its review of state agency rules. [Formerly 171.713; 1993 c.729 §8; 1997 c.602 §5; 1999 c.31 §1]

Note: See note under 183.710.

CIVIL PENALTIES

183.745 Civil penalty procedures; notice; hearing; judicial review; exemptions; recording; enforcement. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. The agency may by rule provide for a longer period of time in which application for a hearing may be made. If no application for a hearing is made within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) This section does not apply to penalties:

(a) Imposed under the tax laws of this state;

(b) Imposed under the provisions of ORS 646.760 or 652.332;

(c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or

(d) Imposed by the Public Utility Commission.

(8) This section creates no new authority in any agency to impose civil penalties.

(9) This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

(10) The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

(11) Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

(12) In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(13) As used in this section:

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

(b) "Civil penalty" includes only those monetary penalties that are specifically denominated as civil penalties by statute. [Formerly 183.090]

Note: 183.745 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

READABILITY OF PUBLIC WRITINGS

183.750 State agency required to prepare public writings in readable form. (1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EXECUTIVE BRANCH; ORGANIZATION

Chapter 192

2007 EDITION

Records; Public Reports and Meetings

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PUBLIC RECORDS POLICY

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of statewide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or non-current, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon in order to assure the retention of records essential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds, and in order to assure the prompt destruction of records without continuing value. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State. [1973 c.439 §1; 1991 c.671 §3]

ARCHIVING OF PUBLIC RECORDS

192.005 Definitions for ORS 192.005 to 192.170. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of

public business, whether or not confidential or restricted in use. "Public record" does not include:

(a) Records of the Legislative Assembly, its committees, officers and employees.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Records or information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905.

(d) Extra copies of a document, preserved only for convenience of reference.

(e) A stock of publications.

(f) Messages on voice mail or on other telephone message storage and retrieval systems.

(6) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employees. [1961 c.160 §2; 1965 c.302 §1; 1983 c.620 §11; 1989 c.16 §1; 1999 c.55 §1; 1999 c.140 §1]

192.010 [Repealed by 1973 c.794 §34]

192.015 Secretary of State as public records administrator. The Secretary of State is the public records administrator of this state, and it is the responsibility of the secretary to obtain and maintain uniformity in the application, operation and interpretation of the public records laws. [1973 c.439 §2]

192.020 [Repealed by 1973 c.794 §34]

192.030 [Amended by 1961 c.160 §4; repealed by 1973 c.794 §34]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate. [Amended by 1961 c.160 §5]

192.050 Copying records; evidentiary effect. A state agency or political subdivision may, with the approval of the proper budgetary authority, cause any public records in its official custody to be photocopied or captured by digital imaging system as in the case of original filings or recordings or recorded by means of analog or digital audio and video tape technology. Each photocopy, digital image and analog or digital audio and video tape shall be made in accordance with

the appropriate standard as determined by the State Archivist. Every such reproduction shall be deemed an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed a transcript, exemplification or certified copy, as the case may be, of the original. [Amended by 1961 c.160 §6; 1991 c.671 §4]

192.060 Indexing and filing copied records. All photocopies, digital images and analog or digital audio and video tapes made under ORS 192.040 and 192.050 shall be properly indexed and placed in conveniently accessible files. Each roll of microfilm shall be deemed a book or volume and shall be designated and numbered and provision shall be made for preserving, examining and using the same. [Amended by 1961 c.160 §7; 1991 c.671 §5]

192.070 Duplicate rolls of microfilm required; delivery to State Archivist. A duplicate of every roll of microfilm of documents recorded pursuant to law and the indexes therefor shall be made and kept safely. The State Archivist upon request may, pursuant to ORS 357.865, accept for safekeeping the duplicate microfilm. [Amended by 1961 c.160 §8]

192.072 State Archivist performing microfilm services for public body. Upon the request of a public body as defined by ORS 174.109, the State Archivist may perform microfilm services for the public body. The public body shall pay the cost of rendering the microfilm services to the State Archivist. The State Archivist shall deposit moneys received under this section with the State Treasurer, who shall give a receipt for the moneys. All moneys deposited under this section are continuously appropriated for the payment of expenses incurred by the Secretary of State in the administration of the office of the State Archivist. [1955 c.87 §1; 1961 c.172 §3; 1973 c.439 §8; 2003 c.803 §3]

192.074 [1955 c.87 §2; repealed by 1961 c.172 §7]

192.076 [1955 c.87 §3; repealed by 1961 c.172 §7]

192.080 [Amended by 1961 c.160 §9; repealed by 1971 c.508 §4]

192.090 [Repealed by 1961 c.160 §24]

192.100 [Repealed by 1961 c.160 §24]

192.105 State Archivist authorization for state officials to dispose of records; legislative records excepted; local government policy on disposing of public records; limitations; records officer; standards for State Records Center. (1) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision specific or continuing authorization for the retention or disposition of public records that are in their custody, after the records have been in existence for a specified period of

time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative or research purposes and shall establish rules for procedure for the retention or disposition of the public records.

(2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410. [1953 c.244 §1; 1961 c.160 §10; subsection (3) enacted as 1961 c.150 §5; 1971 c.508 §1; 1977 c.146 §1; 1991 c.671 §6; 1993 c.660 §1; 1999 c.59 §43; 2003 c.255 §1; 2003 c.803 §10]

192.110 [Amended by 1961 c.160 §11; repealed by 1971 c.508 §4]

192.120 [Repealed by 1971 c.508 §4]

192.130 Disposition of valueless records in custody of State Archivist; notice prior to disposition. If the State Archivist determines that any public records of a state agency or political subdivision in the official custody of the State Archivist prove to have insufficient administrative, legal or research value to warrant permanent preservation, the State Archivist shall submit a statement or summary thereof to the records officer of the state agency or political subdivision, or successor agency or body, certifying the type and nature thereof and giving prior notification of the destruction. [Amended by 1961 c.160 §12; 1971 c.508 §2; 1991 c.671 §7]

192.140 [Amended by 1961 c.160 §13; repealed by 1977 c.146 §2]

192.150 [Amended by 1961 c.160 §14; repealed by 1977 c.146 §2]

192.160 [Amended by 1961 c.160 §15; repealed by 1977 c.146 §2]

192.170 Disposition of materials without authorization. The destruction or other disposal of the following materials do not require specific authorization:

(1) Inquiries and requests from the public and answers thereto not required by law to be preserved or not required as evidence of a public or private legal right or liability.

(2) Public records which are duplicates by reason of their having been photocopied.

(3) Letters of transmittal and acknowledgment, advertising, announcements and correspondence or notes pertaining to reservations of accommodations or scheduling of personal visits or appearances. [Amended by 1961 c.160 §16; 1971 c.508 §3]

192.190 Consular corps credentials as public records; duties of Secretary of State; fees. (1) Subject to such rules as the Secretary of State may adopt, the secretary may accept and file as a public record the credentials of a member of the consular corps if that member's jurisdiction includes the State of Oregon.

(2) The Secretary of State may certify as to the official character and the genuineness of the signature of a member of the consular corps whose credentials have been accepted and filed under subsection (1) of this section.

(3) Fees for the filing of credentials and the issuance of certificates under this section shall be established by the Secretary of State pursuant to ORS 177.130. [1983 c.232 §1]

PUBLIC REPORTS (Standardized Form)

192.210 Definitions for ORS 192.210 and 192.220. As used in ORS 192.210 and 192.220, unless the context requires otherwise:

(1) "Issuing agency" means:

(a) Every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid from public funds and includes the Legislative Assembly, the officers and committees thereof, and the courts and the officers and committees thereof; or

(b) Any county, special district, school district or public or quasi-public corporation.

(2) "Printing" includes any form of reproducing written material.

(3) "Report" means any report or other publication of an issuing agency that is required by law to be submitted to the public or to a receiving agency.

(4) "Receiving agency" means any state officer or state board, commission, department, institution or agency or branch of government that is required by law to receive any report from an issuing agency. If the branch of government is the Legislative Assembly, the receiving agency is the Legislative Administration Committee and if the branch is the judicial branch, the receiving agency is the Supreme Court. [1969 c.456 §1; 1971 c.638 §11]

192.220 Standardized report forms; exemptions. (1) Except where form and frequency of reports are specified by law, every receiving agency shall prescribe by rule standardized forms for all reports and shall fix the frequency with which reports shall be submitted.

(2) Receiving agencies in the executive or administrative branch of government shall consult with the Oregon Department of Administrative Services in preparing rules under this section.

(3) With the consent of the Governor, a receiving agency in the executive or administrative branch may exempt any issuing agency from the requirements imposed under subsection (1) of this section. The Legislative Administration Committee may exempt any issuing agency from such requirements for any report required to be submitted to the Legislative Assembly. The Supreme Court may exempt any issuing agency from such requirements for any report required to be submitted to the courts. [1969 c.456 §2; 1971 c.638 §12]

(Policy; Compliance)

192.230 Definitions for ORS 192.235 to 192.245. As used in ORS 192.235 to 192.245:

(1) "Report" means informational matter that is published as an individual document at state expense or as required by law. "Report" does not include documents prepared

strictly for agency administrative or operational purposes.

(2) "State agency" has the meaning given that term in ORS 192.410. [1991 c.842 §1; 2001 c.153 §1]

Note: 192.230 to 192.250 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.235 Policy for ORS 192.230 to 192.250. (1) The Legislative Assembly finds that:

(a) Many state agency reports are published for reasons that are historical and no longer based on the public's need to be informed.

(b) The format of many state agency reports is not economical or well suited to providing needed information in easily understandable form.

(c) State agency reports containing information that is useful but not to the general public should be placed on a self-supporting schedule.

(2) It is the policy of the Legislative Assembly to encourage state agencies to inform the public, the Legislative Assembly and the Governor of matters of public interest and concern. It is further the policy of this state to guarantee to its citizens the right to know about the activities of their government, to benefit from the information developed by state agencies at public expense and to enjoy equal access to the information services of state agencies. It is further state policy to encourage agencies to consider whether needed information is most effectively and economically presented by means of printed reports. [1991 c.842 §2]

Note: See note under 192.230.

192.240 Duties of state agency issuing report. To comply with the state policy relating to reports outlined in ORS 192.235, a state agency shall do the following:

(1) Use electronic communications whenever the agency determines that such use reduces cost and still provides public access to information.

(2) Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and use recycled paper, as defined in ORS 279A.010 and rules adopted pursuant thereto.

(3) Insure that public documents are furnished to the State Librarian, as required in ORS 357.090. [1991 c.842 §3; 1995 c.69 §10; 2003 c.794 §212]

Note: See note under 192.230.

192.243 Availability of report on Internet; rules. (1) In accordance with rules adopted by the Oregon Department of Administrative Services and to reduce the amount of paper used by state agencies, by June 30, 2005, each state agency shall make available on the Internet any report that the state agency is required by law to publish. If a statute or rule requires a state agency to issue a printed report, that requirement is satisfied if the state agency makes the report available on the Internet. A state agency may issue printed copies of a report upon request.

(2) The Oregon Department of Administrative Services shall adopt rules in accordance with subsection (1) of this section requiring each state agency to make available on the Internet any report that the state agency is required by law to publish.

(3) This section may not be construed to require the disclosure of a public record that is exempt from disclosure under ORS 192.410 to 192.505 or other law. [2001 c.153 §3]

Note: See note under 192.230.

192.245 Form of report to legislature. Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly and one copy of the report to the office of the Speaker of the House of Representatives, one copy to the office of the President of the Senate and five copies to the Legislative Administration Committee. This requirement does not preclude providing a copy of any report to a specific legislative committee if required by law. [1991 c.842 §4]

Note: See note under 192.230.

192.250 Director of Oregon Department of Administrative Services to report to legislature on ORS 192.230 to 192.250. The Director of the Oregon Department of Administrative Services shall report to the Legislative Assembly by appearing at least once during each biennium before the appropriate interim committees designated by the Speaker of the House of Representatives and the President of the Senate. The director shall testify as to the effectiveness of ORS 192.230 to 192.250 and 292.956, including any cost savings realized or projected and any recommendations for further legislative action. [1991 c.842 §5; 2003 c.803 §4]

Note: See note under 192.230.

(Distribution)

192.270 Definitions for ORS 192.270 and 192.275. As used in ORS 192.270 and 192.275:

(1) "Public" does not include any state officer or board, commission, committee, department, institution, branch or agency of state government to which a report is specifically required by law to be submitted but does include any such to which a copy is sent for general informational purposes or as a courtesy.

(2) "Report" means informational matter published as a report or other document by a state agency but does not include an order as defined in ORS 183.310.

(3) "State agency" means any state officer or board, commission, department, institution or agency of the executive, administrative or legislative branches of state government. [1993 c.181 §1]

Note: 192.270 and 192.275 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.275 Notice when report required; content; effect. Notwithstanding ORS 192.230 to 192.245, if any state or federal law requires a state agency to send, mail or submit a report to the public, the state agency may meet this requirement by mailing notice of the report to the public. The notice shall state that if the recipient returns an attached or enclosed postcard to the state agency, the state agency will supply a copy of the report. The postcard may contain a checkoff to indicate whether the person wants to continue receiving a copy of complete reports. [1993 c.181 §2]

Note: See note under 192.270.

RECORDS AND REPORTS IN ENGLISH

192.310 Records and reports required by law to be in English. (1) With the exception of physicians' prescriptions, all records, reports and proceedings required to be kept by law shall be in the English language or in a machine language capable of being converted to the English language by a data processing device or computer.

(2) Violation of this section is a Class C misdemeanor. [1971 c.743 §294]

INSPECTION OF PUBLIC RECORDS

192.410 Definitions for ORS 192.410 to 192.505. As used in ORS 192.410 to 192.505:

(1) "Custodian" means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another

public body that is the custodian unless the public record is not otherwise available.

(2) "Person" includes any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.

(3) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(4)(a) "Public record" includes any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(b) "Public record" does not include any writing that does not relate to the conduct of the public's business and that is contained on a privately owned computer.

(5) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

(6) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. [1973 c.794 §2; 1989 c.377 §1; 1993 c.787 §4; 2001 c.237 §1; 2005 c.659 §4]

192.420 Right to inspect public records; notice to public body attorney. (1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.

(2)(a) If a person who is a party to a civil judicial proceeding to which a public body is a party, or who has filed a notice under ORS 30.275 (5)(a), asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the attorney for the public body.

(b) For purposes of this subsection:

(A) The attorney for a state agency is the Attorney General in Salem.

(B) "Person" includes a representative or agent of the person. [1973 c.794 §3; 1999 c.574 §1; 2003 c.403 §1]

192.423 Condensation of public record subject to disclosure; petition to review denial of right to inspect public record; adequacy of condensation. (1) When a public record is subject to disclosure under ORS 192.502 (9)(b), in lieu of making the public record available for inspection by providing a copy of the record, the public body may prepare and release a condensation from the record of the significant facts that are not otherwise exempt from disclosure under ORS 192.410 to 192.505. The release of the condensation does not waive any privilege under ORS 40.225 to 40.295.

(2) The person seeking to inspect or receive a copy of any public record for which a condensation of facts has been provided under this section may petition for review of the denial to inspect or receive a copy of the records under ORS 192.410 to 192.505. In such a review, the Attorney General, district attorney or court shall, in addition to reviewing the records to which access was denied, compare those records to the condensation to determine whether the condensation adequately describes the significant facts contained in the records. [2007 c.513 §2]

Note: Section 6, chapter 513, Oregon Laws 2007, provides:

Sec. 6. Section 2 of this 2007 Act [192.423] and the amendments to ORS 40.225, 192.460 and 192.502 by sections 3 to 5 of this 2007 Act apply to public records created on or after the effective date of this 2007 Act [June 20, 2007]. [2007 c.513 §6]

Note: 192.423 was added to and made a part of 192.410 to 192.505 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.430 Functions of custodian of public records; rules. (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access.

(2) The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. [1973 c.794 §4; 1989 c.546 §1]

192.440 Copies or inspection of public records; written response by public body; fees; waiver or reduction; procedure for records requests. (1) The custodian of any

public record that a person has a right to inspect shall give the person, upon request:

(a) A copy of the public record if the public record is of a nature permitting copying; or

(b) A reasonable opportunity to inspect or copy the public record.

(2) If a person makes a written request to inspect a public record or to receive a copy of a public record, the public body receiving the request shall respond as soon as practicable and without unreasonable delay. The public body may request additional information or clarification from the requester for the purpose of expediting the public body's response to the request. The response of the public body must acknowledge receipt of the request and must include one of the following:

(a) A statement that the public body does not possess, or is not the custodian of, the public record.

(b) Copies of all requested public records for which the public body does not claim an exemption from disclosure under ORS 192.410 to 192.505.

(c) A statement that the public body is the custodian of at least some of the requested public records, an estimate of the time the public body requires before the public records may be inspected or copies of the records will be provided and an estimate of the fees that the requester must pay under subsection (4) of this section as a condition of receiving the public records.

(d) A statement that the public body is the custodian of at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided by the public body within a reasonable time.

(e) A statement that the public body is uncertain whether the public body possesses the public record and that the public body will search for the record and make an appropriate response as soon as practicable.

(f) A statement that state or federal law prohibits the public body from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction. A statement under this paragraph must include a citation to the state or federal law relied upon by the public body.

(3) If the public record is maintained in a machine readable or electronic form, the custodian shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the custodian shall make the pub-

lic record available in the form in which the custodian maintains the public record.

(4)(a) The public body may establish fees reasonably calculated to reimburse the public body for the public body's actual cost of making public records available, including costs for summarizing, compiling or tailoring the public records, either in organization or media, to meet the person's request.

(b) The public body may include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records. The public body may not include in a fee established under paragraph (a) of this subsection the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.410 to 192.505.

(c) The public body may not establish a fee greater than \$25 under this section unless the public body first provides the requestor with a written notification of the estimated amount of the fee and the requestor confirms that the requestor wants the public body to proceed with making the public record available.

(d) Notwithstanding paragraphs (a) to (c) of this subsection, when the public records are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of the public records are those established by the Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

(5) The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(6) A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

(7) A public body shall make available to the public a written procedure for making public record requests that includes:

(a) The name of one or more persons to whom public record requests may be sent, with addresses; and

(b) The amounts of and the manner of calculating fees that the public body charges for responding to requests for public records.

(8) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973. [1973 c.794 §5; 1979 c.548 §4; 1989 c.111 §12; 1989 c.377 §2; 1989 c.546 §2; 1999 c.824 §5; 2001 c.445 §168; 2005 c.272 §1; 2007 c.467 §1]

192.445 Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable. (1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. A public body may not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address, telephone number or electronic mail address of the individual would constitute a danger to personal safety. The evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address, personal telephone number or electronic mail address of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section remains effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must update the individual's voter registration, at which time the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address, personal telephone number or electronic mail address of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body may not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address, personal telephone number or electronic mail address granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [1993 c.787 §5; 1995 c.742 §12; 2003 c.807 §1]

Note: 192.445 was added to and made a part of 192.410 to 192.505 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.447 Nondisclosure of public employee identification badge or card. (1) As used in this section, "public body" has the meaning given that term in ORS 174.109.

(2) A public body may not disclose the identification badge or card of an employee of the public body without the written consent of the employee if:

(a) The badge or card contains the photograph of the employee; and

(b) The badge or card was prepared solely for internal use by the public body to identify employees of the public body.

(3) The public body may not disclose a duplicate of the photograph used on the badge or card. [2003 c.282 §1]

Note: 192.447 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection; records of health professional regulatory boards. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from pub-

lic inspection. Except as provided in subsection (5) of this section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of this section, the Attorney General shall issue an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if the Attorney General grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as provided in subsection (6) of this section, in the circuit court of the county where the record is held. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by the Attorney General that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with the order of the Attorney General requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

(4) A person denied the right to inspect or to receive a copy of any public record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, and petitioning the Attorney General to review the public record shall, on or before the date of filing the petition with the Attorney General, send a copy of the petition by first class mail to the health professional regulatory board. Not more than 48 hours after the board receives a copy of the petition, the board shall send a copy of the petition by first class mail to the licensee or applicant

who is the subject of any record for which disclosure is sought. When sending a copy of the petition to the licensee or applicant, the board shall include a notice informing the licensee or applicant that a written response by the licensee or applicant may be filed with the Attorney General not later than seven days after the date that the notice was sent by the board. Immediately upon receipt of any written response from the licensee or applicant, the Attorney General shall send a copy of the response to the petitioner by first class mail.

(5) The person seeking disclosure of a public record of a health professional regulatory board, as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. The Attorney General shall issue an order denying or granting the petition, or denying or granting it in part, not later than the 15th day following the day that the Attorney General receives the petition. A copy of the Attorney General's order granting a petition or part of a petition shall be served by first class mail on the health professional regulatory board, the petitioner and the licensee or applicant who is the subject of any record ordered to be disclosed. The health professional regulatory board shall not disclose any record prior to the seventh day following the service of the Attorney General's order on a licensee or applicant entitled to receive notice under this subsection.

(6) If the Attorney General grants or denies the petition for a record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, the board, a person denied the right to inspect or receive a copy of the record or the licensee or applicant who is the subject of the record may institute proceedings for injunctive or declaratory relief in the circuit court for the county where the public record is held. The party seeking disclosure of the record shall have the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(7) The Attorney General may comply with a request of a health professional regulatory board to be represented by independent counsel in any proceeding under subsection (6) of this section. [1973 c.794 §6; 1975 c.308 §2; 1997 c.791 §8; 1999 c.751 §4]

192.460 Procedure to review denial of right to inspect other public records; effect of disclosure. (1) ORS 192.450 applies to the case of a person denied the right to inspect or to receive a copy of any public record of a public body other than a state agency, except that:

(a) The district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General;

(b) Any suit filed must be filed in the circuit court for the county described in paragraph (a) of this subsection; and

(c) The district attorney may not serve as counsel for the public body, in the cases permitted under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for the public body.

(2) Disclosure of a record to the district attorney in compliance with subsection (1) of this section does not waive any privilege or claim of privilege regarding the record or its contents.

(3) Disclosure of a record or part of a record as ordered by the district attorney is a compelled disclosure for purposes of ORS 40.285. [1973 c.794 §7; 2007 c.513 §4]

Note: See first note under 192.423.

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460. [1975 c.308 §5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting the Attorney General or district attorney to order a public record to be made available for inspection or to be produced shall be in

substantially the following form, or in a form containing the same information:

_____ (date)

I (we), _____ (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____ (name of governmental body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)
2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address). The request was denied by the following person(s):

1. _____
(Name of public officer or employee;
title or position, if known)
2. _____
(Name of public officer or employee;
title or position, if known)

(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General. [1973 c.794 §10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to with-

hold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed. [1973 c.794 §8]

192.490 Court authority in reviewing action denying right to inspect public records; docketing; costs and attorney fees.

(1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450, 192.460, 192.470 or 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial and on appeal. If the person prevails in part, the court may in its discretion award the person costs and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein. [1973 c.794 §9; 1975 c.308 §3; 1981 c.897 §40]

192.493 Health services costs. A record of an agency of the executive department as defined in ORS 174.112 that contains the following information is a public record subject to inspection under ORS 192.420 and is not exempt from disclosure under ORS 192.501 or 192.502 except to the extent that the record discloses information about an individual's health or is proprietary to a person:

(1) The amounts determined by an independent actuary retained by the agency to cover the costs of providing each of the following health services under ORS 414.705 to 414.750 for the six months preceding the report:

- (a) Inpatient hospital services;
- (b) Outpatient hospital services;
- (c) Laboratory and X-ray services;
- (d) Physician and other licensed practitioner services;
- (e) Prescription drugs;
- (f) Dental services;
- (g) Vision services;
- (h) Mental health services;
- (i) Chemical dependency services;
- (j) Durable medical equipment and supplies; and
- (k) Other health services provided under a prepaid managed care health services contract under ORS 414.725;

(2) The amounts the agency and each contractor have paid under each prepaid managed care health services contract under ORS 414.725 for administrative costs and the provision of each of the health services described in subsection (1) of this section for the six months preceding the report;

(3) Any adjustments made to the amounts reported under this section to account for geographic or other differences in providing the health services; and

(4) The numbers of individuals served under each prepaid managed care health services contract, listed by category of individual. [2003 c.803 §27]

Note: 192.493 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.495 Inspection of records more than 25 years old. Notwithstanding ORS 192.501 to 192.505 and except as otherwise provided in ORS 192.496, public records that are more than 25 years old shall be available for inspection. [1979 c.301 §2]

192.496 Medical records; sealed records; records of individual in custody or under supervision; student records. The

following public records are exempt from disclosure:

(1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

(2) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

(3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

(4) Student records required by state or federal law to be exempt from disclosure. [1979 c.301 §3]

192.500 [1973 c.794 §11; 1975 c.308 §1; 1975 c.582 §150; 1975 c.606 §41a; 1977 c.107 §1; 1977 c.587 §1; 1977 c.793 §5a; 1979 c.190 §400; 1981 c.107 §1; 1981 c.139 §8; 1981 c.187 §1; 1981 c.892 §92; 1981 c.905 §7; 1983 c.17 §29; 1983 c.198 §1; 1983 c.338 §902; 1983 c.617 §3; 1983 c.620 §12; 1983 c.703 §8; 1983 c.709 §42; 1983 c.717 §30; 1983 c.740 §46; 1983 c.830 §9; 1985 c.413 §1; 1985 c.602 §13; 1985 c.657 §1; 1985 c.762 §179a; 1985 c.813 §1; 1987 c.94 §100; 1987 c.109 §3; 1987 c.320 §145; 1987 c.373 §23; 1987 c.520 §12; 1987 c.610 §24; 1987 c.731 §2; 1987 c.839 §1; 1987 c.898 §26; repealed by 1987 c.764 §1 (192.501, 192.502 and 192.505 enacted in lieu of 192.500)]

192.501 Public records conditionally exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law

to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the

functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests;

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property;

(b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or

(c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body;

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the

information is related to the family of the person, personal assets of the person or is incidental information not related to the donation;

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System;

(26) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;

(27) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number;

(28) Social Security numbers as provided in ORS 107.840;

(29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University;

(30) The name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents. This subsection does not apply to Oregon Health and Science University press releases, websites or other publications circulated to the general public;

(31) If requested by a public safety officer as defined in ORS 181.610, by a district attorney or deputy district attorney or by an assistant attorney general designated by the Attorney General, the home address and home telephone number of the public safety officer or attorney contained in the voter registration records for the public safety officer or attorney;

(32) If requested by a public safety officer as defined in ORS 181.610, by a district attorney or deputy district attorney or by an assistant attorney general designated by the Attorney General, the name of the public safety officer or attorney contained in county real property assessment or taxation records. This exemption:

(a) Applies only to the name of the public safety officer or attorney and any other owner of the property in connection with a specific property identified by the officer or attorney in a request for exemption from disclosure;

(b) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(c) Applies until the public safety officer or attorney requests termination of the exemption;

(d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(e) May not result in liability for a county if the name of a public safety officer or attorney is disclosed after a request for exemption from disclosure is made under this subsection; and

(33) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423. [1987 c.373 §§23c,23d; 1987 c.764 §2 (enacted in lieu of 192.500); 1989 c.70 §1; 1989 c.171 §26; 1989 c.967 §§11,13; 1989 c.1083 §10; 1991 c.636 §§1,2; 1991 c.678 §§1,2; 1993 c.616 §§4,5; 1993 c.787 §§1,2; 1995 c.604 §§2,3; 1999 c.155 §3; 1999 c.169 §§1,2; 1999 c.234 §§1,2; 1999 c.291 §§21,22; 1999 c.380 §§1,2; 1999 c.1093 §§3,4; 2001 c.104 §66; 2001 c.621 §85; 2001 c.915 §1; 2003 c.217 §1; 2003 c.380 §2; 2003 c.524 §1; 2003 c.604 §98; 2003 c.674 §26; 2003 c.803 §12; 2003 c.807 §§2,3; 2005 c.203 §§1,2; 2005 c.232 §§33,34; 2005 c.455 §1; 2007 c.608 §6; 2007 c.687 §1]

Note: The amendments to 192.501 by section 3, chapter 455, Oregon Laws 2005, become operative January 2, 2010. See section 4, chapter 455, Oregon Laws 2005. The text that is operative on and after January 2, 2010, including amendments by section 7, chapter 608, Oregon Laws 2007, and section 2, chapter 687, Oregon Laws 2007, is set forth for the user's convenience.

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this

subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests;

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property;

(b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or

(c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body;

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);

(24) Personal information held by or under the direction of officials of the Oregon Health and Science University or the Oregon University System about a person who has or who is interested in donating money or property to the university, the system or a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation;

(25) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System;

(26) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;

(27) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number;

(28) Social Security numbers as provided in ORS 107.840;

(29) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University;

(30) If requested by a public safety officer as defined in ORS 181.610, by a district attorney or deputy district attorney or by an assistant attorney general designated by the Attorney General, the home address and home telephone number of the public safety officer or attorney contained in the voter registration records for the public safety officer or attorney;

(31) If requested by a public safety officer as defined in ORS 181.610, by a district attorney or deputy district attorney or by an assistant attorney general designated by the Attorney General, the name of the public safety officer or attorney contained in county real property assessment or taxation records. This exemption:

(a) Applies only to the name of the public safety officer or attorney and any other owner of the property in connection with a specific property identified by the

officer or attorney in a request for exemption from disclosure;

(b) Applies only to records that may be made immediately available to the public upon request in person, by telephone or using the Internet;

(c) Applies until the public safety officer or attorney requests termination of the exemption;

(d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for governmental purposes; and

(e) May not result in liability for a county if the name of a public safety officer or attorney is disclosed after a request for exemption from disclosure is made under this subsection; and

(32) Land management plans required for voluntary stewardship agreements entered into under ORS 541.423.

192.502 Other public records exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9)(a) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information compiled in a public record when:

(A) The basis for the claim of exemption is ORS 40.225;

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

(C) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the agents of the treasurer or the council relating to active or proposed publicly traded investments under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or liquidation of the investments. For the purposes of this subsection:

(a) The exemption does not apply to:

(A) Information in investment records solely related to the amount paid directly into an investment by, or returned from the investment directly to, the treasurer or council; or

(B) The identity of the entity to which the amount was paid directly or from which the amount was received directly.

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset including but not limited to records regarding the solicitation, acquisition, deployment, exchange or liquidation of the investments including but not limited to:

(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership or to their respective investment vehicles.

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

(C) Meeting materials of an investment fund, an asset ownership or their respective investment vehicles.

(D) Records containing information regarding the portfolio positions in which an investment fund, an asset ownership or their respective investment vehicles invest.

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

(b) The exemption under this subsection does not apply to:

(A) The name, address and vintage year of each privately placed investment fund.

(B) The dollar amount of the commitment made to each privately placed investment fund since inception of the fund.

(C) The dollar amount of cash contributions made to each privately placed investment fund since inception of the fund.

(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board from each privately placed investment fund.

(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

(F) The net internal rate of return of each privately placed investment fund since inception of the fund.

(G) The investment multiple of each privately placed investment fund since inception of the fund.

(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis to each privately placed investment fund.

(I) The dollar amount of cash profit received from each privately placed investment fund on a fiscal year-end basis.

(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(16) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(17) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(18) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

(a) Circulation records, showing use of specific library material by a named person;

(b) The name of a library patron together with the address or telephone number of the patron; and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or

state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(31) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 646A.250 to 646A.270, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(32) A county elections security plan developed and filed under ORS 254.074.

(33) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

(E) Sewage; or

(F) Water.

(b) Telecommunication systems, including cellular, wireless or radio systems.

(c) Data transmissions by whatever means provided.

(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme

Court designates the information as confidential by rule under ORS 1.002. [1987 c.373 §23e; 1987 c.764 §3; 1987 c.898 §27 (enacted in lieu of 192.500); 1989 c.6 §17; 1989 c.925 §1; 1991 c.825 §7; 1993 c.694 §27; 1993 c.817 §1; 1995 c.79 §70; 1995 c.162 §62a; 1995 c.604 §1; 1997 c.44 §1; 1997 c.559 §1; 1997 c.825 §1; 1999 c.274 §17; 1999 c.291 §24; 1999 c.379 §1; 1999 c.666 §1; 1999 c.683 §3; 1999 c.811 §2; 1999 c.855 §4; 1999 c.955 §23; 1999 c.1059 §§12,16; 2001 c.377 §§17,18; 2001 c.915 §3; 2001 c.922 §§12,13; 2001 c.962 §§80,81; 2001 c.965 §§62,63; 2003 c.14 §§90,91; 2003 c.524 §§2,3; 2003 c.733 §§49,50; 2003 c.803 §§5,6; 2005 c.397 §1; 2005 c.561 §3; 2005 c.659 §1; 2007 c.152 §1; 2007 c.181 §1; 2007 c.513 §5; 2007 c.687 §7]

Note: See first note under 192.423.

192.503 [1993 c.224 §3; repealed by 1997 c.678 §15]

192.505 Exempt and nonexempt public record to be separated. If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [1987 c.764 §4 (enacted in lieu of 192.500)]

RECORDS OF INDIVIDUAL WITH DISABILITY OR MENTAL ILLNESS

192.515 Definitions for ORS 192.515 and 192.517. As used in this section and ORS 179.505 and 192.517:

(1) "Facilities" includes, but is not limited to, hospitals, nursing homes, facilities defined in ORS 430.205, board and care homes, homeless shelters, juvenile training schools, youth care centers, juvenile detention centers, jails and prisons.

(2) "Individual" means:

(a) An individual with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15002) as in effect on January 1, 2003;

(b) An individual with mental illness as defined in the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10802) as in effect on January 1, 2003; or

(c) An individual with disabilities as described in 29 U.S.C. 794e as in effect on January 1, 2006, other than:

(A) An inmate in a facility operated by the Department of Corrections whose only disability is drug or alcohol addiction; and

(B) A person confined in a youth correction facility, as that term is defined in ORS 420.005, whose only disability is drug or alcohol addiction.

(3)(a) "Other legal representative" means a person who has been granted or retains legal authority to exercise an individual's power to permit access to the individual's records.

(b) "Other legal representative" does not include a legal guardian, the state or a political subdivision of this state.

(4) "Records" includes, but is not limited to, reports prepared or received by any staff of a facility rendering care or treatment, any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner, reports prepared by an agency or staff person charged with investigating reports of incidents of abuse, neglect, injury or death occurring at the facility that describe such incidents and the steps taken to investigate the incidents and discharge planning records or any information to which the individual would be entitled access, if capable. [1993 c.262 §1; 1995 c.504 §1; 2003 c.14 §92; 2003 c.803 §7; 2005 c.498 §7]

Note: 192.515 and 192.517 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.517 Access to records of individual with disability or individual with mental illness. (1) The system designated to protect and advocate for the rights of individuals shall have access to all records of:

(a) Any individual who is a client of the system if the individual or the legal guardian or other legal representative of the individual has authorized the system to have such access;

(b) Any individual, including an individual who has died or whose whereabouts are unknown:

(A) If the individual by reason of the individual's mental or physical condition or age is unable to authorize such access;

(B) If the individual does not have a legal guardian or other legal representative, or the state or a political subdivision of this state is the legal guardian of the individual; and

(C) If a complaint regarding the rights or safety of the individual has been received by the system or if, as a result of monitoring or other activities which result from a complaint or other evidence, there is probable cause to believe that the individual has been subject to abuse or neglect; and

(c) Any individual who has a legal guardian or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal representative:

(A) Has been contacted by the system upon receipt of the name and address of the legal guardian or other legal representative;

(B) Has been offered assistance by the system to resolve the situation; and

(C) Has failed or refused to act on behalf of the individual.

(2) The system shall have access to the name, address and telephone number of any legal guardian or other legal representative of an individual.

(3) The system that obtains access to records under this section shall maintain the confidentiality of the records to the same extent as is required of the provider of the services, except as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806) as in effect on January 1, 2003.

(4) The system shall have reasonable access to facilities, including the residents and staff of the facilities.

(5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 (9). [1993 c.262 §2; 1995 c.504 §2; 2003 c.14 §93; 2003 c.803 §8; 2005 c.498 §8]

Note: See note under 192.515.

PROTECTED HEALTH INFORMATION

192.518 Policy for protected health information. (1) It is the policy of the State of Oregon that an individual has:

(a) The right to have protected health information of the individual safeguarded from unlawful use or disclosure; and

(b) The right to access and review protected health information of the individual.

(2) In addition to the rights and obligations expressed in ORS 192.518 to 192.529, the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, establish additional rights and obligations regarding the use and disclosure of protected health information and the rights of individuals regarding the protected health information of the individual. [2003 c.86 §1]

Note: 192.518 to 192.529 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.519 Definitions for ORS 192.518 to 192.529. As used in ORS 192.518 to 192.529:

(1) "Authorization" means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:

(A) The individual's right to revoke the authorization in writing;

(B) The exceptions to the right to revoke the authorization;

(C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and

(D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.

(2) "Covered entity" means:

(a) A state health plan;

(b) A health insurer;

(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.529; or

(d) A health care clearinghouse.

(3) "Health care" means care, services or supplies related to the health of an individual.

(4) "Health care operations" includes but is not limited to:

(a) Quality assessment, accreditation, auditing and improvement activities;

(b) Case management and care coordination;

(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;

(d) Underwriting activities;

(e) Arranging for legal services;

(f) Business planning;

(g) Customer services;

(h) Resolving internal grievances;

(i) Creating de-identified information; and

(j) Fundraising.

(5) "Health care provider" includes but is not limited to:

(a) A psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist;

(b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;

(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(g) An emergency medical technician certified under ORS chapter 682;

(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;

(o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;

(p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

(q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

(r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

(s) A health care facility as defined in ORS 442.015;

(t) A home health agency as defined in ORS 443.005;

(u) A hospice program as defined in ORS 443.850;

(v) A clinical laboratory as defined in ORS 438.010;

(w) A pharmacy as defined in ORS 689.005;

(x) A diabetes self-management program as defined in ORS 743A.184; and

(y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) "Health information" means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(7) "Health insurer" means:

(a) An insurer as defined in ORS 731.106 who offers:

(A) A health benefit plan as defined in ORS 743.730;

(B) A short term health insurance policy, the duration of which does not exceed six months including renewals;

(C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.

(8) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(9) "Payment" includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(10) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

(c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.526.

(11)(a) "Protected health information" means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity.

(b) "Protected health information" does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(12) "State health plan" means:

- (a) The state Medicaid program;
- (b) The Oregon State Children's Health Insurance Program; or
- (c) The Family Health Insurance Assistance Program established in ORS 735.720 to 735.740.

(13) "Treatment" includes but is not limited to:

- (a) The provision, coordination or management of health care; and
- (b) Consultations and referrals between health care providers. [2003 c.86 §2; 2005 c.253 §1]

Note: See note under 192.518.

192.520 Health care provider and state health plan authority. A health care provider or state health plan:

(1) May use or disclose protected health information of an individual in a manner that is consistent with an authorization provided by the individual or a personal representative of the individual.

(2) May use or disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) For the provider's or plan's own treatment, payment or health care operations; or

(b) As otherwise permitted or required by state or federal law or by order of the court.

(3) May disclose protected health information of an individual without obtaining an authorization from the individual or a personal representative of the individual:

(a) To another covered entity for health care operations activities of the entity that receives the information if:

(A) Each entity has or had a relationship with the individual who is the subject of the protected health information; and

(B) The protected health information pertains to the relationship and the disclosure is for the purpose of:

(i) Health care operations as listed in ORS 192.519 (4)(a) or (b); or

(ii) Health care fraud and abuse detection or compliance;

(b) To another covered entity or any other health care provider for treatment activities of a health care provider; or

(c) To another covered entity or any other health care provider for the payment activities of the entity that receives that information. [2003 c.86 §3]

Note: See note under 192.518.

192.521 Health care provider and state health plan charges. A health care provider or state health plan that receives an authorization to disclose protected health information may charge:

(1)(a) No more than \$30 for copying 10 or fewer pages of written material, no more than 50 cents per page for pages 11 through 50 and no more than 25 cents for each additional page; and

(b) A bonus charge of \$5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;

(2) Postage costs to mail copies of protected health information or an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual; and

(3) Actual costs of preparing an explanation or summary of protected health information, if requested by an individual or a personal representative of the individual. [2003 c.86 §4; 2007 c.812 §1]

Note: See note under 192.518.

192.522 Authorization form. A health care provider may use an authorization that contains the following provisions in accordance with ORS 192.520:

**AUTHORIZATION
TO USE AND DISCLOSE PROTECTED
HEALTH INFORMATION**

I authorize: _____ (Name of person/entity disclosing information) to use and disclose a copy of the specific health information described below regarding: _____ (Name of individual) consisting of: (Describe information to be used/disclosed)

to: _____ (Name and address of recipient or recipients) for the purpose of: (Describe each purpose of disclosure or indicate that the disclosure is at the request of the individual)

SIGNATURE

I have read this authorization and I understand it. Unless revoked, this authorization expires _____ (insert either applicable date or event).

By: _____
 (individual or personal representative)

Date: _____

Description of personal representative's authority:

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the use and disclosure of the information may apply. I understand and agree that this information will be disclosed if I place my initials in the applicable space next to the type of information.

- _____ HIV/AIDS information
- _____ Mental health information
- _____ Genetic testing information
- _____ Drug/alcohol diagnosis, treatment, or referral information.

I understand that the information used or disclosed pursuant to this authorization may be subject to redisclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict redisclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, treatment or referral information.

PROVIDER INFORMATION

You do not need to sign this authorization. Refusal to sign the authorization will not adversely affect your ability to receive health care services or reimbursement for services. The only circumstance when refusal to sign means you will not receive health care services is if the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure.

You may revoke this authorization in writing at any time. If you revoke your authorization, the information described above may no longer be used or disclosed for the purposes described in this written authorization. The only exception is when a covered entity has taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage.

To revoke this authorization, please send a written statement to _____ (contact person) at _____ (address of person/entity disclosing information) and state that you are revoking this authorization.

[2003 c.86 §5]

Note: See note under 192.518.

192.523 Confidentiality; use and disclosure. A health care provider or a state health plan does not breach a confidential relationship with an individual if the health care provider or state health plan uses or discloses protected health information in accordance with ORS 192.520. [2003 c.86 §6]

Note: See note under 192.518.

192.524 No right of action. Nothing in ORS 192.519 or 192.520 may be construed to create a new private right of action against a health care provider or a state health plan. [2003 c.86 §7]

Note: See note under 192.518.

192.525 [1977 c.812 §1; 1997 c.635 §1; 1999 c.537 §2; 2001 c.104 §67; repealed by 2003 c.86 §8]

192.526 Personal representative of deceased individual. If no person has been appointed as a personal representative under ORS chapter 113 or a person appointed as a personal representative under ORS chapter 113 has been discharged, the personal representative of a deceased individual shall be the first of the following persons, in the following order, who can be located upon reasonable effort by the covered entity and who is willing to serve as the personal representative:

- (1) A person appointed as guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions at the time of the individual's death.
- (2) The individual's spouse.
- (3) An adult designated in writing by the persons listed in this section, if no person listed in this section objects to the designation.
- (4) A majority of the adult children of the individual who can be located.
- (5) Either parent of the individual or an individual acting in loco parentis to the individual.

(6) A majority of the adult siblings of the individual who can be located.

(7) Any adult relative or adult friend. [2005 c.253 §3]

Note: See note under 192.518.

192.527 Allowed disclosure of protected health information by state health plan or prepaid managed care health services organization. (1) Notwithstanding ORS 179.505, a state health plan or a prepaid managed care health services organization may disclose the protected health information of an individual listed in subsection (2) of this section, without obtaining an authorization from the individual or a personal representative of the individual, to another prepaid managed care health services organization for treatment activities of a prepaid managed care health services organization when the prepaid managed care health services organization is providing behavioral or physical health care services to the individual.

(2) The protected health information that may be disclosed pursuant to subsection (1) of this section includes the following, as defined by the Department of Human Services by rule:

- (a) Oregon Health Plan member name;
- (b) Medicaid recipient number;
- (c) Performing provider number;
- (d) Hospital provider name;
- (e) Attending physician;
- (f) Diagnosis;
- (g) Date or dates of service;
- (h) Procedure code;
- (i) Revenue code;
- (j) Quantity of units of service provided;

or

(k) Medication prescription and monitoring.

(3) As used in this section, "prepaid managed care health services organization" has the meaning given that term in ORS 414.736. [2007 c.798 §2]

Note: See note under 192.518.

192.528 Notice to individual of information that may be disclosed under ORS 192.527. Upon an individual's enrollment in a state health plan or a prepaid managed care health services organization, the plan or organization shall disclose to the individual the information that may be disclosed or exchanged under ORS 192.527. The plan or organization must obtain a signed acknowledgment that the individual has been informed of the provisions of this section and ORS 192.527 and the specific information that may be disclosed or exchanged under

ORS 192.527 without the individual's authorization. [2007 c.798 §3]

Note: 192.528 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.529 Allowed retention or disclosure of genetic information. (1) Notwithstanding ORS 192.537 (3), a health care provider may retain genetic information of an individual without obtaining an authorization from the individual or a personal representative of the individual if the retention is for treatment, payment or health care operations by the provider.

(2) Notwithstanding ORS 192.539 (1), a health care provider may disclose genetic information of an individual without obtaining an authorization from the individual or a personal representative of the individual if the provider discloses the genetic information in accordance with ORS 192.520 (3).

(3) As used in this section, "retain genetic information" has the meaning given that term in ORS 192.531. [2007 c.800 §5]

Note: See note under 192.518.

192.530 [1977 c.812 §2; 1995 c.79 §71; repealed by 2003 c.86 §8]

GENETIC PRIVACY

192.531 Definitions for ORS 192.531 to 192.549. As used in ORS 192.531 to 192.549:

(1) "Anonymous research" means scientific or medical genetic research conducted in such a manner that any DNA sample or genetic information used in the research is unidentified.

(2) "Blanket informed consent" means that the individual has consented to the use of the individual's DNA sample or health information for any future research, but has not been provided with a description of or consented to the use of the sample in genetic research or any specific genetic research project.

(3) "Blood relative" means a person who is:

- (a) Related by blood to an individual; and
- (b) A parent, sibling, son, daughter, grandparent, grandchild, aunt, uncle, first cousin, niece or nephew of the individual.

(4) "Clinical" means relating to or obtained through the actual observation, diagnosis or treatment of patients and not through research.

(5) "Coded" means identifiable only through the use of a system of encryption that links a DNA sample or genetic information to an individual or the individual's blood relative. A coded DNA sample or genetic in-

formation is supplied by a repository to an investigator with a system of encryption.

(6) “Deidentified” means lacking, or having had removed, the identifiers or system of encryption that would make it possible for a person to link a DNA sample or genetic information to an individual or the individual’s blood relative, and neither the investigator nor the repository can reconstruct the identity of the individual from whom the sample or information was obtained. Deidentified DNA samples and genetic information must meet the standards provided in 45 C.F.R. 164.502(d) and 164.514(a) to (c), as in effect on July 17, 2007.

(7) “Disclose” means to release, publish or otherwise make known to a third party a DNA sample or genetic information.

(8) “DNA” means deoxyribonucleic acid.

(9) “DNA sample” means any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to perform a genetic test. “DNA sample” includes DNA extracted from the specimen.

(10) “Genetic characteristic” includes a gene, chromosome or alteration thereof that may be tested to determine the existence or risk of a disease, disorder, trait, propensity or syndrome, or to identify an individual or a blood relative. “Genetic characteristic” does not include family history or a genetically transmitted characteristic whose existence or identity is determined other than through a genetic test.

(11) “Genetic information” means information about an individual or the individual’s blood relatives obtained from a genetic test.

(12) “Genetic privacy statutes” means ORS 192.531 to 192.549, 659A.303 and 746.135 and the provisions of ORS 659A.300 relating to genetic testing.

(13) “Genetic research” means research using DNA samples, genetic testing or genetic information.

(14) “Genetic test” means a test for determining the presence or absence of genetic characteristics in an individual or the individual’s blood relatives, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.

(15) “Health care provider” has the meaning given that term in ORS 192.519.

(16) “Identifiable” means capable of being linked to the individual or a blood relative of the individual from whom the DNA sample or genetic information was obtained.

(17) “Identified” means having an identifier that links, or that could readily allow the recipient to link, a DNA sample or genetic information directly to the individual or a blood relative of the individual from whom the sample or information was obtained.

(18) “Identifier” means data elements that directly link a DNA sample or genetic information to the individual or a blood relative of the individual from whom the sample or information was obtained. Identifiers include, but are not limited to, names, telephone numbers, electronic mail addresses, Social Security numbers, driver license numbers and fingerprints.

(19) “Individually identifiable health information” has the meaning given that term in ORS 192.519.

(20) “Obtain genetic information” means performing or getting the results of a genetic test.

(21) “Person” has the meaning given in ORS 433.045.

(22) “Research” means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(23) “Retain a DNA sample” means the act of storing the DNA sample.

(24) “Retain genetic information” means making a record of the genetic information.

(25) “Unidentified” means deidentified or not identifiable. [Formerly 659.700; 2003 c.333 §1; 2005 c.678 §1; 2007 c.800 §6]

Note: 192.531 to 192.549 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.533 Legislative findings; purposes.

(1) The Legislative Assembly finds that:

(a) The DNA molecule contains information about the probable medical future of an individual and the individual’s blood relatives. This information is written in a code that is rapidly being broken.

(b) Genetic information is uniquely private and personal information that generally should not be collected, retained or disclosed without the individual’s authorization.

(c) The improper collection, retention or disclosure of genetic information can lead to significant harm to an individual and the individual’s blood relatives, including stigmatization and discrimination in areas such as employment, education, health care and insurance.

(d) An analysis of an individual’s DNA provides information not only about the individual, but also about blood relatives of the

individual, with the potential for impacting family privacy, including reproductive decisions.

(e) Current legal protections for medical information, tissue samples and DNA samples are inadequate to protect genetic privacy.

(f) Laws for the collection, storage and use of identifiable DNA samples and private genetic information obtained from those samples are needed both to protect individual and family privacy and to permit and encourage legitimate scientific and medical research.

(2) The purposes of the genetic privacy statutes are as follows:

(a) To define the rights of individuals whose genetic information is collected, retained or disclosed and the rights of the individuals' blood relatives.

(b) To define the circumstances under which an individual may be subjected to genetic testing.

(c) To define the circumstances under which an individual's genetic information may be collected, retained or disclosed.

(d) To protect against discrimination by an insurer or employer based upon an individual's genetic characteristics.

(e) To define the circumstances under which a DNA sample or genetic information may be used for research. [Formerly 659.705; 2003 c.333 §2]

Note: See note under 192.531.

192.535 Informed consent for obtaining genetic information. (1) A person may not obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent of the individual or the individual's representative, except:

(a) As authorized by ORS 181.085 or comparable provisions of federal criminal law relating to the identification of persons, or for the purpose of establishing the identity of a person in the course of an investigation conducted by a law enforcement agency, a district attorney, a medical examiner or the Criminal Justice Division of the Department of Justice;

(b) For anonymous research or coded research conducted under conditions described in ORS 192.537 (2), after notification pursuant to ORS 192.538 or pursuant to ORS 192.547 (7)(b);

(c) As permitted by rules of the Department of Human Services for identification of deceased individuals;

(d) As permitted by rules of the Department of Human Services for newborn screening procedures;

(e) As authorized by statute for the purpose of establishing paternity; or

(f) For the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent.

(2) Except as provided in subsection (3) of this section, a physician licensed under ORS chapter 677 shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 677.097. Except as provided in subsection (3) of this section, any other licensed health care provider or facility must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in a manner substantially similar to that provided by ORS 677.097 for physicians.

(3) A person conducting research shall seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by ORS 192.547.

(4) Except as provided in ORS 746.135 (1), any person not described in subsection (2) or (3) of this section must seek the informed consent of the individual or the individual's representative for the purposes of subsection (1) of this section in the manner provided by rules adopted by the Department of Human Services.

(5) The Department of Human Services may not adopt rules under subsection (1)(d) of this section that would require the providing of a DNA sample for the purpose of obtaining complete genetic information used to screen all newborns. [Formerly 659.710; 2003 c.333 §3; 2005 c.678 §2]

Note: See note under 192.531.

192.537 Individual's rights in genetic information; retention of information; destruction of information. (1) Subject to the provisions of ORS 192.531 to 192.549, 659A.303 and 746.135, an individual's genetic information and DNA sample are private and must be protected, and an individual has a right to the protection of that privacy. Any person authorized by law or by an individual or an individual's representative to obtain, retain or use an individual's genetic information or any DNA sample must maintain the confidentiality of the information or sample and protect the information or sample from unauthorized disclosure or misuse.

(2)(a) A person may use an individual's DNA sample or genetic information that is derived from a biological specimen or clinical

individually identifiable health information for anonymous research or coded research only if the individual:

(A) Has granted informed consent for the specific anonymous research or coded research project;

(B) Has granted consent for genetic research generally;

(C) Was notified in accordance with ORS 192.538 that the individual's biological specimen or clinical individually identifiable health information may be used for anonymous research or coded research and the individual did not, at the time of notification, request that the biological specimen or clinical individually identifiable health information not be used for anonymous research or coded research; or

(D) Was not notified, due to emergency circumstances, in accordance with ORS 192.538 that the individual's biological specimen or clinical individually identifiable health information may be used for anonymous research or coded research and the individual died before receiving the notice.

(b) Paragraph (a) of this subsection does not apply to biological specimens or clinical individually identifiable health information obtained before July 29, 2005, if an institutional review board operating under ORS 192.547 (1)(b) meets the requirements described in ORS 192.547 (7)(b).

(3) A person may not retain another individual's genetic information or DNA sample without first obtaining authorization from the individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a county multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Retention is permitted by rules of the Department of Human Services for identification of, or testing to benefit blood relatives of, deceased individuals;

(d) Retention is permitted by rules of the Department of Human Services for newborn screening procedures; or

(e) Retention is for anonymous research or coded research conducted after notification or with consent pursuant to subsection (2) of this section or ORS 192.538.

(4) The DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of that individual or the individual's representative, unless:

(a) Retention is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest or a child fatality review by a county multidisciplinary child abuse team;

(b) Retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions; or

(c) Retention is for anonymous research or coded research conducted after notification or with consent pursuant to subsection (2) of this section or ORS 192.538.

(5) A DNA sample from an individual that is the subject of a research project, other than an anonymous research project, shall be destroyed promptly upon completion of the project or withdrawal of the individual from the project, whichever occurs first, unless the individual or the individual's representative directs otherwise by informed consent.

(6) A DNA sample from an individual for insurance or employment purposes shall be destroyed promptly after the purpose for which the sample was obtained has been accomplished unless retention is authorized by specific court order pursuant to rules adopted by the Chief Justice of the Supreme Court for civil, criminal and juvenile proceedings.

(7) An individual or an individual's representative, promptly upon request, may inspect, request correction of and obtain genetic information from the records of the individual.

(8) Subject to the provisions of ORS 192.531 to 192.549, and to policies adopted by the person in possession of a DNA sample, an individual or the individual's representative may request that the individual's DNA sample be made available for additional genetic testing for medical diagnostic purposes. If the individual is deceased and has not designated a representative to act on behalf of the individual after death, a request under this subsection may be made by the closest surviving blood relative of the decedent or, if there is more than one surviving blood relative of the same degree of relationship to the decedent, by the majority of the surviving closest blood relatives of the decedent.

(9) The Department of Human Services shall coordinate the implementation of this section.

(10) Subsections (3) to (8) of this section apply only to a DNA sample or genetic information that is coded, identified or identifiable.

(11) This section does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from an individual's DNA sample. [Formerly 659.715; 2003 c.333 §4; 2005 c.562 §21; 2005 c.678 §3]

Note: Section 10, chapter 333, Oregon Laws 2003, provides:

Sec. 10. Notwithstanding ORS 192.537 (2)(a)(C), a person may use an individual's DNA sample or genetic information for anonymous research if the DNA sample or genetic information was obtained prior to the effective date of this 2003 Act [June 12, 2003] and the individual was not notified the sample or genetic information may be used for anonymous research. [2003 c.333 §10]

Note: See note under 192.531.

192.538 Notice by health care provider regarding anonymous or coded research.

(1) A health care provider that is a covered entity as defined in ORS 192.519 (2)(c) and that obtains an individual's biological specimen or clinical individually identifiable health information shall notify the individual that the biological specimen or clinical individually identifiable health information may be disclosed or retained by the provider for anonymous research or coded research.

(2) A health care provider that is not a covered entity as defined in ORS 192.519 (2)(c) and that obtains an individual's biological specimen or clinical individually identifiable health information may notify the individual that the biological specimen or clinical individually identifiable health information may be disclosed or retained by the provider for anonymous research or coded research.

(3) A health care provider described in subsection (1) of this section shall provide a notice to the individual describing how the biological specimen or clinical individually identifiable health information may be used and allowing the individual to request that the specimen or information not be disclosed or retained for anonymous research or coded research. The notice must contain a place where the individual may mark the individual's request that the specimen or information not be disclosed or retained for anonymous research or coded research before returning the notice to the health care provider.

(4) The notice described in subsection (3) of this section:

(a) Must be given no later than when the provider obtains an individual's biological specimen or clinical individually identifiable health information; and

(b) May be given at the same time and in the same manner as the notice of privacy practices required under the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164. [2005 c.678 §5]

Note: See note under 192.531.

192.539 Disclosure of genetic information; exceptions. (1) Regardless of the manner of receipt or the source of genetic information, including information received from an individual or a blood relative of the individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or the identity of a blood relative of the individual, or to disclose genetic information about the individual or a blood relative of the individual in a manner that permits identification of the individual, unless:

(a) Disclosure is authorized by ORS 181.085 or comparable provisions of federal criminal law relating to identification of persons, or is necessary for the purpose of a criminal or death investigation, a criminal or juvenile proceeding, an inquest, or a child fatality review by a county multidisciplinary child abuse team;

(b) Disclosure is required by specific court order entered pursuant to rules adopted by the Chief Justice of the Supreme Court for civil actions;

(c) Disclosure is authorized by statute for the purpose of establishing paternity;

(d) Disclosure is specifically authorized by the tested individual or the tested individual's representative by signing a consent form prescribed by rules of the Department of Human Services;

(e) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent; or

(f) Disclosure is for the purpose of identifying bodies.

(2) The prohibitions of this section apply to any redisclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed, or has disclosed genetic information or the identity of a blood relative of the individual.

(3) A release or publication is not a disclosure if:

(a) It involves a good faith belief by the person who caused the release or publication

that the person was not in violation of this section;

(b) It is not due to willful neglect;

(c) It is corrected in the manner described in ORS 192.541 (4);

(d) The correction with respect to genetic information is completed before the information is read or heard by a third party; and

(e) The correction with respect to DNA samples is completed before the sample is retained or genetically tested by a third party. [Formerly 659.720; 2005 c.562 §22]

Note: See note under 192.531.

192.540 Use of deceased individual's DNA sample or genetic information for research. Notwithstanding ORS 192.535 and 192.537 (2), a person may use an individual's DNA sample or genetic information that is derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research if the individual was deceased when the individual's biological specimen or clinical individually identifiable health information was obtained. [2005 c.678 §8]

Note: See note under 192.531.

192.541 Private right of action; remedies; affirmative defense; attorney fees. (1) An individual or an individual's blood relative, representative or estate may bring a civil action against any person who violates ORS 192.535, 192.537, 192.539 or 192.547.

(2) For a violation of ORS 192.537 or 192.547, the court shall award the greater of actual damages or:

(a) \$100, for an inadvertent violation that does not arise out of the negligence of the defendant;

(b) \$500, for a negligent violation;

(c) \$10,000, for a knowing or reckless violation;

(d) \$15,000, for a knowing violation based on a fraudulent misrepresentation; or

(e) \$25,000, for a knowing violation committed with intent to sell, transfer or use for commercial advantage, personal gain or malicious harm.

(3) For a violation of ORS 192.535 or 192.539, the court shall award the greater of actual damages or:

(a) \$1,000, for an inadvertent violation that does not arise out of the negligence of the defendant;

(b) \$5,000, for a negligent violation;

(c) \$100,000, for a knowing or reckless violation;

(d) \$150,000, for a knowing violation based on a fraudulent misrepresentation; or

(e) \$250,000, for a knowing violation committed with intent to sell, transfer or use for commercial advantage, personal gain or malicious harm.

(4) It is an affirmative defense to an action described in subsection (2)(a) or (b) or (3)(a) or (b) of this section that the defendant corrected the violation through destruction of illegally retained or obtained samples or information, or took other action to correct the violation, if the correction was completed within 120 days after the defendant knew or should have known that the violation occurred.

(5) The court may provide such equitable relief as it deems necessary or proper.

(6)(a) The court may award attorney fees to a defendant only if the court finds that the plaintiff had no objectively reasonable basis for asserting a claim or for appealing an adverse decision of the trial court.

(b) The court shall award attorney fees to a plaintiff if the court finds that the defendant committed a violation described in subsection (2)(c), (d) or (e) or (3)(c), (d) or (e) of this section.

(7) An action authorized by subsection (1) of this section must be commenced within three years after the date the plaintiff knew or should have known of the violation, but in no instance more than 10 years after the date of the violation.

(8) A plaintiff may recover damages provided by subsections (2) and (3) of this section for each violation by a defendant.

(9) ORS 31.725, 31.730, 31.735 and 31.740 do not apply to amounts awarded in actions under this section. [2001 c.588 §2]

Note: See note under 192.531.

192.543 Criminal penalty. (1) A person commits the crime of unlawfully obtaining, retaining or disclosing genetic information if the person knowingly, recklessly or with criminal negligence, as those terms are defined in ORS 161.085, obtains, retains or discloses genetic information in violation of ORS 192.531 to 192.549.

(2) Unlawfully obtaining, retaining or disclosing genetic information is a Class A misdemeanor. [2001 c.588 §3]

Note: See note under 192.531.

192.545 Enforcement; Attorney General or district attorney; intervention. (1) The Attorney General or a district attorney may bring an action against a person who violates ORS 192.535, 192.537, 192.539 or 192.547. In addition to remedies otherwise provided in ORS 192.541, the court shall award to the Attorney General or district attorney the costs of the investigation.

(2) The Attorney General may intervene in a civil action brought under ORS 192.541 if the Attorney General certifies that, in the opinion of the Attorney General, the action is of general public importance. In the action, the Attorney General shall be entitled to the same relief as if the Attorney General instituted the action under this section. [2001 c.588 §4]

Note: See note under 192.531.

192.547 Department of Human Services rules; procedures. (1)(a) The Department of Human Services shall adopt rules for conducting research using DNA samples, genetic testing and genetic information. Rules establishing minimum research standards shall conform to the Federal Policy for the Protection of Human Subjects, 45 C.F.R. 46, that is current at the time the rules are adopted. The rules may be changed from time to time as may be necessary.

(b) The rules adopted by the Department of Human Services shall address the operation and appointment of institutional review boards. The rules shall conform to the compositional and operational standards for such boards contained in the Federal Policy for the Protection of Human Subjects that is current at the time the rules are adopted. The rules must require that research conducted under paragraph (a) of this subsection be conducted with the approval of the institutional review board.

(c) Persons proposing to conduct anonymous research, coded research or genetic research that is otherwise thought to be exempt from review must obtain from an institutional review board prior to conducting such research a determination that the proposed research is exempt from review.

(2) A person proposing to conduct research under subsection (1) of this section, including anonymous research or coded research, must disclose to the institutional review board the proposed use of DNA samples, genetic testing or genetic information.

(3) The Department of Human Services shall adopt rules requiring that all institutional review boards operating under subsection (1)(b) of this section register with the department. The Advisory Committee on Genetic Privacy and Research shall use the registry to educate institutional review boards about the purposes and requirements of the genetic privacy statutes and administrative rules relating to genetic research.

(4) The Department of Human Services shall consult with the Advisory Committee on Genetic Privacy and Research before adopting the rules required under subsections (1) and (3) of this section, including

rules identifying those parts of the Federal Policy for the Protection of Human Subjects that are applicable to this section.

(5) Genetic research in which the DNA sample or genetic information is coded shall satisfy the following requirements:

(a)(A) The subject has granted informed consent for the specific research project;

(B) The subject has consented to genetic research generally; or

(C) The DNA sample or genetic information is derived from a biological specimen or from clinical individually identifiable health information that was obtained or retained in compliance with ORS 192.537 (2).

(b) The research has been approved by an institutional review board after disclosure by the investigator to the board of risks associated with the coding.

(c) The code is:

(A) Not derived from individual identifiers;

(B) Kept securely and separately from the DNA samples and genetic information; and

(C) Not accessible to the investigator unless specifically approved by the institutional review board.

(d) Data is stored securely in password protected electronic files or by other means with access limited to necessary personnel.

(e) The data is limited to elements required for analysis and meets the criteria in 45 C.F.R. 164.514(e) for a limited data set.

(f) The investigator is a party to the data use agreement as provided by 45 C.F.R. 164.514(e) for limited data set recipients.

(6) Research conducted in accordance with this section is rebuttably presumed to comply with ORS 192.535 and 192.539.

(7)(a) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained, with blanket informed consent, before June 25, 2001, for genetic research.

(b) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained without specific informed consent and derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research if an institutional review board operating under subsection (1)(b) of this section:

(A) Waives or alters the consent requirements pursuant to the Federal Policy for the Protection of Human Subjects; and

(B) Waives authorization pursuant to the federal Health Insurance Portability and Ac-

countability Act privacy regulations, 45 C.F.R. parts 160 and 164.

(c) Except as provided in subsection (5)(a) of this section or paragraph (b) of this subsection, a person must have specific informed consent from an individual to use a DNA sample or genetic information of the individual obtained on or after June 25, 2001, for genetic research.

(8) Except as otherwise allowed by rule of the Department of Human Services, if DNA samples or genetic information obtained for either clinical or research purposes is used in research, a person may not recontact the individual or the individual's physician by using research information that is identifiable or coded. The Department of Human Services shall adopt by rule criteria for recontacting an individual or an individual's physician. In adopting the criteria, the department shall consider the recommendations of national organizations such as those created by executive order by the President of the United States and the recommendations of the Advisory Committee on Genetic Privacy and Research.

(9) The requirements for consent to, or notification of, obtaining a DNA sample or genetic information for genetic research are governed by the provisions of ORS 192.531 to 192.549 and the administrative rules that were in effect on the effective date of the institutional review board's most recent approval of the study. [2001 c.588 §6; 2003 c.333 §5; 2005 c.678 §6]

Note: See note under 192.531.

192.549 Advisory Committee on Genetic Privacy and Research. (1) The Advisory Committee on Genetic Privacy and Research is established consisting of 15 members. The President of the Senate and the Speaker of the House of Representatives shall each appoint one member and one alternate. The Director of Human Services shall appoint one representative and one alternate from each of the following categories:

(a) Academic institutions involved in genetic research;

(b) Physicians licensed under ORS chapter 677;

(c) Voluntary organizations involved in the development of public policy on issues related to genetic privacy;

(d) Hospitals;

(e) The Department of Human Services;

(f) The Department of Consumer and Business Services;

(g) Health care service contractors involved in genetic and health services research;

(h) The biosciences industry;

(i) The pharmaceutical industry;

(j) Health care consumers;

(k) Organizations advocating for privacy of medical information;

(L) Public members of institutional review boards; and

(m) Organizations or individuals promoting public education about genetic research and genetic privacy and public involvement in policymaking related to genetic research and genetic privacy.

(2) Organizations and individuals representing the categories listed in subsection (1) of this section may recommend nominees for membership on the advisory committee to the President, the Speaker and the director.

(3) Members and alternate members of the advisory committee serve two-year terms and may be reappointed.

(4) Members and alternate members of the advisory committee serve at the pleasure of the appointing entity.

(5) The Department of Human Services shall provide staff for the advisory committee.

(6) The advisory committee shall report biennially to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include the activities and the results of any studies conducted by the advisory committee. The advisory committee may make any recommendations for legislative changes deemed necessary by the advisory committee.

(7) The advisory committee shall study the use and disclosure of genetic information and shall develop and refine a legal framework that defines the rights of individuals whose DNA samples and genetic information are collected, stored, analyzed and disclosed.

(8) The advisory committee shall create opportunities for public education on the scientific, legal and ethical development within the fields of genetic privacy and research. The advisory committee shall also elicit public input on these matters. The advisory committee shall make reasonable efforts to obtain public input that is representative of the diversity of opinion on this subject. The advisory committee's recommendations to the Legislative Assembly shall take into consideration public concerns and values related to these matters. [2001 c.588 §7; 2003 c.333 §6]

Note: See note under 192.531.

PRIVATE FINANCIAL RECORDS**192.550 Definitions for ORS 192.550 to 192.595.** As used in ORS 192.550 to 192.595:

(1) "Customer" means any person, partnership, limited partnership, corporation, trust or other legal entity, who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means:

(a) A "financial institution" as defined in ORS 706.008; or

(b) A "trust company" as defined in ORS 706.008.

(3) "Financial records" means any original written or electronic document, any copy of the document, or any information contained in the document, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of such an institution.

(4) "Local agency" means every county, city, school district, municipal organization, district, political subdivision; or any board, commission or agency thereof; or any other local public agency; and every officer, agent or employee thereof.

(5) "State agency" means every state office, department, division, bureau, board or commission or other state agency, including the Legislative Assembly and every officer, agent or employee thereof.

(6) "Summons or subpoena" means an administrative summons or administrative subpoena issued by any state or local agency, or a judicial subpoena or subpoena duces tecum. [1977 c.517 §1; 1985 c.762 §180; 1987 c.373 §24; 1987 c.414 §146; 1997 c.631 §422; 2003 c.803 §9; 2005 c.130 §1]

192.555 Disclosure of financial records prohibited; exceptions. (1) Except as provided in ORS 192.557, 192.559, 192.560, 192.565, 192.570 and 192.585 or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:

(a) No financial institution shall provide any financial records of any customer to a state or local agency.

(b) No state or local agency shall request or receive from a financial institution any financial records of customers.

(2) Subsection (1) of this section shall not preclude a financial institution, in its discretion, from initiating contact with, and thereafter communicating with and disclosing customer financial records to:

(a) Appropriate state or local agencies concerning any suspected violation of the law.

(b) The office of the State Treasurer if the records relate to state investments in commercial mortgages involving the customer. The records and the information contained therein are public records but shall be exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in disclosure clearly outweighs the public interest in confidentiality. However, the following records in the office shall remain open to public inspection:

(A) The contract or promissory note establishing a directly held residential or commercial mortgage and information identifying collateral;

(B) Any copy the office retains of the underlying mortgage note in which the office purchases a participation interest; and

(C) Any information showing that a directly held loan is in default.

(c) An appropriate state or local agency in connection with any business relationship or transaction between the financial institution and the customer, if the disclosure is made in the ordinary course of business of the financial institution and will further the legitimate business interests of the customer or the financial institution.

(3) Nothing in ORS 192.550 to 192.595 prohibits any of the following:

(a) The dissemination of any financial information which is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) The examination by, or disclosure to, the Department of Consumer and Business Services of financial records which relate solely to the exercise of its supervisory function. The scope of the department's supervisory function shall be determined by reference to statutes which grant authority to examine, audit, or require reports of financial records or financial institutions.

(c) The furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360.

(d) Compliance with the provisions of ORS 708A.655, 722.660 or 723.844.

(4) Notwithstanding subsection (1) of this section, a financial institution may:

(a) Enter into an agreement with the Oregon State Bar that requires the financial institution to make reports to the Oregon State Bar whenever a properly payable instrument is presented for payment out of an attorney trust account that contains insuffi-

cient funds, whether or not the instrument is honored by the financial institution; and

(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out of an attorney trust account under a trust account overdraft notification program established under ORS 9.132. [1977 c.517 §2, 8 (1); 1985 c.565 §24; 1987 c.373 §25; 1987 c.438 §4; 1993 c.131 §3; 1993 c.274 §1; 1993 c.695 §1; 1997 c.142 §1; 1999 c.80 §68; 1999 c.506 §5]

192.557 Disclosure to Department of Human Services; procedure; limitations.

(1) Upon the request of the Department of Human Services and the receipt of the certification required under subsection (2) of this section, a financial institution shall advise whether a person has one or more accounts with the financial institution, and if so, the balance on deposit in each such account on the date this information is provided.

(2) In requesting information under subsection (1) of this section, the department shall specify the name and Social Security number of the person upon whom the account information is sought, and shall certify to the financial institution in writing, signed by an agent of the department:

(a) That the person upon whom account information is sought is an applicant for or recipient of public assistance, as described in ORS 411.010 to 411.116; and

(b) That the department has authorization from the person for release of the account information.

(3) Any financial institution supplying account information under ORS 192.550 to 192.557 and 411.632 shall be reimbursed for actual costs incurred.

(4) No financial institution that supplies account information to the department pursuant to this section shall be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of account information under this section.

(5) Each financial institution that is requested to supply account information under this section may specify to the department that requests for account information and responses from the financial institution shall be submitted in written, tape or electronic format. A reasonable time shall be provided the financial institution for response.

(6) The department shall seek account information under this section only with respect to persons who are applicants for or recipients of public assistance as described in ORS 411.010 to 411.116. [1987 c.438 §2; 1999 c.80 §69; 2003 c.73 §59]

192.559 Disclosure to state court; procedure; limitations. (1) Upon the request of

a state court and the receipt of the certification required under subsection (2) of this section, a financial institution shall advise whether a person has one or more accounts with the financial institution and, if so, the balance on deposit in each such account on the date this information is provided and a record of the account's activity for at least the prior 30 days, which may include the current and previous account statement period.

(2) In requesting information under subsection (1) of this section, the state court shall specify the name and Social Security number of the person about whom the account information is sought, and shall certify to the financial institution in writing, signed by an agent of the state court, that the person about whom account information is sought has requested appointed counsel or that appointed counsel has been provided for the person. In addition, the state court shall forward to the financial institution a certification signed by the person about whom account information is sought that authorizes the release of the account information.

(3) Any financial institution supplying account information under this section shall be reimbursed for reasonable costs incurred.

(4) No financial institution that supplies account information to a state court pursuant to this section is liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of account information under this section.

(5) Each financial institution that is requested to supply account information under this section may specify to the state court that requests for account information and responses from the financial institution shall be submitted in written, tape or electronic format. The financial institution shall respond to the request within three business days.

(6) The state court may seek account information only with respect to persons who have requested appointed counsel or who have had counsel appointed by the court. [1991 c.825 §2; 1993 c.274 §2; 2001 c.962 §82]

192.560 Authorization by customer for disclosure. (1) A financial institution may disclose financial records of a customer to a state or local agency, and such an agency may request and receive such records, when the customer has authorized such disclosure as provided in this section.

(2) The authorization of disclosure shall:

(a) Be in writing, signed and dated by the customer;

(b) Identify with particularity the records authorized to be disclosed;

(c) Name the agency to whom disclosure is authorized;

(d) Contain notice to the customer that the customer may revoke such authorization at any time in writing; and

(e) Inform the customer as to the reason for such request and disclosure.

(3) No financial institution shall require a customer to sign an authorization for disclosure as a condition of doing business with such institution. [1977 c.517 §3]

192.565 Disclosure under summons or subpoena; procedure. (1) A financial institution may disclose financial records of a customer to a state or local agency, and a state or local agency may request and receive such records, pursuant to a lawful summons or subpoena, served upon the financial institution, as provided in this section or ORS chapter 25.

(2) The state or local agency issuing such summons or subpoena shall make personal service of a copy of it upon the customer.

(3) The summons or subpoena shall name the agency issuing it, and shall specify the statutory authority under which the financial records are being obtained.

(4) The summons or subpoena shall state that service of a copy thereof has been made upon the customer, and shall state the date upon which service was accomplished.

(5) Except as provided in subsection (6) of this section, a financial institution shall not disclose the financial records of a customer to a state or local agency, in response to a summons or subpoena served upon it, for a period of 10 days following service of a copy thereof upon the customer, unless the customer has consented to earlier disclosure. If the customer moves to quash such summons or subpoena, and the financial institution receives written notice of such action from the customer, all within 10 days following the date upon which a copy of the summons or subpoena was served upon the customer, the financial institution shall not disclose the financial records of said customer pursuant to said summons or subpoena unless:

(a) The customer thereafter consents in writing to the disclosure; or

(b) A court orders disclosure of the financial records to the state or local agency, pursuant to the summons or subpoena.

(6) Pursuant to the issuance of a summons or subpoena, a state or local agency may petition the court, and the court, upon a showing of reasonable cause to believe that a law subject to the jurisdiction of the petitioning agency has been or is about to be violated, may order that service upon the

customer pursuant to subsection (2) of this section, information concerning such service required by subsection (4) of this section, and the 10-day period provided for in subsection (5) of this section be waived or shortened.

(7) Where the court grants such petition, a copy of the court order granting the same shall be attached to the summons or subpoena, and shall therewith be served upon the financial institution.

(8) The provisions of subsections (2) to (7) of this section do not apply to subpoenas issued pursuant to ORS chapter 25. [1977 c.517 §4; 1999 c.80 §30]

192.570 Disclosure under search warrant. (1) A financial institution may disclose financial records of a customer to a state or local agency, and a state or local agency may request and receive such records, pursuant to a lawful search warrant, as provided in this section.

(2) The content of the search warrant shall conform to the requirements of ORS 133.565.

(3) The state or local agency seeking financial records shall make personal service of the search warrant upon the financial institution in the manner provided by law for service of a subpoena.

(4) Disclosure of financial records may occur as soon as the warrant is served upon the financial institution. [1977 c.517 §5]

192.575 Liability of financial institution for disclosure. (1) Nothing in ORS 192.550 to 192.595 shall require a financial institution to inquire or determine that those seeking disclosure have duly complied with the requirements set forth in ORS 192.550 to 192.595, provided only that the customer authorization, summons, subpoena or search warrant served upon or delivered to a financial institution pursuant to ORS 192.560, 192.565 or 192.570 shows compliance on its face.

(2) A financial institution which in good faith reliance refuses to disclose financial records of a customer upon the prohibitions of ORS 192.550 to 192.595, shall not be liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by such refusal.

(3) Financial institutions shall not be required to notify their customers concerning the receipt by them of requests from state or local agencies for disclosures of financial records of such customers. However, except as otherwise provided in ORS 192.550 to 192.595, nothing in ORS 192.550 to 192.595 shall preclude financial institutions from giving such notice to customers. A court may order a financial institution to withhold notification to a customer of the receipt of a summons,

subpoena or search warrant when the court finds that notice to the customer would impede the investigation being conducted by the state or local agency.

(4) Financial institutions that participate in a trust account overdraft notification program established under ORS 9.132 are not liable to a lawyer or law firm on the attorney trust account, to a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole or in part by that participation or arising in any way out of that participation.

(5) A financial institution shall not be liable to any person for any loss, damage or injury arising out of or in any way pertaining to the release of information pursuant to ORS 192.555 (2)(a). [1977 c.517 §6; 1993 c.131 §4; 1995 c.666 §28]

192.580 Time for compliance; reimbursement; exceptions. (1) A financial institution shall have a reasonable period of time in which to comply with any proper customer authorization, summons, subpoena or search warrant permitting or seeking disclosure of financial records. For the purposes of this section, a “reasonable period of time” shall in no case be less than 10 days from the date upon which the financial institution receives or is served with a customer authorization, summons, subpoena or search warrant. However, in all cases in which disclosure is sought pursuant to ORS 192.565, the reasonable period of time shall be not less than 20 days.

(2) Before making disclosures, a financial institution may require that the requesting state or local agency reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs include, but are not limited to, personnel costs, reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

(a) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(b) Reproduction costs, \$1 per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual costs.

(c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to

convey the required or requested material to the place of examination.

(3) The provisions of subsection (2) of this section do not apply in the case of records subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700. [1977 c.517 §7; 1985 c.797 §4; 1987 c.482 §1; 2001 c.247 §1; 2003 c.14 §94]

192.585 Procedure for disclosure to law enforcement agency. (1) When a police or sheriff’s department or district attorney’s office in this state requests account information from a financial institution to assist in a criminal investigation, the financial institution shall supply a statement setting forth the requested account information with respect to a customer account specified by the police or sheriff’s department or district attorney’s office, for a period of up to three months prior to and three months following the date of occurrence of the account transaction giving rise to the criminal investigation. The disclosure statement required under this subsection may include only account information as defined in subsection (2) of this section. The police or sheriff’s department or district attorney’s office requesting the information shall, within 24 hours of making the request, confirm the request in a written or electronic message delivered or mailed to the financial institution, setting forth the nature of the account information sought, the time period for which account information is sought, and that the information has been requested pursuant to a criminal investigation.

(2) As used in this section, “account information” means, whether or not the financial institution has an account under a particular customer’s name, the number of customer account items dishonored or which created overdrafts, dollar volume of dishonored items and items which when paid created overdrafts, a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates and amounts of deposits and debits to a customer’s account, copies of deposit slips and deposited items, the account balance on such dates, a copy of the customer’s signature card and the dates the account opened or closed. [1977 c.517 §8(2),(3); 2005 c.130 §2]

192.587 Charges for participation in attorney trust account overdraft notification program. Financial institutions that participate in an attorney trust account

overdraft notification program established under ORS 9.132 may charge attorneys or law firms who have trust accounts with the financial institution for the reasonable costs incurred by the financial institution by reason of that participation. [1993 c.131 §6]

192.590 Civil liability for violation of ORS 192.550 to 192.595; attorney fees; status of evidence obtained in violation.

(1) Any customer who suffers any ascertainable loss as a result of a willful violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages or \$1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(b) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action under this section.

(4) An action to enforce any provision of ORS 192.550 to 192.595 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.550 to 192.595 is inadmissible in any proceeding. [1977 c.517 §9; 1981 c.897 §41; 1995 c.696 §18]

192.595 Severability. If any provision of ORS 192.550 to 192.595 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 192.550 to 192.595 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.550 to 192.595 are severable. [1977 c.517 §10]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) “Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) “Executive session” means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) “Governing body” means the members of any public body which consists of two or

more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) “Public body” means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) “Meeting” means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “Meeting” does not include any on-site inspection of any project or program. “Meeting” also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or

more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52]

Note: The amendments to 192.630 by section 21, chapter 100, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 100, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on November 4, 2008. If approved by the people at the general election, chapter 100, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 192.630 by section 21, chapter 100, Oregon Laws 2007, take effect January 1, 2008. 192.630, as amended by section 21, chapter 100, Oregon Laws 2007, and including amendments by section 52, chapter 70, Oregon Laws 2007, is set forth for the user's convenience.

192.630. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Department of Human Services or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but

this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Recording or written minutes required; content; fees. (1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- (a) All members of the governing body present;
- (b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- (c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;
- (d) The substance of any discussion on any matter; and
- (e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that

material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.

(1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

- (a) To consider the employment of a public officer, employee, staff member or individual agent.
- (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.
- (c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.
- (d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.
- (e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall

bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134]

Note: The amendments to 192.660 by section 11, chapter 602, Oregon Laws 2007, take effect January 1, 2009. See section 13, chapter 602, Oregon Laws 2007. The text that is effective on and after January 1, 2009, is set forth for the user's convenience.

192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (2) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session,

of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities

in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26; 2005 c.347 §5; 2005 c.562 §23]

Note: The amendments to 192.690 by section 8, chapter 796, Oregon Laws 2007, take effect January 1, 2009. See section 9, chapter 796, Oregon Laws 2007. The text that is effective on and after January 1, 2009, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the Health Professionals Program Supervisory Council established under ORS 677.615, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97; 1989 c.544 §3]

Note: 192.695 was added to and made a part of ORS chapter 192 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.710 Smoking in public meetings prohibited. (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

FINANCIAL INSTITUTION RECORD DISCLOSURES

192.800 Definitions for ORS 192.800 to 192.810. As used in this section and ORS 192.805 and 192.810:

(1) "Customer" means any person who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a

financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means a financial institution or a trust company, as those terms are defined in ORS 706.008.

(3) "Financial records" means any original written or electronic document, any copy of the document, or any information contained in the document, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpoena" means a judicial subpoena or subpoena duces tecum. [1985 c.797 §1; 1997 c.631 §423; 2005 c.130 §3]

192.805 Reimbursement required prior to disclosure; charges. Before producing any documents or making any disclosures, a financial institution may require the requesting person who caused the subpoena to be issued to reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs shall include but are not limited to personnel costs, reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

(1) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the requested material to the place of examination.

(2) Reproduction costs, \$1 per page, including copies produced by reader and printer reproduction processes. Photographs, films and other materials shall be reimbursed at actual cost.

(3) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel to locate and retrieve the information required or requested and to convey the required or requested material to the place of examination. [1985 c.797 §2; 1989 c.309 §1; 2001 c.247 §2]

192.810 Applicability of ORS 192.805. ORS 192.805 does not apply to any subpoena issued by or on behalf of a state agency or local agency subject to the provisions of ORS 192.550 to 192.595, or if the financial institution is a named party to litigation that is the basis for issuance of the subpoena. [1985 c.797 §3; 1989 c.309 §2]

ADDRESS CONFIDENTIALITY PROGRAM

192.820 Definitions for ORS 192.820 to 192.868. As used in ORS 192.820 to 192.868:

(1) "Actual address" means:

(a) A residential, work or school street address of an individual specified on the application of the individual to be a program participant; or

(b) The name of the county in which the program participant resides or the name or number of the election precinct in which the program participant is registered to vote.

(2) "Address Confidentiality Program" means the program established under ORS 192.822.

(3) "Application assistant" means an employee of or a volunteer serving a public or private entity designated by the Attorney General under ORS 192.854 to assist individuals with applications to participate in the Address Confidentiality Program.

(4) "Program participant" means an individual accepted into the Address Confidentiality Program under ORS 192.820 to 192.868.

(5) "Public body" has the meaning given that term in ORS 174.109.

(6) "Public record" has the meaning given that term in ORS 192.410.

(7) "Substitute address" means an address designated by the Attorney General under the Address Confidentiality Program.

(8) "Victim of domestic violence" means:

(a) An individual against whom domestic violence has been committed, as defined in ORS 135.230, 181.610, 411.117 or 657.176;

(b) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(c) Any other individual designated a victim of domestic violence by the Attorney General by rule.

(9) "Victim of a sexual offense" means:

(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or

(b) Any other individual designated by the Attorney General by rule.

(10) "Victim of stalking" means:

(a) An individual against whom stalking has been committed, as described in ORS 163.732; or

(b) Any other individual designated by the Attorney General by rule. [2005 c.821 §1; 2007 c.542 §1]

Note: The amendments to 192.820 by section 1, chapter 542, Oregon Laws 2007, become operative June 1, 2008. See section 1a, chapter 542, Oregon Laws 2007.

The text that is operative until June 1, 2008, is set forth for the user's convenience.

192.820. As used in ORS 192.820 to 192.868:

(1) "Actual address" means a residential, work or school street address of an individual specified on the application of the individual to be a program participant.

(2) "Address Confidentiality Program" means the program established under ORS 192.822.

(3) "Application assistant" means an employee of or a volunteer serving a public or private entity designated by the Attorney General under ORS 192.854 to assist individuals with applications to participate in the Address Confidentiality Program.

(4) "Program participant" means an individual accepted into the Address Confidentiality Program under ORS 192.820 to 192.868.

(5) "Public body" has the meaning given that term in ORS 174.109.

(6) "Public record" has the meaning given that term in ORS 192.410.

(7) "Substitute address" means an address designated by the Attorney General under the Address Confidentiality Program.

(8) "Victim of domestic violence" means:

(a) An individual against whom domestic violence has been committed, as defined in ORS 135.230, 181.610, 411.117 or 657.176;

(b) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(c) Any other individual designated a victim of domestic violence by the Attorney General by rule.

(9) "Victim of a sexual offense" means:

(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or

(b) Any other individual designated by the Attorney General by rule.

(10) "Victim of stalking" means:

(a) An individual against whom stalking has been committed, as described in ORS 163.732; or

(b) Any other individual designated by the Attorney General by rule.

Note: 192.820 to 192.868 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.822 Address Confidentiality Program; substitute addresses. (1) The Address Confidentiality Program is established in the Department of Justice to:

(a) Protect the confidentiality of the actual address of a victim of domestic violence, a sexual offense or stalking; and

(b) Prevent assailants or potential assailants of the victim from finding the victim through public records.

(2) The Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of all legal process in this state and receiving and forwarding first-class, certified or registered mail.

(3) The Attorney General is not required to forward any packages or mail other than first-class, certified or registered mail to the program participant.

(4) The Attorney General is not required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered. [2005 c.821 §2]

Note: See second note under 192.820.

192.825 [1997 c.566 §1; 2001 c.535 §31; repealed by 2005 c.118 §1]

192.826 Application for participation in program; certification of participation; authorization card; rules. (1) Any of the following individuals with the assistance of an application assistant may file an application with the Attorney General to participate in the Address Confidentiality Program:

(a) An adult individual.

(b) A parent or guardian acting on behalf of a minor when the minor resides with the parent or guardian.

(c) A guardian acting on behalf of an incapacitated individual.

(2) The application must be dated, signed and verified by the applicant and the application assistant who assisted in the preparation of the application.

(3) The application must contain all of the following:

(a) A statement by the applicant that the applicant or the applicant's child or ward is a victim of domestic violence, a sexual offense or stalking and that the applicant fears for the applicant's safety or the safety of the applicant's child or ward.

(b) Evidence that the applicant or the applicant's child or ward is a victim of domestic violence, a sexual offense or stalking. This evidence may include any of the following:

(A) Law enforcement, court or other federal, state or local government records or files;

(B) Documentation from a public or private entity that provides assistance to victims of domestic violence, a sexual offense or stalking if the applicant or the applicant's child or ward is an alleged victim of domestic violence, a sexual offense or stalking;

(C) Documentation from a religious, medical or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense or stalking; or

(D) Other forms of evidence as determined by the Attorney General by rule.

(c) A statement by the applicant that disclosure of the actual address of the appli-

cant would endanger the safety of the applicant or the safety of the applicant's child or ward.

(d) A statement by the applicant that the applicant:

(A) Resides at a location in this state that is not known by assailants or potential assailants of the applicant or the applicant's child or ward; and

(B) Will not disclose the location to assailants or potential assailants of the applicant or the applicant's child or ward while the applicant is a program participant.

(e) Written consent permitting the Attorney General to act as an agent for the applicant for the service of all legal process in this state and the receipt of first-class, certified or registered mail.

(f) The mailing address and telephone number at which the Attorney General can contact the applicant.

(g) The actual address that the applicant requests not be disclosed by the Attorney General that directly relates to the increased risk of the applicant or the applicant's child or ward as a victim of domestic violence, sexual offense or stalking.

(h) A sworn statement by the applicant that to the best of the applicant's knowledge the information contained in the application is true.

(i) A recommendation by an application assistant that the applicant be a participant in the Address Confidentiality Program.

(4) Upon the filing of a properly completed application and upon approval by the Attorney General, the Attorney General shall certify the applicant as a program participant.

(5) Upon certification, the Attorney General shall issue an Address Confidentiality Program authorization card to the program participant. The Address Confidentiality Program authorization card is valid as long as the program participant remains certified under the program.

(6) The term of certification shall be for a period of time determined by the Attorney General by rule, unless prior to the end of the period one of the following occurs:

(a) The program participant withdraws the certification by filing with the Attorney General a request for withdrawal signed by the program participant and acknowledged in writing by a notary public or an application assistant; or

(b) The Attorney General cancels the certification under ORS 192.834.

(7) A program participant may renew the certification by filing an application for re-

newal with the Attorney General at least 30 days prior to expiration of the current certification. [2005 c.821 §3]

Note: See second note under 192.820.

192.828 Prohibitions; civil penalty. (1) An applicant for participation in the Address Confidentiality Program or a program participant may not:

(a) Falsely attest in an initial application or an application for renewal that disclosure of the actual address of the applicant would endanger the safety of the applicant or the safety of the applicant's child or ward; or

(b) Knowingly provide false information in an initial application or an application for renewal.

(2) If after an investigation, the Attorney General finds that a violation of subsection (1) of this section has occurred, the Attorney General may impose a civil penalty as provided in ORS 183.745 in an amount not to exceed \$500. [2005 c.821 §4]

Note: See second note under 192.820.

192.830 [1997 c.566 §2; 2001 c.535 §32; repealed by 2005 c.118 §1]

192.832 Notice of change in name, address or telephone number. (1) A program participant shall notify the Attorney General within 30 days after the program participant has obtained a legal name change by providing the Attorney General with a certified copy of any judgment or order evidencing the change or any other documentation the Attorney General considers sufficient evidence of the name change.

(2) A program participant shall notify the Attorney General of a change in actual address or telephone number from the actual address or telephone number listed on the application of the program participant within 10 days after the change occurs. [2005 c.821 §5]

Note: See second note under 192.820.

192.834 Cancellation of certification. (1) The Attorney General shall cancel the certification of a program participant if:

(a) The Attorney General determines that the program participant violated ORS 192.828;

(b) The Attorney General determines that the program participant violated ORS 192.832; or

(c) Subject to ORS 192.832 (2), first class, certified or registered mail forwarded to the program participant by the Attorney General is returned as undeliverable.

(2) The Attorney General shall send notice of cancellation to the program participant setting out the reasons for the cancellation and setting out the rights and duties of the program participant.

(3) A program participant has 30 days to appeal the cancellation decision under procedures adopted by the Attorney General by rule. A cancellation of certification under this section is not considered an order as defined in ORS 183.310 and is not subject to judicial review under ORS 183.480.

(4) An individual whose certification as a program participant is cancelled under this section shall notify persons and public bodies using the substitute address as the address of the program participant that the substitute address is no longer the address to be used by public bodies as described in ORS 192.836. [2005 c.821 §6]

Note: See second note under 192.820.

192.835 [1997 c.566 §3; 1999 c.59 §48; 1999 c.718 §1; 2001 c.535 §33; repealed by 2005 c.118 §1]

192.836 Use of substitute address; waiver of requirement. (1)(a) A program participant may request that public bodies use the substitute address designated by the Attorney General as the address of the program participant in any ongoing actions or proceedings or when creating a new public record.

(b) A public body is not responsible for requesting that departments, divisions, affiliates or other organizational units of the public body or other public bodies use the substitute address as the address of the program participant.

(c) Unless requested by the program participant, when the actual address of a program participant is contained in a public record that is filed with the public body, the public body is not responsible for modifying the public record to contain the substitute address designated by the Attorney General.

(d) The Attorney General is not responsible for making requests under this subsection.

(2) Except as provided in this section and ORS 192.842, when a program participant submits a current and valid Address Confidentiality Program authorization card to a public body, the public body shall accept the substitute address on the authorization card as the address of the program participant when creating a new public record. Upon the request of the program participant, the public body shall use the substitute address on the authorization card in any ongoing actions or proceedings.

(3) A public body may request a waiver from the requirements of the Address Confidentiality Program by submitting a waiver request to the Attorney General. The waiver request shall be in writing and include:

(a) An explanation of why the public body cannot meet its statutory or adminis-

trative obligations by possessing or using the substitute address; and

(b) An affirmation that if the Attorney General accepts the waiver, the public body will only use the actual address of the program participant for those statutory or administrative purposes included in the waiver request.

(4) The Attorney General shall accept or deny a waiver request from a public body in writing and include a statement of specific reasons for acceptance or denial. An acceptance or denial made under this subsection is not considered an order as defined in ORS 183.310 and is not subject to judicial review under ORS 183.480.

(5) Except as provided in ORS 192.820 to 192.868, if a law or rule requires the use of a residence address, the substitute address may be used instead. [2005 c.821 §7; 2007 c.542 §2]

Note: See second note under 192.820.

192.840 [1997 c.566 §4; repealed by 2001 c.535 §36]

192.842 Use of actual or substitute address in specified circumstances. (1) A county clerk or other elections official shall use the actual address of a program participant for voter registration purposes. Except as provided in ORS 192.820 to 192.868, a county clerk or other elections official may not disclose the actual address.

(2) A county clerk or other elections official shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under ORS 254.470.

(3) A school district shall use the actual address of a program participant for any purpose related to admission or assignment. The school district shall take such measures as necessary to protect the confidentiality of the actual address of the program participant. Student records created under ORS 326.565 and 326.580 shall use the substitute address of the program participant.

(4) A county clerk shall accept the substitute address of the program participant as the address of the applicant for the purpose of issuing a marriage license under ORS 106.041. [2005 c.821 §8; 2007 c.542 §12]

Note: The amendments to 192.842 by section 13, chapter 99, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 99, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on November 4, 2008. If approved by the people at the general election, chapter 99, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 192.842 by section 13, chapter 99, Oregon Laws 2007, take effect January 1, 2008. 192.842, as amended by section 13, chapter 99, Oregon Laws 2007, and including

amendments by section 12, chapter 542, Oregon Laws 2007, is set forth for the user's convenience.

192.842. (1) A county clerk or other elections official shall use the actual address of a program participant for voter registration purposes. Except as provided in ORS 192.820 to 192.868, a county clerk or other elections official may not disclose the actual address.

(2) A county clerk or other elections official shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under ORS 254.470.

(3) A school district shall use the actual address of a program participant for any purpose related to admission or assignment. The school district shall take such measures as necessary to protect the confidentiality of the actual address of the program participant. Student records created under ORS 326.565 and 326.580 shall use the substitute address of the program participant.

(4) A county clerk shall accept the substitute address of the program participant as the address of the applicant for the purpose of issuing a marriage license under ORS 106.041 or registering a Declaration of Domestic Partnership under section 6, chapter 99, Oregon Laws 2007.

Note: See second note under 192.820.

192.844 Prohibition on disclosure of actual address or telephone number by public body. (1) Except as provided in ORS 192.820 to 192.868, a public body that receives a request from a program participant under ORS 192.836 may not disclose the actual address or telephone number of the program participant.

(2) Each public body that receives a request from a program participant under ORS 192.836 shall adopt a procedure to prevent unnecessary disclosure of actual addresses or telephone numbers of program participants to employees of that public body or other persons in that public body. [2005 c.821 §9; 2007 c.542 §3]

Note: See second note under 192.820.

192.845 [1997 c.566 §5; 1999 c.718 §2; repealed by 2005 c.118 §1]

192.846 Records of Department of Transportation; substitute address. (1) A program participant may request that any driver or vehicle record kept by the Department of Transportation that contains or is required to contain the program participant's actual address contain instead the substitute address designated by the Attorney General. A request under this subsection must:

(a) Be in a form specified by the department; and

(b) Contain verification that the individual is a program participant.

(2) Upon receipt of a request and verification under this section, the department shall remove the program participant's actual address from its records and instead use the substitute address designated by the Attorney General. The department shall note

on the records that the address shown is a substitute address under ORS 192.820 to 192.868. While the request is in effect, the program participant may enter the substitute address on any driver or vehicle form issued by the department that requires an address.

(3) If an individual ceases to be certified as a program participant, the individual shall notify the department of a change of address as provided in ORS 803.220, 807.420 or 807.560. [2007 c.542 §11]

Note: See second note under 192.820.

192.848 When Attorney General may disclose actual address or telephone number. (1) The Attorney General may not disclose the actual address or telephone number of a program participant, except under either of the following circumstances:

(a) Upon receipt of a court order signed by a judge pursuant to a finding of good cause. Good cause exists when disclosure is sought for a lawful purpose that outweighs the risk of the disclosure and, in the case of a request for disclosure received from a federal, state or local law enforcement agency, district attorney or other public body, when information is provided to the court that describes the official purpose for which the actual address or telephone number of the program participant will be used. If a judge finds that good cause exists, the terms of the court order shall address, as much as practicable, the safety and protection of the program participant. In cases where the Attorney General has not received prior notice of a court order, not later than three business days after receiving the order, the Attorney General may object to the order and request a hearing before the judge who signed the order.

(b) Where the program participant is required to disclose the actual address of the program participant as part of a registration for sex offenders as required under ORS 181.598 and 181.599.

(2) A person to whom an actual address or telephone number of a program participant has been disclosed pursuant to a court order may not disclose the actual address or telephone number to any other person unless permitted to do so by order of the court.

(3) The Attorney General shall notify a program participant within one business day after the Attorney General discloses an actual address under subsection (1)(a) of this section.

(4) Upon request by a public body, the Attorney General may verify whether or not a person is a program participant when the verification is for official use only. [2005 c.821 §10; 2007 c.542 §4]

Note: See second note under 192.820.

192.850 [1997 c.566 §6; 2001 c.535 §34; repealed by 2005 c.118 §1]

192.852 Prohibition on obtaining actual address or telephone number; prohibition on disclosure by employee of public body. (1) A person may not attempt to obtain or obtain the actual address or telephone number of a program participant from the Attorney General or a public body through fraud or misrepresentation.

(2) Except as provided in ORS 192.820 to 192.868 or federal law, an employee of a public body may not intentionally disclose the actual address or telephone number of a program participant to a person known to the employee to be prohibited from receiving the actual address or telephone number of the program participant. This subsection applies only when an employee obtains the actual address or telephone number of the program participant during the performance of the official duties of the employee and, at the time of disclosure, the employee has specific knowledge that the actual address or telephone number disclosed belongs to a program participant. [2005 c.821 §11]

Note: See second note under 192.820.

192.854 Application assistants; application assistance not legal advice. (1) The Attorney General may designate employees of or volunteers serving public or private entities that provide counseling and shelter services to victims of domestic violence, sexual offense or stalking as application assistants to assist individuals applying to participate in the Address Confidentiality Program.

(2) Any assistance rendered to applicants for participation in the Address Confidentiality Program by the Attorney General or an application assistant is not considered legal advice. [2005 c.821 §12]

Note: See second note under 192.820.

192.855 [1997 c.566 §7; repealed by 2001 c.535 §36]

192.856 Additional response time for notice or other paper. Notwithstanding any other law and the Oregon Rules of Civil Procedure, whenever a program participant has the right or is required to do some act or take some proceedings within a prescribed

period of 10 days or less after the service of a notice or other paper upon the program participant and the notice or paper is served by mail pursuant to ORS 192.820 to 192.868, five days shall be added to the prescribed period. [2005 c.821 §13]

Note: See second note under 192.820.

192.858 Disclosures to participants. The Attorney General shall disclose in writing to a program participant prior to certification:

(1) The rights and obligations of the program participant under ORS 192.820 to 192.868; and

(2) The term of certification as determined by the Attorney General under ORS 192.826. [2005 c.821 §14]

Note: See second note under 192.820.

192.860 Rules. The Attorney General may adopt rules the Attorney General considers necessary to carry out the provisions of ORS 192.820 to 192.868. [2005 c.821 §15]

Note: See second note under 192.820.

192.865 Criminal penalty. Violation of ORS 192.852 is a Class C misdemeanor. [2005 c.821 §16]

Note: See second note under 192.820.

192.868 Grants, donations and gifts. (1) The Department of Justice may seek, solicit, receive and administer monetary grants, donations and gifts to establish and operate the Address Confidentiality Program.

(2) All moneys received by the department under subsection (1) of this section shall be deposited in the Department of Justice Operating Account created in ORS 180.180. Amounts deposited under this section are continuously appropriated to the department to carry out the provisions of ORS 192.820 to 192.868. [2005 c.821 §17]

Note: See second note under 192.820.

PENALTIES

192.990 Penalties. Violation of ORS 192.710 (1) is a violation punishable by a fine of \$10. [1973 c.168 §2]

Chapter 469

2007 EDITION

Energy; Conservation Programs; Energy Facilities

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GENERAL PROVISIONS

469.010 Policy. The Legislative Assembly finds and declares that:

(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 §1; 1979 c.723 §1]

469.020 Definitions. As used in ORS 176.820, 469.010 to 469.225, 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 State Department of Energy created under ORS 469.030.

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

(7) "Energy facility" has the meaning given in ORS 469.300.

(8) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An energy generation area for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

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

(10) "Nominal electric generating capacity" has the meaning given in ORS 469.300.

(11) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

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

(13) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structure, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. "Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

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

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

(16) "Utility" includes:

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

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

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas. [1975 c.606 §2; 1977 c.794 §1; 1979 c.723 §2; 1981 c.629 §1; 1981 c.792 §1; 1991 c.480 §3; 1993 c.569 §1; 1995 c.505 §4; 1995 c.551 §2; 2003 c.186 §16]

STATE DEPARTMENT OF ENERGY; ADMINISTRATION

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

(2) The State Department of Energy shall:

(a) Be the central repository within the state government for the collection of data on energy resources;

(b) Endeavor to utilize all public and private sources to inform and educate the pub-

lic about energy problems and ways in which the public can conserve energy resources;

(c) Engage in research, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the State Department of Energy shall endeavor to avoid duplication of research whether completed or in progress;

(d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 757.710 and 757.720;

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

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

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

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

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

(j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section; and

(k) Upon request of the governing body of any affected jurisdiction, coordinate a public review of a proposed transmission line according to the provisions of ORS 469.442. [1975 c.606 §4; 1981 c.792 §2; 1987 c.200 §4; 1993 c.569 §2; 1995 c.551 §3; 1999 c.934 §5; 1999 c.1043 §9; 2003 c.186 §1]

469.040 Director; duties; appointment; rules. (1) The State Department of Energy shall be under the supervision of the Director of the State Department of Energy, who shall:

(a) Supervise the day-to-day functions of the State Department of Energy;

(b) Supervise and facilitate the work and research on energy facility siting applications at the direction of the Energy Facility Siting Council;

(c) Hire, assign, reassign and coordinate personnel of the State Department of Energy, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(d) Adopt rules and issue orders to carry out the duties of the director and the State

Department of Energy in accordance with ORS chapter 183 and the policy stated in ORS 469.010.

(2) The director may delegate to any officer or employee the exercise and discharge in the director's name of any power, duty or function of whatever character vested in the director by law. The official act of any person acting in the director's name and by the director's authority shall be considered an official act of the director.

(3) The director shall be appointed by the Governor. [1975 c.606 §5; 1985 c.593 §1; 1993 c.496 §3; 1995 c.551 §4; 1999 c.934 §6; 1999 c.1043 §10; 2003 c.186 §3]

469.050 Limitations on subsequent employment of director; sanctions. (1) A person who has been the Director of the State Department of Energy shall not, within two years after the person ceases to be the director, be an employee of:

(a) An owner or operator of an energy facility;

(b) An applicant for a site certificate; or

(c) Any person who engages in the sale or manufacture of any energy resource or of any major component of an energy facility in Oregon.

(2) Employment of any individual in violation of subsection (1)(a) or (b) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual. [1975 c.606 §§6,7]

469.055 Authority of department to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the State Department of Energy may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the department; or

(b) Provides services or seeks to provide services to the department as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In the Hanford nuclear safety program;

(b) In which the person conducts energy audits in schools, colleges, universities or medical facilities;

(c) In the budget and finance section of the department;

(d) That has personnel or human resources functions as one of the position's primary responsibilities;

(e) In which the person is providing information technology services and has control over, or access to, information

technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(f) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers or criminal background information; or

(g) In which the person has access to tax or financial information about individuals or business entities or processes tax credits. [2005 c.730 §7]

Note: 469.055 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.060 Comprehensive energy plan; energy pricing structures research. (1) Every odd-numbered year, the State Department of Energy shall transmit to the Governor and the Legislative Assembly a comprehensive plan including comments on the energy forecasts of the utilities and on the department's independent analysis and evaluation. The plan 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 statewide energy need for each year in the forthcoming five-year period and for the 10th and 20th year following issuance of the plan.

(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 Commission. This research shall be submitted biennially to the Legislative Assembly and the Governor as a part of the plan described in subsection (1) of this section.

(3) Consistent with the legislatively approved budget, the plan described in subsections (1) and (2) of this section shall include, but not be limited to:

(a) An inventory of existing energy resources available to Oregon.

(b) An estimation of the potential contribution that various energy resources could make in satisfying Oregon's future energy needs consistent with the policy stated in ORS 469.010 and where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric

Power and Conservation Planning Council pursuant to P.L. 96-501.

(c) Recommendations for state and local governments to assist in the development and maximum use of cost-effective conservation and renewable resources, consistent with the policy stated in ORS 469.010 and, where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(d) Recommendations for proposed research, development and demonstration projects and programs necessary to evaluate the availability and cost-effectiveness of conservation and renewable resources in Oregon.

(4) The plan described in this section shall be compiled by organizing and refining data acquired by the department in the performance of its existing duties. [1975 c.606 §8; 1983 c.273 §1; 1989 c.466 §1; 1995 c.505 §5; 1995 c.551 §19a]

469.070 Energy forecast; contents; fees. (1) At least biennially the State Department of Energy shall 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) The State Department of Energy, by July 1 of each even-numbered year, shall issue a statement setting forth the methodology and assumptions it intends to employ in preparing the forthcoming forecast, any changes in the preceding forecast, and an outline of the contents of the biennial plan to be published by the department on the following January 1, and not later than the 45th day thereafter, commence public hearings thereon.

(5) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the Director of the State Department of Energy 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 even-numbered year. The director may charge a reasonable fee for a copy of this statement not to exceed the cost thereof.

(6) After the public hearings required by subsection (4) 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.

(7) The forecast shall be included within the plan provided for in ORS 469.060 (1). [1975 c.606 §9; 1977 c.794 §3; 1983 c.273 §2; 2003 c.186 §17]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The Director of the State Department of Energy may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;

(c) Inventory of energy resources; and

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

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

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

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

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

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or

records as provided in ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 469.992, 757.710 and 757.720, may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C. [1975 c.606 §18; 1977 c.358 §9; 1977 c.794 §4a; 1979 c.284 §154; 2003 c.186 §18]

469.085 Procedure for imposing civil penalties; rules. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745 (2), the notice to the person against whom a civil penalty is to be imposed shall reflect a complete statement of the consideration given to the factors listed in subsection (7) of this section. The notice may be served by either the Director of the State Department of Energy or the Energy Facility Siting Council.

(3) Notwithstanding ORS 183.745, if a hearing is not requested or if the person requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency.

(4) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the director or the council under this section may be joined by the director or the council with any other action against the same person under this chapter.

(5) Any civil penalty recovered under this section shall be paid into the General Fund.

(6) The director or the council shall adopt by rule a schedule of the amount of civil penalty that may be imposed for a particular violation.

(7) In imposing a penalty under ORS 469.992, the director or the council shall consider:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct or prevent any violation;

(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged violation;

(c) The impact of the violation on public health and safety or public interests in fishery, navigation and recreation;

(d) Any other factors determined by the director or the council to be relevant; and

(e) The alleged violator's cooperativeness and effort to correct the violation.

(8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and conditions as the director or council determines to be proper. Upon the

request of the person incurring the penalty, the director or council shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.480 §2; 1991 c.734 §106; 2003 c.186 §19]

469.090 Confidentiality of information submitted under ORS 469.080. (1) Information furnished under ORS 469.080 shall be confidential and maintained as such, if so requested by the person providing the information, if the information meets one of the following requirements:

(a) The information is proprietary in nature; or

(b) The information consists of geological and geophysical information and data, including maps, concerning oil, gas or geothermal resource wells.

(2) Nothing in this section prohibits the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons. [1975 c.606 §19]

469.095 [1979 c.561 §9; repealed by 1993 c.475 §3]

469.097 Duty to monitor industry progress in energy conservation. The State Department of Energy shall to the extent permitted by its resources monitor industry progress in achieving energy conservation. [1981 c.865 §3; 1987 c.158 §96]

469.100 Agency consideration of legislative policy; agency review of rules. (1) All agencies shall consider the policy stated in ORS 469.010 in adopting or modifying their rules and policies.

(2) All agencies shall review their rules and policies to determine their consistency with the policy stated in ORS 469.010. [1975 c.606 §3; 1995 c.551 §20]

469.110 Dealings with federal government; intervention by State Department of Energy in agency action. (1) As to any matter involving the federal government, its departments or agencies, which is within the scope of the power and duties of the State Department of Energy, 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 State Department of Energy Account; appropriation; record of monies. (1) The State Department of Energy Account is established.

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

(3) The Director of the State Department of Energy shall keep a record of all moneys deposited in the State Department of Energy 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; 1995 c.551 §5; 2003 c.186 §7]

469.130 [1975 c.606 §47; 1977 c.794 §5; 1977 c.891 §10; 1987 c.879 §16; repealed by 1995 c.551 §21]

469.135 Energy Conservation Clearinghouse for Commerce and Industry. The State Department of Energy shall expand the Energy Conservation Clearinghouse for Commerce and Industry so that it provides:

(1) Current information to business and industry on:

(a) State and federal financing mechanisms;

(b) Tax advantages of energy conservation investments; and

(c) General economic advantages of energy conservation investments.

(2) Teaching on conservation techniques and management of energy by corporations. [1981 c.865 §2]

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

469.150 Energy suppliers to provide conservation services and information; rules. (1) As used in this section "energy conservation services" means services provided by energy suppliers to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) Energy suppliers other than public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such guidelines as the Director of the State Department of Energy may by rule prescribe.

(3) As used in this section "energy supplier" means a publicly owned utility or fuel

oil dealer which supplies electricity or fuel oil for the space heating of dwellings. [1977 c.887 §13]

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

(a) "Dwelling" means real or personal property inhabited as the principal residence of an owner or renter. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and multiple unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 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 of the State Department of Energy shall establish advisory energy conservation standards for existing dwellings. The standards shall be adopted by rule in accordance with ORS 183.310 to 183.410. The standards:

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

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

(3) The director shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards. [1981 c.565 §2; 1987 c.158 §97; 1989 c.648 §65; 2003 c.186 §20]

469.157 [1981 c.746 §7; repealed by 1995 c.79 §287]

ALTERNATIVE ENERGY DEVICES

469.160 Definitions for ORS 469.160 to 469.180; rules. As used in ORS 316.116, 317.115 and 469.160 to 469.180:

(1) "Alternative energy device" means a category one alternative energy device or a category two alternative energy device.

(2) "Alternative fuel device" means any of the following:

(a) An alternative fuel vehicle;

(b) Related equipment; or

(c) A fueling station necessary to operate an alternative fuel vehicle.

(3) "Alternative fuel vehicle" means a motor vehicle as defined in ORS 801.360 that is:

(a) Registered in this state; and

(b) Manufactured or modified to use an alternative fuel, including but not limited to electricity, natural gas, ethanol, methanol, propane and any other fuel approved in rules adopted by the Director of the State Department of Energy that produces less exhaust

emissions than vehicles fueled by gasoline or diesel. Determination that a vehicle is an alternative fuel vehicle shall be made without regard to energy consumption savings.

(4) "Category one alternative energy device" means:

(a) Any system, mechanism or series of mechanisms that uses solar radiation for space heating or cooling for one or more dwellings;

(b) Any system that uses solar radiation for:

(A) Domestic water heating; or

(B) Swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116;

(c) A ground water heat pump and ground loop system;

(d) Any wind powered device used to offset or supplement the use of electricity by performing a specific task such as pumping water;

(e) Equipment used in the production of alternative fuels;

(f) A generator powered by alternative fuels and used to produce electricity;

(g) An energy efficient appliance;

(h) An alternative fuel device; or

(i) A premium efficiency biomass combustion device that includes a dedicated outside combustion air source and that meets minimum performance standards that are established by the State Department of Energy.

(5) "Category two alternative energy device" means a fuel cell system, solar electric system or wind electric system.

(6) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(7) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, construction service, installation service or design service.

(8)(a) "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.

(b) For an alternative fuel vehicle, "cost" means the difference between the cost of the alternative fuel vehicle and the same vehicle or functionally similar vehicle manufactured to use conventional gasoline or diesel fuel or, in the case of modification of an existing vehicle, the cost of the modification. "Cost" does not include any amounts paid for remodification of the same vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, "cost" means the cost to the contractor of constructing or installing the fueling station in a dwelling and of making the fuel station operational in accordance with the specifications issued under ORS 469.160 to 469.180 and any rules adopted by the Director of the State Department of Energy.

(d) For related equipment, "cost" means the cost of the related equipment and any modifications or additions to the related equipment necessary to prepare the related equipment for use in converting a vehicle to alternative fuel use.

(9) "Domestic water heating" means the heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(10) "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.

(11) "Energy efficient appliance" means a clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, appliance designed to heat or cool a dwelling or other major household appliance that has been certified by the State Department of Energy to have premium energy efficiency characteristics.

(12) "First year energy yield" of an alternative energy device is the usable energy produced under average environmental conditions in one year.

(13) "Fuel cell system" means any system, mechanism or series of mechanisms that uses fuel cells or fuel cell technology to generate electrical energy for a dwelling.

(14) "Fueling station" includes but is not limited to a compressed natural gas compressor fueling system or an electric charging system for vehicle power battery charging.

(15) "Placed in service" means:

(a) The date an alternative energy device is ready and available to produce usable energy or save energy.

(b) For an alternative fuel vehicle:

(A) In the case of purchase, the date that the alternative fuel vehicle is first purchased as an alternative fuel vehicle ready and available for use.

(B) In the case of modification, the date that the modification is completed and the vehicle is ready and available for use as an alternative fuel vehicle.

(c) For a fueling station necessary to operate an alternative fuel vehicle, the date that the fueling station is first operational.

(d) For related equipment, the date that the equipment is first operational.

(16) "Related equipment" means equipment necessary to convert a vehicle to use an alternative fuel.

(17) "Solar electric system" means any system, mechanism or series of mechanisms, including photovoltaic systems, that uses solar radiation to generate electrical energy for a dwelling.

(18) "Wind electric system" means any system, mechanism or series of mechanisms that uses wind to generate electrical energy for a dwelling. [1977 c.196 §2; 1979 c.670 §3; 1981 c.894 §4; 1983 c.346 §1; 1983 c.768 §2; 1987 c.492 §2; 1989 c.880 §1; 1995 c.746 §19a; 1997 c.534 §4; 1999 c.510 §1; 2001 c.584 §5; 2005 c.832 §6; 2007 c.843 §28]

Note: Section 36, chapter 843, Oregon Laws 2007, provides:

Sec. 36. The amendments to ORS 316.116, 469.160, 469.165, 469.170, 469.172, 469.176 and 469.180 and section 5a, chapter 832, Oregon Laws 2005, by sections 28 to 35 of this 2007 Act apply to alternative energy devices constructed or installed on or after January 1, 2007. [2007 c.843 §36]

469.165 Rules; federal standards. (1) For the purposes of carrying out ORS 469.160 to 469.180, the State Department of Energy may 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).

(3) The Director of the State Department of Energy shall adopt rules governing the determination of eligibility, verification and certification of an alternative fuel device for purposes of the tax credits granted under ORS 316.116 and 317.115, including but not limited to rules that further define an alternative fuel vehicle, related equipment or fueling station necessary to operate an alternative fuel vehicle, that govern the computation of costs eligible for credit and that require equitable allocation of the tax credit benefits between the lessor and the lessee of an alternative fuel vehicle as a condition of tax credit eligibility. [1977 c.196 §3; 1989 c.880 §2; 1997 c.534 §5; 2005 c.832 §7; 2007 c.843 §30]

Note: See note under 469.160.

469.170 Claim for tax credits; rules; eligibility; contents; contractor system certification. (1) Any person may claim a tax credit under ORS 316.116 (or ORS

317.115, if the person is a corporation) if the person:

(a) Meets the requirements of ORS 316.116 (or ORS 317.115, if applicable);

(b) Meets the requirements of ORS 469.160 to 469.180; and

(c) Pays, subject to subsection (9) of this section, all or a portion of the costs of an alternative energy device.

(2) A credit under ORS 317.115 may be claimed only if the alternative energy device is a fueling station necessary to operate an alternative fuel vehicle.

(3)(a) In order to be eligible for a tax credit under ORS 316.116 or 317.115, a person claiming a tax credit for construction or installation of an alternative energy device (including a fueling station) shall have the device certified by the State Department of Energy or constructed or installed by a contractor certified by the department under subsection (5) of this section. This paragraph does not apply to an alternative fuel vehicle or to related equipment.

(b) Certification of an alternative fuel vehicle or related equipment shall be accomplished under rules that shall be adopted by the Director of the State Department of Energy.

(4) Verification of the purchase, construction or installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and, if applicable, shall contain:

(a) The location of the alternative energy device;

(b) A description of the type of device;

(c) If the device was constructed or installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and construct or install the alternative energy device;

(d) If the device was constructed or installed by a contractor, a statement signed by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device;

(B) A copy of consumer information published by the State Department of Energy;

(C) An operating manual for the alternative energy device; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate for the alternative energy device, as appropriate;

(e) If the device was not constructed or installed by a contractor, evidence that:

(A) The State Department of Energy has issued an alternative energy device system certificate for the alternative energy device; and

(B) The taxpayer has obtained all building permits required for construction or installation of the device;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was constructed or installed by a contractor, that the construction or installation meets all the requirements of ORS 469.160 to 469.180 or, if the device is a fueling station and the taxpayer is the contractor, a statement signed by the contractor that the construction or installation meets all of the requirements of ORS 469.160 to 469.180;

(g) The date the alternative energy device was purchased;

(h) The date the alternative energy device was placed in service; and

(i) Any other information that the Director of the State Department of Energy or the Department of Revenue determines is necessary.

(5)(a) When the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the Director of the State Department of Energy may issue a contractor system certification to the person selling and constructing or installing the alternative energy device.

(b) Any person who sells or installs more than 12 alternative energy devices in one year shall apply for a contractor system certification. An application for a contractor system certification shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and construction or 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 construction or installation procedure;

(C) The addresses of three installations of the device that are available for inspection by the State Department of Energy;

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

(E) Any important construction, installation or operating instructions; and

(F) Any other information that the State Department of Energy determines is necessary.

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

(d) The State Department of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification, which shall authorize the sale and installation of the same domestic water heating alternative energy devices authorized by the dealer certification.

(e) If the State Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the Director of the State Department of Energy may issue an alternative energy device system certificate to the taxpayer constructing or installing or having an alternative energy device constructed or installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the State Department of Energy and shall contain:

(A) 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, siting method and construction or installation procedure;

(B) The constructed or installed cost of the device; and

(C) A statement that the taxpayer has all permits required for construction or installation of the device.

(6) To claim the tax credit, the verification form described in subsection (4) of this section shall be submitted with the taxpayer's tax return for the year the alternative energy device is placed in service or the immediately succeeding tax year. A copy of the contractor's certification certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate also shall be submitted.

(7) The verification form and contractor's certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116 or 317.115.

(8) The verification form and contractor's certificate described under this section may be transferred to the first purchaser of a dwelling or, in the case of construction or installation of a fueling station in an existing

dwelling, the current owner, who intends to use or is using the dwelling as a principal or secondary residence.

(9) Any person that pays the present value of the tax credit for an alternative energy device provided under ORS 316.116 or 317.115 and 469.160 to 469.180 to the person who constructs or installs the alternative energy device shall be entitled to claim the credit in the manner and subject to rules adopted by the Department of Revenue to carry out the purposes of this subsection. The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this subsection. [1977 c.196 §4; 1979 c.670 §4; 1981 c.894 §5; 1983 c.346 §2; 1987 c.492 §3; 1989 c.880 §3; 1995 c.746 §20; 1997 c.534 §6; 1999 c.21 §78; 2001 c.584 §6; 2003 c.186 §21; 2005 c.832 §8; 2007 c.843 §31]

Note: See note under 469.160.

Note: Section 8a, chapter 832, Oregon Laws 2005, provides:

Sec. 8a. The State Department of Energy may not issue a contractor's certification certificate, alternative energy device system certificate or alternative fuel vehicle or related equipment certificate under ORS 469.170 on or after January 1, 2016. [2005 c.832 §8a]

469.171 Transfer of tax credit for alternative fuel vehicle; rules. (1) The owner of an alternative fuel vehicle as defined in ORS 469.160 may transfer a tax credit otherwise allowed under ORS 316.116 for cost of the vehicle in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [1999 c.765 §2]

469.172 Ineligible devices; rules. The following devices are not eligible for the tax credit under ORS 316.116:

- (1) Standard efficiency furnaces;
- (2) Standard back-up heating systems;
- (3) Woodstoves or wood furnaces, or any part of a heating system that burns wood, unless the woodstove, furnace or system constitutes a premium efficiency biomass combustion device described in ORS 469.160 (4)(i);
- (4) Heat pump water heaters that are part of a geothermal heat pump space heating system;
- (5) Structures that cover or enclose a swimming pool;
- (6) Swimming pools, hot tubs or spas used to store heat;
- (7) Above ground, uninsulated swimming pools, hot tubs or spas;
- (8) Photovoltaic systems installed on recreational vehicles;

(9) Conversion of an existing alternative energy device to another type of alternative energy device;

(10) Repair or replacement of an existing alternative energy device;

(11) A category two alternative energy device, if the equipment or other property that comprises the category two alternative energy device is the basis for an allowed credit for a category one alternative energy device under ORS 316.116;

(12) A category one alternative energy device, if the equipment or other property that comprises the category one alternative energy device is also the basis for an allowed credit for a category two alternative energy device under ORS 316.116; or

(13) Any other device identified by the State Department of Energy. The department may adopt rules defining standards for eligible and ineligible devices under this section. [1989 c.880 §7; 1995 c.746 §20a; 1999 c.510 §2; 2001 c.584 §7; 2005 c.832 §9; 2007 c.843 §32]

Note: See note under 469.160.

469.175 [1977 c.196 §5; 1979 c.670 §5; 1981 c.894 §6; 1983 c.346 §3; 1987 c.492 §4; repealed by 1989 c.880 §4 (469.176 enacted in lieu of 469.175)]

469.176 Performance assumptions and prescriptive measures for tax credits. (1) Except for alternative fuel vehicles or related equipment, in order to carry out ORS 469.160 to 469.180, the State Department of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices constructed or installed in a dwelling.

(2) The department shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The State Department of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the department shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the American Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating en-

ergy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the construction or installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Except for an owner-built or site-built system, an alternative energy device used as a source for domestic hot water heating must meet the SRCC OG 300 systems test or comply with comparable requirements as determined by the department.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the department.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the department. [1989 c.880 §5 (enacted in lieu of 469.175); 1997 c.534 §7; 2005 c.832 §10; 2007 c.843 §33]

Note: See note under 469.160.

469.180 Forfeiture of tax credits; revocation of contractor certificate; inspection; effect of failure to allow inspection. (1) Upon the Department of Revenue's own motion, or upon request of the State Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 or 317.115 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer or investor owned utility;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) In the case of an alternative energy device other than an alternative fuel vehicle or related equipment, the alternative energy device has not been constructed, installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or

(d) The taxpayer or investor owned utility failed to consent to an inspection of the constructed or installed alternative energy device by the State Department of Energy after a reasonable, written request for such an inspection by the State Department of Energy. This paragraph does not apply to an

alternative fuel vehicle or to related equipment.

(2) Pursuant to the procedures for a contested case under ORS chapter 183, the Director of the State Department of Energy may order the revocation of a contractor certificate issued under ORS 469.170 if the director finds that:

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

(b) The contractor's performance for the alternative energy device for which the contractor is issued a certificate under ORS 469.170 does not meet industry standards; or

(c) The contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device.

(3) If the tax credit allowed under ORS 316.116 or 317.115 for the purchase, construction or installation of an alternative energy device is ordered forfeited due to an action of the taxpayer or investor owned utility under subsection (1)(a), (c) or (d) of this section, all prior tax relief provided to the taxpayer or investor owned utility shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer or utility as a result of the tax credit relief under ORS 316.116 or 317.115.

(4) If the tax credit for the construction or installation of an alternative energy device is ordered forfeited due to an action of the contractor under subsection (1)(b) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer or investor owned utility as a result of the tax credit relief under ORS 316.116 or 317.115. As long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer or utility, the assessment of such taxes shall be levied on the contractor and not on the taxpayer or utility. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the State Department of Energy or its representative may inspect an alternative energy device that has been purchased, constructed or 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 forfeiture of any tax credit relief under ORS 316.116 or

317.115. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the State Department of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [1977 c.196 §6; 1979 c.670 §6; 1981 c.894 §7; 1983 c.346 §4; 1987 c.492 §5; 1989 c.880 §8; 1993 c.684 §1; 1997 c.534 §10; 2003 c.186 §22; 2005 c.832 §11; 2007 c.843 §34]

Note: See note under 469.160.

RENEWABLE ENERGY RESOURCES

469.185 Definitions for ORS 469.185 to 469.225 and 469.878; rules. As used in ORS 469.185 to 469.225 and 469.878:

(1) "Alternative fuel vehicle" means a vehicle as defined by the Director of the State Department of Energy by rule that is used primarily in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and propane or natural gas, regardless of energy consumption savings.

(2) "Car sharing facility" means the expenses of operating a car sharing program, including but not limited to the fair market value of parking spaces used to store the fleet of cars available for a car sharing program, but does not include the costs of the fleet of cars.

(3) "Car sharing program" means a program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. "Car sharing program" does not include operations conducted by car rental agencies.

(4) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a facility, including site development costs and expenses for a sustainable building practices facility.

(5) "Energy facility" means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(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;

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

(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(b) Any acquisition of, 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.

(6) "Facility" means an energy facility, recycling facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system, or a renewable energy resource equipment manufacturing facility.

(7) "High-efficiency combined heat and power facility" means a device or equipment that simultaneously produces heat and electricity from a single source of fuel and that meets the criteria established for a high-efficiency combined heat and power facility under ORS 469.197.

(8) "High-performance home" means a new single-family dwelling that:

(a) Is designed and constructed to reduce net purchased energy through use of both

energy efficiency and on-site renewable energy resources; and

(b) Meets the criteria established for a high-performance home under ORS 469.197.

(9) “Homebuilder-installed renewable energy system” means a renewable energy resource system that:

(a) Meets the criteria established for a renewable energy resource system under ORS 469.197; and

(b) Is installed in a new single-family dwelling by, or at the direction of, the homebuilder constructing the dwelling.

(10) “Qualified transit pass contract” means a purchase agreement entered into between a transportation provider and a person, the terms of which obligate the person to purchase transit passes on behalf or for the benefit of employees, students, patients or other individuals over a specified period of time.

(11) “Recycling facility” means equipment used by a trade or business solely for recycling:

(a) Including:

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

(B) 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;

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

(D) 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.

(12)(a) “Renewable energy resource” includes, but is not limited to:

(A) Straw, forest slash, wood waste or other wastes from farm or forest land, non-petroleum plant or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal energy; or

(B) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(i) That does not exceed 10 megawatts of installed capacity; or

(ii) Qualifies as a research, development or demonstration facility.

(b) “Renewable energy resource” does not include a hydroelectric generating facility that is not described in paragraph (a) of this subsection.

(13) “Renewable energy resource equipment manufacturing facility” means any structure, building, installation, excavation, machinery, equipment or device, or an addition, reconstruction or improvement to land or an existing structure, building, installation, excavation, machinery, equipment or device, that is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used primarily to manufacture equipment, machinery or other products designed to use a renewable energy resource and that meets the criteria established under ORS 469.197.

(14) “Sustainable building practices facility” means a commercial building in which building practices that reduce the amount of energy, water or other resources needed for construction and operation of the building are used. “Sustainable building practices facility” may be further defined by the State Department of Energy by rule, including rules that establish traditional building practice baselines in energy, water or other resource usage for comparative purposes for use in determining whether a facility is a sustainable building practices facility.

(15) “Transportation facility” means a transportation project that reduces energy use during commuting to and from work or school, during work-related travel, or during travel to obtain medical or other services, and may be further defined by the department by rule. “Transportation facility” includes, but is not limited to, a qualified transit pass contract or a transportation services contract.

(16) “Transportation provider” means a public, private or nonprofit entity that provides transportation services to members of the public.

(17) “Transportation services contract” means a contract that is related to a transportation facility, and may be further defined by the department by rule. [1979 c.512 §3; 1981 c.894 §17; 1985 c.745 §1; 1991 c.711 §1; 1997 c.534 §11; 1997 c.656 §5; 1999 c.365 §1; 1999 c.623 §4; 1999 c.765 §4; 2001 c.583 §4; 2007 c.591 §1; 2007 c.843 §16]

Note: Section 27, chapter 843, Oregon Laws 2007, provides:

Sec. 27. Section 22 of this 2007 Act [469.197] and the amendments to ORS 315.354, 315.356, 469.185, 469.200, 469.205, 469.206 and 469.215 by sections 14 to 20 of this 2007 Act apply to facilities acquired, erected, constructed or installed on or after January 1, 2007, and to tax years beginning on or after January 1, 2007. [2007 c.843 §27]

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 facilities for tax credits, preference shall be given to those projects which:

(1) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(a) Nonowner occupied single family dwellings; and

(b) Multiple unit residential housing; or

(2) Provide long-term energy savings from the use of renewable resources or conservation of energy resources. [1979 c.512 §4; 1985 c.745 §2]

469.197 Rules; criteria for high-performance homes, renewable energy systems, combined heat and power facilities and renewable energy resource equipment. The State Department of Energy shall by rule establish all of the following criteria:

(1) For a high-performance home, the minimum design and construction standards that must be met or exceeded for a dwelling to be considered a high-performance home, including but not limited to standards for the building envelope, HVAC systems, lighting, appliances, water conservation measures, use of sustainable building materials and on-site renewable energy systems. The criteria must also establish the minimum reduction in estimated net purchased energy that a dwelling must achieve to be considered a high-performance home.

(2) For a homebuilder-installed renewable energy system, the minimum performance and efficiency standards that a solar electric system, solar domestic water heating system, passive solar space heating system, wind power system, geothermal heating system, fuel cell system or other system utilizing renewable resources must achieve to be considered a homebuilder-installed renewable energy system.

(3) For a high-efficiency combined heat and power facility, the minimum performance and efficiency standards that the facility must achieve to be considered a high-efficiency combined heat and power facility.

(4) For a renewable energy resource equipment manufacturing facility, standards relating to the type of equipment, machinery

or other products being manufactured and related performance and efficiency standards applicable to the manufactured products. [2007 c.843 §22]

Note: See note under 469.185.

469.200 Annual limit to cost of facility in granting tax credits. (1) The total cost of a facility that receives a preliminary certification from the Director of the State Department of Energy for tax credits in any calendar year may not exceed:

(a) \$20 million, in the case of a facility using or producing renewable energy resources, a renewable energy resource equipment manufacturing facility or a high-efficiency combined heat and power facility; or

(b) \$10 million, in the case of any other facility.

(2) The director 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 and applicable rules and standards adopted under ORS 469.185 to 469.225. The director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies or a qualified transit pass contract in the determination. [1979 c.512 §5; 1981 c.894 §18; 1985 c.745 §3; 1987 c.158 §98; 1991 c.711 §3; 1993 c.684 §2; 1995 c.746 §15a; 1997 c.534 §12; 1997 c.656 §6a; 1999 c.365 §2; 2003 c.186 §23; 2007 c.843 §17]

Note: See note under 469.185.

469.205 Application for preliminary certification; eligibility; contents; fees; rules. (1) Prior to erection, construction, installation or acquisition of a proposed facility, any person may apply to the State Department of Energy for preliminary certification under ORS 469.210 if:

(a) The erection, construction, installation or acquisition of the facility is to be commenced on or after October 3, 1979;

(b) The facility complies with the standards or rules adopted by the Director of the State Department of Energy; and

(c) The applicant meets one of the following criteria:

(A) The applicant is a person to whom a tax credit has been transferred; or

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

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

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person who will utilize the facility in connection with Oregon property.

(2) An application 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 acquire, construct or install 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 acquire, construct or install a facility that substantially reduces the consumption of purchased energy;

(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (11);

(F) Plans to acquire an alternative fuel vehicle or to convert an existing vehicle to an alternative fuel vehicle;

(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel vehicles;

(H) Plans to acquire transit passes for use by individuals specified by the applicant;

(I) Plans to acquire, construct or install a transportation facility;

(J) Plans to acquire a sustainable building practices facility;

(K) Plans to acquire a car sharing facility and operate a car sharing program;

(L) Plans to construct a high-efficiency combined heat and power facility;

(M) Is a homebuilder and plans to construct a homebuilder-installed renewable energy system;

(N) Is a homebuilder and plans to construct a high-performance home; or

(O) Plans to acquire, construct or install a renewable energy resource equipment manufacturing facility.

(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 na-

tural 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 or, if applicable, information about the expected level of sustainable building practices facility performance.

(d) The projected cost of the facility.

(e) If applicable, a copy of the proposed qualified transit pass contract, transportation services contract or contract for lease of parking spaces for a car sharing facility.

(f) Any other information the director considers 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) An application for preliminary certification shall be accompanied by a fee established under ORS 469.217. The director may refund the fee if the application for certification is rejected.

(4) The director may allow an applicant to file the preliminary application after the start of erection, construction, installation or acquisition of the facility if the director finds:

(a) Filing the application before the start of erection, construction, installation or acquisition is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225.

(5) A preliminary certification of a sustainable building practices facility shall be applied for and issued as prescribed by the department by rule. [1979 c.512 §6; 1981 c.894 §19; 1985 c.745 §4; 1989 c.765 §7; 1991 c.711 §2; 1993 c.684 §3; 1995 c.746 §16; 1997 c.656 §7; 1999 c.623 §5; 1999 c.765 §5; 2001 c.583 §5; 2001 c.660 §2; 2003 c.186 §24; 2007 c.843 §18]

Note: See note under 469.185.

469.206 Transferability of facility tax credit; rules; effect on taxes reported by public utility. (1) The owner of a facility may transfer a tax credit for the facility in exchange for a cash payment equal to the present value of the tax credit.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section.

(3) Notwithstanding any other provision of law, a tax credit transferred pursuant to this section does not decrease the amount of taxes required to be reported by a public utility. [1997 c.534 §9; 2001 c.583 §6; 2007 c.843 §19]

Note: See note under 469.185.

469.207 Tax credit for rental housing units; eligibility. (1) Except as provided in subsection (3) of this section, an applicant under ORS 469.205 (1)(c) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636. The tax credit shall apply to only the first \$5,000 of actually installed energy conservation measure costs per dwelling unit.

(2) An owner, contract purchaser or lessee of a rental housing unit for which energy conservation measures have been financed by an applicant under subsection (1) of this section is ineligible for an energy conservation measure tax credit for such measures.

(3) No applicant under ORS 469.205 (1)(c) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636 if the rental housing units are constructed on or after January 1, 1996. [1985 c.745 §9; 1993 c.684 §4; 1995 c.746 §16a; 2001 c.583 §7]

469.208 Transferability of rental housing unit tax credit; rules. (1) The owner of a rental housing unit may transfer a tax credit for energy conservation measures installed in rental housing units under ORS 469.207 in exchange for a cash payment equal to the present value of the tax credit. To be eligible for a transfer, the energy conservation measures must have been recommended in an energy audit as provided in ORS 469.633, 469.651 or 469.675.

(2) The State Department of Energy may establish by rule uniform discount rates to be used in calculating the present value of a tax credit under this section. [1993 c.684 §6]

469.210 Submission of plans, specifications and contract terms; preliminary certification. (1) The Director of the State Department of Energy may require the submission of plans, specifications and contract terms, and after examination thereof, may request corrections and revisions of the plans, specifications and terms.

(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. [1979 c.512 §7; 1995 c.746 §17; 1997 c.656 §8; 1999 c.365 §3; 2001 c.583 §7a; 2003 c.186 §25]

469.215 Final certification; eligibility; application; content. (1) A final certification may not be issued by the Director of the State Department of Energy under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210 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 State Department of Energy for final certification of a facility:

(a) If the department issued preliminary certification for the facility under ORS 469.210; and

(b)(A) After completion of erection, construction, installation or acquisition of the proposed facility or, if the facility is a qualified transit pass contract, after entering into the contract with a transportation provider; or

(B) After transfer of the facility, as provided in ORS 315.354 (5).

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

(a) 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 employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts for purchase and installation of the facility;

(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 director, after consultation with the Public Utility Commission, may issue the certificate together with such conditions as the director determines are appropriate to promote the purposes of this section and ORS 315.354, 469.185, 469.200, 469.205 and 469.878. 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) Upon approval of an application for final certification of a facility, the director shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the director may certify the operational unit under one certificate. [1979 c.512 §8; 1981 c.894 §20; 1985 c.745 §5; 1989 c.765 §8; 1991 c.711 §4; 1995 c.746 §18; 1997 c.656 §9; 1999 c.365 §4; 1999 c.623 §6; 2001 c.583 §8; 2001 c.660 §1b; 2003 c.186 §26; 2007 c.843 §20]

Note: See note under 469.185.

Note: Section 26, chapter 843, Oregon Laws 2007, provides:

Sec. 26. The Director of the State Department of Energy may not issue a final certification of a facility under ORS 469.215 on or after January 1, 2016. [2007 c.843 §26]

469.217 Rules; fees for certification. By rule and after hearing, the Director of the State Department of Energy may adopt a schedule of reasonable fees which the State Department of Energy may require of applicants for preliminary or final certification under ORS 469.185 to 469.225. Before the adoption or revision of the fees, the department shall estimate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of filing, investigating, granting and rejecting applications for certification and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the facility. The fee shall not be considered as part of the cost of the facility to be certified. [1985 c.745 §8]

469.220 Certificate required for tax credits; certification not to exceed five years. A certificate issued under ORS 469.215 is required for purposes of obtaining tax credits in accordance with ORS 315.354. 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 chapter 183, the Director of the State Department of Energy 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 subsection (1)(a) 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 315.354. 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 subsection (1)(b) of this section, the certificate holder shall be denied any further relief under ORS 315.354 in connection with such facility from and after the date that the order of revocation becomes final. [1979 c.512 §10; 2003 c.186 §27]

469.228 [1989 c.926 §1; 1991 c.67 §134; 1991 c.641 §5; 1993 c.617 §1; repealed by 1999 c.880 §2]

ENERGY EFFICIENCY STANDARDS

(Temporary provisions relating to outdoor lighting)

Note: Sections 1 to 4, chapter 551, Oregon Laws 2007, provide:

Sec. 1. The Legislative Assembly finds that in order to promote the use of energy-efficient outdoor lighting fixtures and to mitigate the light pollution caused by certain types of outdoor lighting fixtures, local building officials should assess local ordinances relating to outdoor lighting, and the State Department of Energy should assess state statutes and state building code provisions relating to outdoor lighting, for consistency and relevance in accomplishing the strong regulation of outdoor lighting fixtures in this state. [2007 c.551 §1]

Sec. 2. Upon a model lighting ordinance being made available to the public by the International Dark-Sky Association and the Illuminating Engineering Society of North America, or their successors, the State

Department of Energy shall review the model ordinance provisions that are relevant to outdoor lighting fixtures. The department shall publish a report containing findings and recommendations of the department based upon the review. The findings and recommendations may include, but need not be limited to:

- (1) The relevance of the model ordinance for regulating outdoor lighting fixtures under the state building code;
- (2) The suitability of the technical regulations on outdoor lighting fixtures specified in the ordinance;
- (3) The expected effectiveness that adoption of the model ordinance would have in reducing light pollution from outdoor lighting fixtures and promoting the energy efficiency of outdoor lighting fixtures; and
- (4) The desirability of promoting both state and local adoption of the model ordinance provisions regarding outdoor lighting. [2007 c.551 §2]

Sec. 3. The State Department of Energy shall report its findings and recommendations to the Governor and to the Seventy-fourth Legislative Assembly in the manner provided by ORS 192.245 no later than October 1, 2008. The department shall make the report available to the public without charge. [2007 c.551 §3]

Sec. 4. Sections 1, 2 and 3 of this 2007 Act are repealed January 2, 2012. [2007 c.551 §4]

469.229 Definitions for ORS 469.229 to 469.261. As used in ORS 469.229 to 469.261, unless the context clearly requires otherwise:

(1) “Automatic commercial ice cube machine” means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes, and any integrated components for storing or dispensing ice.

(2) “Ballast” means a device used with an electric discharge lamp to obtain necessary circuit conditions for starting and operating the lamp.

(3) “Bottle-type water dispenser” means a water dispenser that uses a bottle or reservoir as the source of potable water.

(4) “Commercial clothes washer” means a soft mount horizontal-axis or vertical-axis clothes washer that:

(a) Has a clothes compartment no greater than 3.5 cubic feet in the case of a horizontal-axis product or no greater than 4 cubic feet in the case of a vertical-axis product; and

(b) Is designed for use by more than one household.

(5)(a) “Commercial hot food holding cabinet” means an appliance that is a heated, fully-enclosed compartment with one or more solid doors and is designed to maintain the temperature of hot food that has been cooked in a separate appliance.

(b) “Commercial hot food holding cabinet” does not include heated glass merchandising cabinets, drawer warmers or cook-and-hold appliances.

(6) “Commercial prerinse spray valve” means a handheld device designed and marketed for use with commercial dishwashing equipment and that sprays water on dishes, flatware and other food service items for the purpose of removing food residue prior to their cleaning.

(7) “Commercial refrigerators or freezers” means refrigerators, freezers or refrigerator-freezers, smaller than 85 cubic feet of internal volume and designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages or ice at specified temperatures, other than products without doors, walk-in refrigerators or freezers, consumer products that are federally regulated pursuant to 42 U.S.C. 6291 et seq. or freezers specifically designed for ice cream. “Commercial refrigerators or freezers”:

(a) Must incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and

(b) May be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet or roll-through cabinet.

(8)(a) “Compact audio product,” also known as a mini, mid, micro or shelf audio system, means an integrated audio system encased in a single housing that includes an amplifier and radio tuner and attached or separable speakers that can reproduce audio from one or more of the following media:

- (A) Magnetic tape;
- (B) Compact disc;
- (C) DVD; or
- (D) Flash memory.

(b) “Compact audio product” does not include products that can be independently powered by internal batteries, have a powered external satellite antenna or can provide a video output signal.

(9) “Compensation” means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(10) “Digital versatile disc” or “DVD” means a laser-encoded plastic medium capable of storing a large amount of digital audio, video and computer data.

(11)(a) “Digital versatile disc player” or “digital versatile disc recorder” means a commercially available electronic product encased in a single housing that includes an integral power supply and for which the sole purpose is, respectively, the decoding and the production or recording of digitized video signal on a DVD.

(b) “Digital versatile disc recorder” does not include models that have an electronic programming guide function that provides an interactive, on-screen menu of television listings and downloads program information from the vertical blanking interval of a regular television signal.

(12) “High-intensity discharge lamp” means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.

(13) “Illuminated exit sign” means an internally illuminated sign that is designed to be permanently fixed in place to identify a building exit, that consists of an electrically powered integral light source that illuminates the legend “EXIT” and any directional indicators and that provides contrast between the legend, any directional indicators and the background.

(14) “Metal halide lamp” means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

(15) “Metal halide lamp fixture” means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

(16) “Pass-through cabinet” means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.

(17) “Portable electric spa” means a factory-built electric spa or hot tub supplied with equipment for heating and circulating water.

(18) “Probe-start metal halide lamp ballast” means a ballast used to operate metal halide lamps that does not contain an igniter and that instead starts metal halide lamps by using a third starting electrode probe in the arc tube.

(19) “Reach-in cabinet” means a commercial refrigerator or freezer with hinged or sliding doors or lids, other than roll-in or roll-through cabinets or pass-through cabinets.

(20) “Roll-in cabinet” means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks to be rolled into the unit.

(21) “Roll-through cabinet” means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks to be rolled through the unit.

(22)(a) “Single-voltage external AC to DC power supply” means a device, other than a product with batteries or battery packs that physically attach directly to the power supply unit, a product with a battery chemistry or type selector switch and indicator light or a product with a battery chemistry or type selector switch and a state of charge meter, that:

(A) Is designed to convert line voltage alternating current input into lower voltage direct current output;

(B) Is able to convert to only one direct current output voltage at a time;

(C) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load;

(D) Is contained within a separate physical enclosure from the end-use product;

(E) Is connected to the end-use product via a removable or hard-wired male or female electrical connection, cable, cord or other wiring; and

(F) Has a nameplate output power less than or equal to 250 watts.

(b) “Single-voltage external AC to DC power supply” does not include power supplies that are classified as devices for human use under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360c.

(23) “State-regulated incandescent reflector lamp” means a lamp that is not colored or designed for rough or vibrating service applications, that has an inner reflective coating on the outer bulb to direct the light, that has an E26 medium screw base, that has a rated voltage or voltage range that lies at least partially within 115 to 130 volts and that falls into one of the following categories:

(a) A bulged reflector or elliptical reflector bulb shape that has a diameter that equals or exceeds 2.25 inches; or

(b) A reflector, parabolic aluminized reflector or similar bulb shape that has a diameter of 2.25 to 2.75 inches.

(24) "Torchiere" means a portable electric lighting fixture with a reflective bowl that directs light upward so as to produce indirect illumination.

(25) "Traffic signal module" means a standard traffic signal indicator, consisting of a light source, a lens and all other parts necessary for operation, that is:

(a) Eight inches, or approximately 200 millimeters, in diameter; or

(b) Twelve inches, or approximately 300 millimeters, in diameter.

(26) "Unit heater" means a self-contained, vented fan-type commercial space heater, other than a consumer product covered

by federal standards established pursuant to 42 U.S.C. 6291 et seq. or that is a direct vent, forced flue heater with a sealed combustion burner, that uses natural gas or propane and that is designed to be installed without ducts within a heated space.

(27) "Walk-in refrigerator" and "walk-in freezer" mean a space refrigerated to temperatures, respectively, at or above and below 32° F that can be walked into.

(28) "Water dispenser" means a factory-made assembly that mechanically cools and heats potable water and dispenses the cooled or heated water by integral or remote means. [2005 c.437 §1; 2007 c.375 §1; 2007 c.649 §1]

Note: 469.229 to 469.261 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.230 [1989 c.926 §3; repealed by 1999 c.880 §2]

469.232 [1989 c.926 §§4,10; 1993 c.617 §2; 1997 c.249 §165; 1997 c.632 §9; repealed by 1999 c.880 §2]

469.233 Energy efficiency standards. The following minimum energy efficiency standards for new products are established:

(1)(a) Automatic commercial ice cube machines must have daily energy use and daily water use no greater than the applicable values in the following table:

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	water	<500	7.80 -.0055H	200 -.022H
		≥ 500<1436	5.58 -.0011H	200 -.022H
		≥ 1436	4.0	200 -.022H
Ice-making head	air	<450	10.26 -.0086H	Not applicable
		≥ 450	6.89 -.0011H	Not applicable
Remote condensing but not remote compressor	air	<1000	8.85 -.0038	Not applicable
		≥ 1000	5.10	Not applicable
Remote condensing and remote compressor	air	<934	8.85 -.0038H	Not applicable
		≥ 934	5.30	Not applicable
Self-contained models	water	<200	11.40 -.0190H	191 -.0315H
		≥ 200	7.60	191 -.0315H
Self-contained models	air	<175	18.0 -.0469H	Not applicable
		≥ 175	9.80	Not applicable

Where H = harvest rate in pounds per 24 hours, which must be reported within 5 percent of the tested value. Maximum water use applies only to water used for the condenser.

(b) For purposes of this subsection, automatic commercial ice cube machines shall be tested in accordance with the ARI 810-2003 test method as published by the Air-Conditioning and Refrigeration Institute. Ice-making heads include all automatic commercial ice cube

machines that are not split system ice makers or self-contained models as defined in ARI 810-2003.

(2) Commercial clothes washers must have a minimum modified energy factor of 1.26 and a maximum water consumption factor of 9.5. For purposes of this subsection, capacity, modified energy factor and water consumption factor are defined and shall be measured in accordance with the federal test method for commercial clothes washers under 10 C.F.R. 430.23.

(3) Commercial prerinse spray valves must have a flow rate equal to or less than 1.6 gallons per minute when measured in accordance with the ASTM International's "Standard Test Method for Prerinse Spray Valves," ASTM F2324-03.

(4)(a) Commercial refrigerators or freezers must meet the applicable requirements listed in the following table:

Equipment Type	Doors	Maximum Daily Energy Consumption (kWh)
Reach-in cabinets, pass-through cabinets and roll-in or roll-through cabinets that are refrigerators	Solid	0.10V + 2.04
	Transparent	0.12V + 3.34
Reach-in cabinets, pass-through cabinets and roll-in or roll-through cabinets that are "pulldown" refrigerators	Transparent	.126V + 3.51
Reach-in cabinets, pass-through cabinets and roll-in or roll-through cabinets that are freezers	Solid	0.40V + 1.38
	Transparent	0.75V + 4.10
Reach-in cabinets that are refrigerator-freezers with an AV of 5.19 or higher	Solid	0.27AV - 0.71

kWh = kilowatt hours
V = total volume (ft³)
AV = adjusted volume = 1.63 x freezer volume (ft³) + refrigerator volume (ft³)

(b) For purposes of this subsection:

(A) "Pulldown" designates products designed to take a fully stocked refrigerator with beverages at 90 degrees Fahrenheit and cool those beverages to a stable temperature of 38 degrees Fahrenheit within 12 hours or less.

(B) Daily energy consumption shall be measured in accordance with the American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers test method 117-2002, except that:

(i) The back-loading doors of pass-through and roll-through refrigerators and freezers must remain closed throughout the test; and

(ii) The controls of all commercial refrigerators or freezers shall be adjusted to obtain the following product temperatures, in accordance with the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, section 1604, table A-2, effective November 27, 2002:

Product or compartment type	Integrated average product temperature in degrees Fahrenheit
Refrigerator	38 ± 2
Freezer	0 ± 2

(5) Illuminated exit signs must have an input power demand of five watts or less per illuminated face. For purposes of this subsection, input power demand shall be measured in accordance with the conditions for testing established by the United States Environmental Protection Agency's Energy Star exit sign program version 3.0. Illuminated exit signs must also meet all applicable building and safety codes.

(6) Metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts may not contain a probe-start metal halide lamp ballast.

(7)(a) Single-voltage external AC to DC power supplies manufactured on or after July 1, 2008, must meet the requirements in the following table:

Nameplate output	Minimum Efficiency in Active Mode
<1 Watt	0.5 * Nameplate Output
≥ 1 Watt	
and ≤ 51 Watts	0.09 * Ln (Nameplate Output) + 0.5
> 51 Watts	0.85
	Maximum Energy Consumption in No-Load Mode
Any Output	0.5 Watts

Where Ln (Nameplate Output) - Natural Logarithm of the nameplate output expressed in Watts

(b) For the purposes of this subsection, efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the United States Environmental Protection Agency's "Test Method for Calculating the Energy Efficiency of Single-Voltage External AC to DC and AC to AC Power Supplies," dated August 11, 2004. The efficiency in the active and no-load modes of power supplies shall be tested only at 115 volts at 60 Hz.

(8)(a) State-regulated incandescent reflector lamps manufactured on or after January 1, 2008, must meet the minimum efficiencies in the following table:

Wattage	Minimum average lamp efficiency (lumens per watt)
40 - 50	10.5
51 - 66	11.0
67 - 85	12.5
86 - 115	14.0
116 - 155	14.5
156 - 205	15.0

(b) Lamp efficiency shall be measured in accordance with the applicable test method found in 10 C.F.R. 430.23.

(9) Torchieres may not use more than 190 watts. A torchiere uses more than 190 watts if any commercially available lamp or combination of lamps can be inserted in a socket and cause the torchiere to draw more than 190 watts when operated at full brightness.

(10)(a) Traffic signal modules must have maximum and nominal wattage that does not exceed the applicable values in the following table:

Module Type	Maximum Wattage (at 74°C)	Nominal Wattage (at 25°C)
12" red ball (or 300 mm circular)	17	11
8" red ball (or 200 mm circular)	13	8
12" red arrow (or 300 mm arrow)	12	9
12" green ball (or 300 mm circular)	15	15
8" green ball (or 200 mm circular)	12	12
12" green arrow (or 300 mm arrow)	11	11

(b) For purposes of this subsection, maximum wattage and nominal wattage shall be

measured in accordance with and under the testing conditions specified by the Institute for Transportation Engineers “Interim LED Purchase Specification, Vehicle Traffic Control Signal Heads, Part 2: Light Emitting Diode Vehicle Traffic Signal Modules.”

(11) Unit heaters must be equipped with intermittent ignition devices and must have either power venting or an automatic flue damper.

(12) Bottle-type water dispensers designed for dispensing both hot and cold water may not have standby energy consumption greater than 1.2 kilowatt-hours per day, as measured in accordance with the test criteria contained in Version 1 of the United States Environmental Protection Agency’s “Energy Star Program Requirements for Bottled Water Coolers,” except that units with an integral, automatic timer may not be tested using Section D, “Timer Usage,” of the test criteria.

(13) Commercial hot food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the “Idle Energy Rate-dry Test” in ASTM F2140-01, “Standard Test Method for Performance of Hot Food Holding Cabinets” published by ASTM International. Interior volume shall be measured in accordance with the method shown in the United States Environmental Protection Agency’s “Energy Star Program Requirements for Commercial Hot Food Holding Cabinets,” as in effect on August 15, 2003.

(14) Compact audio products may not use more than two watts in standby passive mode for those without a permanently illuminated clock display and four watts in standby passive mode for those with a permanently illuminated clock display, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002(E), “Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment.”

(15) Digital versatile disc players and digital versatile disc recorders may not use more than three watts in standby passive mode, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002(E), “Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment.”

(16) Portable electric spas may not have a standby power greater than $5(V^{2/3})$ Watts where V=the total volume in gallons, as measured in accordance with the test method for portable electric spas contained in the California Code of Regulations, Title 20, Division 2, Chapter 4, section 1604.

(17)(a) Walk-in refrigerators and walk-in freezers with the applicable motor types shown in the table below shall include the required components shown.

Motor Type	Required Components
All	Interior lights: light sources with an efficacy of 45 lumens per watt or more, including ballast losses (if any).
All	Automatic door closers that firmly close all reach-in doors
All	Automatic door closers that firmly close all walk-in doors no wider than 3.9 feet and no higher than 6.9 feet that have been closed to within one inch of full closure.
All	Wall, ceiling and door insulation at least R-28 for refrigerators and at least R-34 for freezers
All	Floor insulation at least R-28 for freezers (no requirement for refrigerators)
Condenser fan motors of under one horsepower	(i) Electronically commutated motors, (ii) Permanent split capacitor-type motors, or (iii) Polyphase motors of ½ horsepower or more
Single-phase evaporator fan motors of under one horsepower and less than 460 volts	Electronically commutated motors

(b) In addition to the requirements in paragraph (a) of this subsection, walk-in refrigerators and walk-in freezers with transparent reach-in doors shall meet the following requirements:

(A) Transparent reach-in doors shall be of triple pane glass with either heat-reflective treated glass or gas fill;

(B) If the appliance has an anti-sweat heater without anti-sweat controls, the appliance shall have a total door rail, glass and frame heater power draw of no more than 40 watts if it is a freezer or 17 watts if it is a refrigerator per foot of door frame width; and

(C) If the appliance has an anti-sweat heater with anti-sweat heat controls, and the total door rail, glass, and frame heater power draw is 40 watts or greater per foot of door frame width if it is a freezer or 17 watts or greater per foot of door frame width if it is a refrigerator, the anti-sweat heat controls shall reduce the energy use of the anti-sweat heater in an amount corresponding to the relative humidity in the air outside the door or to the condensation on the inner glass pane. [2005 c.437 §5; 2007 c.375 §§2,3; 2007 c.649 §2]

Note: The amendments to 469.233 by section 3, chapter 375, Oregon Laws 2007, become operative July 1, 2008. See section 8, chapter 375, Oregon Laws 2007. The text that is operative until July 1, 2008, including amendments by section 2, chapter 375, Oregon Laws 2007, and section 2, chapter 649, Oregon Laws 2007, is set forth for the user's convenience.

469.233. The following minimum energy efficiency standards for new products are established:

(1)(a) Automatic commercial ice cube machines must have daily energy use and daily water use no greater than the applicable values in the following table:

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	water	<500	7.80 -.0055H	200 -.022H
		≥ 500<1436	5.58 -.0011H	200 -.022H
Ice-making head	air	≥ 1436	4.0	200 -.022H
		<450	10.26 -.0086H	Not applicable
Remote condensing but not remote compressor	air	≥ 450	6.89 -.0011H	Not applicable
		<1000	8.85 -.0038	Not applicable
Remote condensing and remote compressor	air	≥ 1000	5.10	Not applicable
		<934	8.85 -.0038H	Not applicable
Self-contained models	water	≥ 934	5.30	Not applicable
		<200	11.40 -.0190H	191 -.0315H
Self-contained models	air	≥ 200	7.60	191 -.0315H
		<175	18.0 -.0469H	Not applicable
		≥ 175	9.80	Not applicable

Where H = harvest rate in pounds per 24 hours, which must be reported within 5 percent of the tested value. Maximum water use applies only to water used for the condenser.

(b) For purposes of this subsection, automatic commercial ice cube machines shall be tested in accordance with the ARI 810-2003 test method as published by the Air-Conditioning and Refrigeration Institute. Ice-making heads include all automatic commercial ice cube machines that are not split system ice makers or self-contained models as defined in ARI 810-2003.

(2) Commercial clothes washers must have a minimum modified energy factor of 1.26 and a maximum water consumption factor of 9.5. For purposes of this subsection, capacity, modified energy factor and water consumption factor are defined and shall be measured in accordance with the federal test method for commercial clothes washers under 10 C.F.R. 430.23.

(3) Commercial prerinse spray valves must have a flow rate equal to or less than 1.6 gallons per minute when measured in accordance with the ASTM International's "Standard Test Method for Prerinse Spray Valves," ASTM F2324-03.

(4)(a) Commercial refrigerators or freezers must meet the applicable requirements listed in the following table:

Equipment Type	Doors	Maximum Daily Energy Consumption (kWh)
Reach-in cabinets, pass-through cabinets and roll-in or roll-through cabinets that are refrigerators	Solid	0.10V + 2.04
	Transparent	0.12V + 3.34
Reach-in cabinets, pass-through cabinets and roll-in or roll-through cabinets that are "pulldown" refrigerators	Transparent	.126V + 3.51
Reach-in cabinets, pass-through cabinets and roll-in or roll-through cabinets that are freezers	Solid	0.40V + 1.38
	Transparent	0.75V + 4.10
Reach-in cabinets that are refrigerator-freezers with an AV of 5.19 or higher	Solid	0.27AV - 0.71

kWh = kilowatt hours
V = total volume (ft³)
AV = adjusted volume = 1.63 x freezer volume (ft³) + refrigerator volume (ft³)

(b) For purposes of this subsection:

(A) "Pulldown" designates products designed to take a fully stocked refrigerator with beverages at 90 degrees Fahrenheit and cool those beverages to a stable temperature of 38 degrees Fahrenheit within 12 hours or less.

(B) Daily energy consumption shall be measured in accordance with the American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers test method 117-2002, except that:

(i) The back-loading doors of pass-through and roll-through refrigerators and freezers must remain closed throughout the test; and

(ii) The controls of all commercial refrigerators or freezers shall be adjusted to obtain the following product temperatures, in accordance with the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, section 1604, table A-2, effective November 27, 2002:

Product or compartment type	Integrated average product temperature in degrees Fahrenheit
Refrigerator	38 ± 2
Freezer	0 ± 2

(5) Illuminated exit signs must have an input power demand of five watts or less per illuminated face. For purposes of this subsection, input power demand shall be measured in accordance with the conditions for testing established by the United States Environmental Protection Agency's Energy Star exit sign program version 3.0. Illuminated exit signs must also meet all applicable building and safety codes.

(6) Metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts may not contain a probe-start metal halide lamp ballast.

(7)(a) Single-voltage external AC to DC power supplies manufactured on or after July 1, 2007, must meet the requirements in the following table:

Nameplate output	Minimum Efficiency in Active Mode
<1 Watt	0.49 * Nameplate Output
≥ 1 Watt	0.09 * Ln (Nameplate Output) + 0.49
and ≤ 49 Watts	
>49 Watts	0.84
	Maximum Energy Consumption in No-Load Mode
≤ 10 Watts	0.5 Watts
>10 Watts	0.75 Watts
and ≤ 250 Watts	

Where Ln (Nameplate Output) - Natural Logarithm of the nameplate output expressed in Watts

(b) For the purposes of this subsection, efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the United States Environmental Protection Agency's "Test Method for Calculating the Energy Efficiency of Single-Voltage External AC to DC and AC to AC Power Supplies," dated August 11, 2004. The efficiency in the active and no-load modes of power supplies shall be tested only at 115 volts at 60 Hz.

(8)(a) State-regulated incandescent reflector lamps manufactured on or after January 1, 2008, must meet the minimum efficiencies in the following table:

Wattage	Minimum average lamp efficiency (lumens per watt)
40 - 50	10.5
51 - 66	11.0
67 - 85	12.5
86 - 115	14.0
116 - 155	14.5
156 - 205	15.0

(b) Lamp efficiency shall be measured in accordance with the applicable test method found in 10 C.F.R. 430.23.

(9) Torchieres may not use more than 190 watts. A torchiere uses more than 190 watts if any commercially available lamp or combination of lamps can be inserted in a socket and cause the torchiere to draw more than 190 watts when operated at full brightness.

(10)(a) Traffic signal modules must have maximum and nominal wattage that does not exceed the applicable values in the following table:

Module Type	Maximum Wattage (at 74°C)	Nominal Wattage (at 25°C)
12" red ball (or 300 mm circular)	17	11
8" red ball (or 200 mm circular)	13	8
12" red arrow (or 300 mm arrow)	12	9
12" green ball (or 300 mm circular)	15	15
8" green ball (or 200 mm circular)	12	12
12" green arrow (or 300 mm arrow)	11	11

(b) For purposes of this subsection, maximum wattage and nominal wattage shall be measured in accordance with and under the testing conditions specified by the Institute for Transportation Engineers "Interim LED Purchase Specification, Vehicle Traffic Control Signal Heads, Part 2: Light Emitting Diode Vehicle Traffic Signal Modules."

(11) Unit heaters must be equipped with intermittent ignition devices and must have either power venting or an automatic flue damper.

(12) Bottle-type water dispensers designed for dispensing both hot and cold water may not have standby energy consumption greater than 1.2 kilowatt-hours per day, as measured in accordance with the test criteria contained in Version 1 of the United States Environmental Protection Agency's "Energy Star Program Requirements for Bottled Water Coolers," except that units with an integral, automatic timer may not be tested using Section D, "Timer Usage," of the test criteria.

(13) Commercial hot food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the "Idle Energy Rate-dry Test" in ASTM F2140-01, "Standard Test Method for Performance of Hot Food Holding Cabinets" published by ASTM International. Interior volume shall be measured in accordance with the method shown in the United States Environmental Protection Agency's "Energy Star Program Requirements for Commercial Hot Food Holding Cabinets," as in effect on August 15, 2003.

(14) Compact audio products may not use more than two watts in standby passive mode for those without a permanently illuminated clock display and four watts in standby passive mode for those with a permanently illuminated clock display, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002(E), "Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment."

(15) Digital versatile disc players and digital versatile disc recorders may not use more than three watts in standby passive mode, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002(E), "Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment."

(16) Portable electric spas may not have a standby power greater than $5(V^{2/3})$ Watts where V=the total volume in gallons, as measured in accordance with the test method for portable electric spas contained in the California Code of Regulations, Title 20, Division 2, Chapter 4, section 1604.

(17)(a) Walk-in refrigerators and walk-in freezers with the applicable motor types shown in the table below shall include the required components shown.

Motor Type	Required Components
All	Interior lights: light sources with an efficacy of 45 lumens per watt or more, including ballast losses (if any).
All	Automatic door closers that firmly close all reach-in doors
All	Automatic door closers that firmly close all walk-in doors no wider than 3.9 feet and no higher than 6.9 feet that have been closed to within one inch of full closure.
All	Wall, ceiling and door insulation at least R-28 for refrigerators and at least R-34 for freezers
All	Floor insulation at least R-28 for freezers (no requirement for refrigerators)
Condenser fan motors of under one horsepower	(i) Electronically commutated motors, (ii) Permanent split capacitor-type motors, or (iii) Polyphase motors of ½ horsepower or more
Single-phase evaporator fan motors of under one horsepower and less than 460 volts	Electronically commutated motors

(b) In addition to the requirements in paragraph (a) of this subsection, walk-in refrigerators and walk-in freezers with transparent reach-in doors shall meet the following requirements:

(A) Transparent reach-in doors shall be of triple pane glass with either heat-reflective treated glass or gas fill;

(B) If the appliance has an anti-sweat heater without anti-sweat controls, the appliance shall have a total door rail, glass and frame heater power draw of no more than 40 watts if it is a freezer or 17 watts if it is a refrigerator per foot of door frame width; and

(C) If the appliance has an anti-sweat heater with anti-sweat heat controls, and the total door rail, glass, and frame heater power draw is 40 watts or greater per foot of door frame width if it is a freezer or 17 watts or greater per foot of door frame width if it is a refrigerator, the anti-sweat heat controls shall reduce the energy use of the anti-sweat heater in an amount corresponding to the relative humidity in the air outside the door or to the condensation on the inner glass pane.

Note: See note under 469.229.

Note: Section 8 (2), chapter 375, Oregon Laws 2007, provides:

Sec. 8. (2) The minimum energy efficiency standards specified in ORS 469.233 (7) do not apply to a single-voltage external AC to DC power supply that is made available by a manufacturer directly to a consumer or to a service or repair facility, as a service part or spare part, after and separate from the original sale of the product requiring the power supply unless the single-voltage external AC to DC power supply is made available five or more years after the effective date of this 2007 Act [June 12, 2007]. [2007 c.375 §8(2)]

Note: Section 7, chapter 649, Oregon Laws 2007, provides:

Sec. 7. The minimum efficiency standard for interior lights established in ORS 469.233 (17)(a) applies to walk-in refrigerators and walk-in freezers on or after January 1, 2010. [2007 c.649 §7]

469.234 [1989 c.926 §§5,9; 1993 c.617 §4; repealed by 1999 c.880 §2]

469.235 Certain reflector lamps exempt from standards. The following state-regulated incandescent reflector lamps are exempt from the minimum energy efficiency standards established in ORS 469.233 (8):

(1) 50 watt elliptical reflector lamps;

(2) Lamps rated at 50 watts or less of the following types: BR 30, ER 30, BR 40 and ER 40;

(3) Lamps rated at 65 watts of the following types: BR 40 and ER 40; and

(4) R 20 lamps of 45 watts or less. [2007 c.375 §4]

Note: See note under 469.229.

469.236 [1989 c.926 §6; repealed by 1999 c.880 §2]

469.238 Sale of products not meeting standards prohibited; exemptions. (1) Except as provided in subsection (2) of this section, a person may not sell or offer for sale a new commercial prerinse spray valve, commercial refrigerator or freezer, illuminated exit sign, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, automatic commercial ice cube machine, metal halide lamp fixture or unit heater unless the energy efficiency of the new product meets or exceeds the minimum

energy efficiency standards specified in ORS 469.233.

(2) A person may sell or offer for sale a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Manufactured in this state and sold outside this state;

(b) Manufactured outside this state and sold at wholesale inside this state for final retail sale and installation outside this state;

(c) Installed in a mobile or manufactured home at the time of construction; or

(d) Designed expressly for installation and use in recreational vehicles. [2005 c.437 §§2,3]

Note 1: The amendments to 469.238 by section 4, chapter 437, Oregon Laws 2005, become operative January 1, 2009. See section 10, chapter 437, Oregon Laws 2005. The text that is operative from January 1, 2009, until September 1, 2009, is set forth for the user's convenience.

469.238. (1) Except as provided in subsection (2) of this section, a person may not sell or offer for sale a new commercial clothes washer, commercial prerinse spray valve, commercial refrigerator or freezer, illuminated exit sign, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, automatic commercial ice cube machine, metal halide lamp fixture or unit heater unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may sell or offer for sale a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Manufactured in this state and sold outside this state;

(b) Manufactured outside this state and sold at wholesale inside this state for final retail sale and installation outside this state;

(c) Installed in a mobile or manufactured home at the time of construction; or

(d) Designed expressly for installation and use in recreational vehicles.

Note 2: The amendments to 469.238 by section 3, chapter 649, Oregon Laws 2007, become operative September 1, 2009. See section 8, chapter 649, Oregon Laws 2007. The text that is operative on and after September 1, 2009, is set forth for the user's convenience.

469.238. (1) Except as provided in subsection (2) of this section, a person may not sell or offer for sale a new commercial clothes washer, commercial prerinse spray valve, commercial refrigerator or freezer, illuminated exit sign, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, automatic commercial ice cube machine, metal halide lamp fixture, unit heater, bottle-type water dispenser, commercial hot food holding cabinet, compact audio product, digital versatile disc player, digital versatile disc recorder, portable electric spa, walk-in refrigerator or walk-in freezer unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may sell or offer for sale a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Manufactured in this state and sold outside this state;

(b) Manufactured outside this state and sold at wholesale inside this state for final retail sale and installation outside this state;

(c) Installed in a mobile or manufactured home at the time of construction; or

(d) Designed expressly for installation and use in recreational vehicles.

Note 3: See note under 469.229.

469.239 Installation of products not meeting standards prohibited; exemptions. (1) Except as provided in subsection (2) of this section, a person may not install a new commercial prerinse spray valve, commercial refrigerator or freezer, illuminated exit sign, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module or unit heater for compensation unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may install a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Installed in a mobile or manufactured home at the time of construction; or

(b) Designed expressly for installation and use in recreational vehicles. [2005 c.437 §6]

Note 1: The amendments to 469.239 by section 7, chapter 437, Oregon Laws 2005, become operative January 1, 2009. See section 10, chapter 437, Oregon Laws 2005. The text that is operative from January 1, 2009, until September 1, 2010, is set forth for the user's convenience.

469.239. (1) Except as provided in subsection (2) of this section, a person may not install a new commercial clothes washer, commercial prerinse spray valve, commercial refrigerator or freezer, illuminated exit sign, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, automatic commercial ice cube machine, metal halide lamp fixture or unit heater for compensation unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may install a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Installed in a mobile or manufactured home at the time of construction; or

(b) Designed expressly for installation and use in recreational vehicles.

Note 2: The amendments to 469.239 by section 4, chapter 649, Oregon Laws 2007, become operative September 1, 2010. See section 8, chapter 649, Oregon Laws 2007. The text that is operative on and after September 1, 2010, is set forth for the user's convenience.

469.239. (1) Except as provided in subsection (2) of this section, a person may not install a new commercial clothes washer, commercial prerinse spray valve, commercial refrigerator or freezer, illuminated exit sign, single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, torchiere, traffic signal module, automatic commercial ice cube machine,

metal halide lamp fixture, unit heater, bottle-type water dispenser, commercial hot food holding cabinet, compact audio product, digital versatile disc player, digital versatile disc recorder, portable electric spa, walk-in refrigerator or walk-in freezer for compensation unless the energy efficiency of the new product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

(2) A person may install a new product not meeting efficiency standards specified in subsection (1) of this section if the product is:

(a) Installed in a mobile or manufactured home at the time of construction; or

(b) Designed expressly for installation and use in recreational vehicles.

Note 3: See note under 469.229.

469.240 [1989 c.926 §§11,12; repealed by 1999 c.880 §2]

469.241 [1993 c.617 §22; repealed by 1999 c.880 §2]

469.242 [1993 c.617 §20; repealed by 1999 c.880 §2]

469.243 [1993 c.617 §21; repealed by 1999 c.880 §2]

469.244 [1989 c.926 §§16,25; repealed by 1993 c.617 §28]

469.245 [1993 c.617 §19; repealed by 1999 c.880 §2]

469.246 [1989 c.926 §§13,18; 1991 c.67 §135; 1993 c.617 §5; repealed by 1999 c.880 §2]

469.247 [1993 c.617 §16; repealed by 1999 c.880 §2]

469.248 [1989 c.926 §39; 1991 c.67 §136; 1993 c.617 §6; repealed by 1999 c.880 §2]

469.249 [1993 c.617 §18; repealed by 1999 c.880 §2]

469.250 [1989 c.926 §§7,8; 1991 c.67 §137; repealed by 1999 c.880 §2]

469.252 [1989 c.926 §§14,15; repealed by 1993 c.617 §28]

469.253 [1993 c.617 §17; repealed by 1999 c.880 §2]

469.254 [1989 c.926 §19; 1993 c.617 §7; 1997 c.838 §6; repealed by 1999 c.880 §2]

469.255 Manufacturers to test products; test methods; certification of products; rules. (1) A manufacturer of a product specified in ORS 469.238 that is sold or offered for sale, or installed or offered for installation, in this state shall test samples of the manufacturer's products in accordance with the test methods specified in ORS 469.233 or, if more stringent, those specified in the state building code.

(2) If the test methods for products required to be tested under this section are not provided for in ORS 469.233 or in the state building code, the State Department of Energy shall adopt test methods for these products. The department shall use test methods approved by the United States Department of Energy or, in the absence of federal test methods, other appropriate nationally recognized test methods for guidance in adopting test methods. The State Department of Energy may periodically review and revise its test methods.

(3) A manufacturer of a product regulated pursuant to ORS 469.229 to 469.261, except for manufacturers of single-voltage external AC to DC power supplies, walk-in

refrigerators and walk-in freezers, shall certify to the State Department of Energy that the products are in compliance with the minimum energy efficiency standards specified in ORS 469.233. The department shall establish rules governing the certification of these products and may coordinate with the certification and testing programs of other states and federal agencies with similar standards.

(4)(a) The department shall establish rules governing the identification of the products that comply with the minimum energy efficiency standards specified in ORS 469.233. The rules shall be coordinated to the greatest extent practicable with the labeling programs of other states and federal agencies with equivalent efficiency standards.

(b) Identification required under paragraph (a) of this subsection shall be by means of a mark, label or tag on the product and packaging at the time of sale or installation.

(c) The department shall waive marking, labeling or tagging requirements for products marked, labeled or tagged in compliance with federal requirements or for products certified pursuant to subsection (3) of this section, unless the department determines that state marking, labeling or tagging is required to provide adequate energy efficiency information to the consumer. [2005 c.437 §9; 2007 c.375 §6; 2007 c.649 §5a]

Note: See note under 469.229.

469.256 [1989 c.926 §29; repealed by 1993 c.617 §29]

469.258 [1989 c.926 §20; 1991 c.641 §6; repealed by 1999 c.880 §2]

469.259 [1991 c.641 §2; 1993 c.617 §8; repealed by 1999 c.880 §2]

469.260 [1989 c.926 §21; 1991 c.67 §138; repealed by 1999 c.880 §2]

469.261 Department to review standards; rules; postponement of operative dates of standards; application for waiver of federal preemption. (1)(a) Notwithstanding ORS 469.233, the State Department of Energy shall periodically review the minimum energy efficiency standards specified in ORS 469.233.

(b) After the review pursuant to paragraph (a) of this subsection, the Director of the State Department of Energy may adopt rules to update the minimum energy efficiency standards specified in ORS 469.233 if the director determines that the standards need to be updated:

(A) To promote energy conservation in the state;

(B) To achieve cost-effectiveness for consumers; or

(C) Due to federal action or to the outcome of collaborative consultations with

manufacturers and the energy departments of other states.

(c)(A) In addition to the rules adopted under paragraph (b) of this subsection, the director may postpone by rule the operative date of any of the minimum energy efficiency standards specified in ORS 469.233 if the director determines that:

(i) Adjoining states with similar minimum energy efficiency standards have postponed the operative date of their corresponding minimum energy efficiency standards; or

(ii) Failure to modify the operative date of any of the minimum energy efficiency standards would impose a substantial hardship on manufacturers, retailers or the public.

(B)(i) The director may not postpone the operative date of a minimum energy efficiency standard under subparagraph (A) of this paragraph for more than one year.

(ii) If at the end of the first postponement period the director determines that adjoining states have further postponed the operative date of minimum energy efficiency standards and the requirements of subparagraph (A) of this paragraph continue to be met, the director may postpone the operative date for not more than one additional year.

(d) After the review pursuant to paragraph (a) of this subsection, the director may adopt rules to establish new minimum energy efficiency standards if the director determines that new standards are needed:

(A) To promote energy conservation in the state;

(B) To achieve cost-effectiveness for consumers; or

(C) Due to federal action or to the outcome of collaborative consultations with manufacturers and the energy departments of other states.

(e) If the director adopts rules under paragraph (b) of this subsection to update the minimum energy efficiency standards specified in ORS 469.233 or under paragraph (d) of this subsection to establish new minimum energy efficiency standards:

(A) The rules may not take effect until one year following their adoption by the director; and

(B) The Governor shall cause to be introduced at the next Legislative Assembly a bill to conform the statutory minimum energy efficiency standards to the minimum energy efficiency standards adopted by the director by rule.

(2) If the director determines that implementation of a state minimum energy effi-

ciency standard requires a waiver of federal preemption, the director shall apply for a waiver of federal preemption pursuant to 42 U.S.C. 6297(d). [2005 c.437 §8; 2007 c.375 §7; 2007 c.649 §6a]

Note: See note under 469.229.

469.262 [1989 c.926 §24; repealed by 1999 c.880 §2]

469.267 [1989 c.926 §26; 1993 c.617 §9; repealed by 1999 c.880 §2]

469.269 [1989 c.926 §27; 1993 c.617 §10; repealed by 1999 c.880 §2]

469.270 [1989 c.926 §28; 1991 c.67 §139; repealed by 1993 c.617 §29]

469.274 [1989 c.926 §§31,32; 1991 c.641 §7; 1993 c.617 §11; repealed by 1999 c.880 §2]

469.276 [1989 c.926 §33; repealed by 1999 c.880 §2]

469.278 [1989 c.926 §34; repealed by 1999 c.880 §2]

469.280 [1989 c.926 §35; repealed by 1999 c.880 §2]

469.282 [1989 c.926 §36; repealed by 1999 c.880 §2]

469.284 [1989 c.926 §37; repealed by 1999 c.880 §2]

469.286 [1989 c.926 §38; 1991 c.67 §140; 1993 c.617 §12; repealed by 1999 c.880 §2]

469.290 [1989 c.926 §23; 1991 c.641 §8; 1993 c.617 §13; repealed by 1999 c.880 §2]

469.292 [1989 c.926 §22; 1991 c.641 §9; repealed by 1999 c.880 §2]

469.296 [1989 c.926 §17; 1993 c.617 §14; repealed by 1999 c.880 §2]

469.298 [1989 c.926 §2; repealed by 1999 c.880 §2]

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

(1) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) "Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(3) "Associated transmission lines" means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

(4) "Average electric generating capacity" means the peak generating capacity of the facility divided by one of the following factors:

(a) For wind or solar energy facilities, 3.00;

(b) For geothermal energy facilities, 1.11;
or

(c) For all other energy facilities, 1.00.

(5) "Combustion turbine power plant" means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.

(6) "Construction" means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000.

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

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

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

(10) "Electric utility" means persons, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, supplying, transmitting or distributing electric energy.

(11)(a) "Energy facility" means any of the following:

(A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:

- (i) Thermal power; or
- (ii) 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 of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:

(i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and

(ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way.

(D) A solar collecting facility using more than 100 acres of land.

(E) A pipeline that is:

(i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a liquid state or

other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;

(ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:

(I) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or

(II) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or

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

(F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.

(G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.

(H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

(I) A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:

- (i) The underground storage reservoir;
- (ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and

(iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.

(J) An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal, solar or wind en-

ergy at a single energy facility or within a single energy generation area.

(b) "Energy facility" does not include a hydroelectric facility.

(12) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more. An "energy generation area" for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

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

(14) "Facility" means an energy facility together with any related or supporting facilities.

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

(16) "Local government" means a city or county.

(17) "Nominal electric generating capacity" means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

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

(19) "Nuclear installation" means any power reactor, nuclear fuel fabrication plant,

nuclear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities that are part of a thermal power plant.

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

(21) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(22) "Project order" means the order, including any amendments, issued by the State Department of Energy under ORS 469.330.

(23)(a) "Radioactive waste" 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.

(24) "Related or supporting facilities" means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. "Related or supporting facilities" does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.

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

(26) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.

(27) "Thermal power plant" means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. "Thermal power plant" includes a nuclear-fueled thermal power plant that has ceased to operate.

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

(29) "Underground gas storage reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous substances. "Underground gas storage reservoir" includes a pool as defined in ORS 520.005.

(30) "Utility" includes:

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

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

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(31) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-

fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1; 1981 c.587 §1; 1981 c.629 §2; 1981 c.707 §1; 1981 c.866 §1; 1991 c.480 §4; 1993 c.544 §3; 1993 c.569 §3; 1995 c.505 §6; 1995 c.551 §10; 1997 c.606 §1; 1999 c.365 §5; 2001 c.134 §2; 2001 c.683 §6; 2003 c.186 §28]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. It is furthermore the policy of this state, notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS 469.020, that the need for new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in ORS 469.503. [Formerly 453.315; 1997 c.428 §1; 2003 c.186 §29]

(Siting)

469.320 Site certificate required; exceptions. (1) Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(2) A site certificate is not required for:

(a) An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:

(A) The site is not enlarged; and

(B) The ability of the energy facility to use fuel for electricity production under peak

steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(b) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(c) An energy facility, except coal and nuclear power plants, if the energy facility:

(A) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(B) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

(d) Temporary storage, at the site of a nuclear-fueled thermal power plant for which a site certificate has been issued by the State of Oregon, of radioactive waste from the plant.

(e) An energy facility as defined in ORS 469.300 (11)(a)(G), if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day.

(f) An energy facility as defined in ORS 469.300 (11)(a)(G), if the facility:

(A) Exclusively uses biomass, including but not limited to grain, whey, potatoes, oil seeds, waste vegetable oil or cellulosic biomass, as the source of material for conversion to a liquid fuel;

(B) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility;

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section;

(D) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge; and

(E) Emits less than 118 pounds of carbon dioxide per million Btu from fossil fuel used for conversion energy.

(g) A standby generation facility, if the facility complies with all of the following:

(A) The facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission;

(B) The standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

(C) The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.

(3) The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.

(4) Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.

(5) Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

(a) Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;

(b) Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or

(c) Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.

(6) If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7) As used in this section:

(a) "Standby generation facility" means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(c) "Useful thermal energy" means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(8) Notwithstanding the definition of "energy facility" in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8; 1982 s.s.1 c.6 §1; 1987 c.200 §5; 1991 c.480 §5; 1993 c.569 §4; 1995 c.505 §7; 1999 c.365 §6; 1999 c.385 §1; 2001 c.134 §§3,4; 2001 c.683 §§7,8; 2003 c.186 §§76,77; 2005 c.768 §§1,2; 2007 c.739 §33]

469.330 Notice of intent to file application for site certificate; public notice; standards, application requirements and study requirements; project order; rules.

(1) Each applicant for a site certificate shall submit to the Energy Facility Siting Council a notice of intent to file an application for a site certificate. The notice of intent must provide information about the proposed site and the characteristics of the facility sufficient for the preparation of the State Department of Energy's project order.

(2) The council shall cause public notice to be given upon receipt of a notice of intent by the council. The public notice shall provide a description of the proposed site and facility in sufficient detail to inform the public of the location and proposed use of the site.

(3) Following review of the notice of intent and any public comments received in response to the notice of intent, the department may hold a preapplication conference with state agencies and local governments that have regulatory or advisory responsibility with respect to the facility. After the preapplication conference, the department shall issue a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application. A project order is not a final order.

(4) A project order issued under subsection (3) of this section may be amended at any time by either the department or the council. [Formerly 453.335; 1977 c.794 §9; 1989 c.88 §1; 1993 c.569 §5; 1995 c.505 §8]

469.340 [1975 c.552 §37; 1975 c.606 §26a; repealed by 1981 c.629 §3]

469.350 Application for site certificate; comment and recommendation.

(1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

(2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, any other state agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

(3) Any state agency, city or county that is requested by the council to comment and make recommendations under this section shall respond to the council by the specified deadline. If a state agency, city or county determines that it cannot respond to the council by the specified deadline because the state agency, city or county lacks sufficient resources to review and comment on the application, the state agency, city or county shall contract with another entity to assist in preparing a response. A state agency, city or county that enters into a contract to assist in preparing a response may request funding to pay for that contract from the council pursuant to ORS 469.360.

(4) The State Department of Energy shall notify the applicant whether the application is complete. When the department determines an application is complete, the department shall notify the applicant and provide notice to the public. [Formerly 453.345; 1977 c.794 §10; 1989 c.88 §2; 1993 c.569 §6; 1995 c.505 §9; 2001 c.683 §10]

469.360 Evaluation of site applications; costs; payment. (1) The Energy Facility Siting Council shall evaluate each site certificate application. As part of its evaluation, the council may commission an independent study by an independent contractor, state agency, local government or any other person, of any aspect of the proposed facility within its statutory authority to review. The council may compensate a state agency or local government for expenses related to:

- (a) Review of the notice of intent, the application or a request for an expedited review;
- (b) The state agency's or local government's participation in a council proceeding; and
- (c) The performance of specific studies necessary to complete the council's statutory evaluation of the application.

(2) The council may enter into a contract under subsection (1) of this section only after the council makes a determination that the council is unable to fully evaluate the application without assistance and identifies specific issues to be addressed and only pursuant to a written contract or agreement with the independent contractor, state agency, local government or other person. The council shall compensate the independent contractor, state agency, local government or other person only to the extent the costs are directly related to issues identified by the council.

(3) The council shall provide funding to state agencies, cities or counties required to contract with another entity to complete

comments and recommendations pursuant to ORS 469.350.

(4) In addition to compensating state agencies and local governments pursuant to subsection (1) of this section, the council may provide funding to the Department of Environmental Quality for the department to conduct modeling and provide technical assistance to expedite preparation, submission and review of applications for permits under ORS 468A.040 required for energy facilities. [Formerly 453.355; 1987 c.450 §1; 1989 c.88 §3; 1993 c.569 §7; 1995 c.505 §10; 2001 c.683 §11]

469.370 Draft proposed order for hearing; issues raised; final order; expedited processing. (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the State Department of Energy shall prepare and issue a draft proposed order on the application.

(2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:

- (a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;
- (b) Include a description of the facility and the facility's general location;
- (c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;
- (d) State that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost; and
- (e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.

(4) After reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the department shall issue a proposed order recommending approval or rejection of the application. The department shall issue public notice of the proposed order, that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

(5) Following receipt of the proposed order from the department, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:

(a) The department failed to follow the requirements of subsection (2) or (3) of this section; or

(b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

(6) If no person requests party status to challenge the department's proposed order, the proposed order shall be forwarded to the council and the contested case hearing shall be concluded.

(7) At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review.

The council's order shall be considered a final order for purposes of appeal.

(8) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.

(9) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or

(C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(10) At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with an average electric generating capacity of less than 100 megawatts. No notice of intent shall be required. Following approval of a request for expedited review, the department shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant.

(11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the

automatic issuance or denial of a site certificate.

(12) The council shall specify in the site certificate a date by which construction of the facility must begin.

(13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:

(a) Elimination of duplicative application, study and reporting requirements;

(b) Council use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable council standards;

(d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1; 1985 c.569 §17; 1993 c.544 §4; 1993 c.569 §8; 1995 c.79 §288; 1995 c.505 §11; 1997 c.428 §2; 2001 c.134 §6]

469.371 [1985 c.569 §5; 1991 c.480 §6; repealed by 1993 c.544 §9]

469.372 [1985 c.569 §14; 1985 c.673 §196; repealed by 1993 c.544 §9]

469.373 Expedited processing for certain natural gas energy facilities. (1) Notwithstanding the expedited review process established pursuant to ORS 469.370, an applicant may apply under the provisions of this section for expedited review of an application for a site certificate for an energy facility if the energy facility:

(a) Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup power generation;

(b) Is a permitted or conditional use allowed under an applicable local acknowledged comprehensive plan, land use regulation or federal land use plan, and is located:

(A) At or adjacent to an existing energy facility; or

(B)(i) At, adjacent to or in close proximity to an existing industrial use; and

(ii) In an area currently zoned or designated for industrial use;

(c)(A) Requires no more than three miles of associated transmission lines or three miles of new natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines; or

(B) Imposes, in the determination of the Energy Facility Siting Council, no significant impact in the locating of associated transmission lines or new natural gas pipelines outside of existing rights of way;

(d) Requires no new water right or water right transfer;

(e) Provides funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reduction in carbon dioxide emissions as specified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by the energy facility for the life of the energy facility; and

(f)(A) Discharges process wastewater to a wastewater treatment facility that has an existing National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment permit, if needed, within the expedited review process time frame and has written confirmation from the wastewater facility permit holder that the additional wastewater load will be accommodated by the facility without resulting in a significant thermal increase in the facility effluent or without requiring any changes to the wastewater facility National Pollutant Discharge Elimination System permit;

(B) Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:

(i) The municipal corporation has included, or intends to include, the process wastewater load from the energy facility in an application for a National Pollutant Discharge Elimination System permit; and

(ii) All conditions required of the energy facility to allow the discharge of process wastewater from the energy facility will be satisfied; or

(C) Obtains a National Pollutant Discharge Elimination System or water pollution control facility permit for process wastewater disposal, supplies evidence to support a finding that the discharge can likely be permitted within the expedited review process time frame and that the discharge will not require:

(i) A new National Pollutant Discharge Elimination System permit, except for a storm water general permit for construction activities; or

(ii) A change in any effluent limit or discharge location under an existing National Pollutant Discharge Elimination System or water pollution control facility permit.

(2) An applicant seeking expedited review under this section shall submit documentation to the State Department of Energy, prior to the submission of an application for a site certificate, that demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this section. The department shall determine, within 14 days of receipt of the documentation, on a preliminary, non-binding basis, whether the energy facility qualifies for expedited review.

(3) If the department determines that the energy facility preliminarily qualifies for expedited review, the applicant may submit an application for expedited review. Within 30 days after the date that the application for expedited review is submitted, the department shall determine whether the application is complete. If the department determines that the application is complete, the application shall be deemed filed on the date that the department sends the applicant notice of its determination. If the department determines that the application is not complete, the department shall notify the applicant of the deficiencies in the application and shall deem the application filed on the date that the department determines that the application is complete. The department or the council may request additional information from the applicant at any time.

(4) The State Department of Energy shall send a copy of a filed application to the Department of Environmental Quality, the Water Resources Department, the State Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agriculture, the Department of Land Conservation and Development, the Public Utility Commission and any other state agency, city, county or political subdivision of the state that has regulatory or advisory responsibility with respect to the proposed energy facility. The State Department of Energy shall send with the copy of the filed application a notice specifying that:

(a) In the event the council issues a site certificate for the energy facility, the site certificate will bind the state and all counties, cities and political subdivisions in the state as to the approval of the site, the construction of the energy facility and the operation of the energy facility, and that after the issuance of a site certificate, all permits,

licenses and certificates addressed in the site certificate must be issued as required by ORS 469.401 (3); and

(b) The comments and recommendations of state agencies, counties, cities and political subdivisions concerning whether the proposed energy facility complies with any statute, rule or local ordinance that the state agency, county, city or political subdivision would normally administer in determining whether a permit, license or certificate required for the construction or operation of the energy facility should be approved will be considered only if the comments and recommendations are received by the department within a reasonable time after the date the application and notice of the application are sent by the department.

(5) Within 90 days after the date that the application was filed, the department shall issue a draft proposed order setting forth:

(a) A description of the proposed energy facility;

(b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed energy facility;

(c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed energy facility; and

(d) Proposed findings specifying how the proposed energy facility complies with the applicable standards and criteria for approval of a site certificate.

(6) The council shall review the application for site certification in the manner set forth in subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council determines that the facility, with any required conditions to the site certificate, will comply with:

(a) The requirements for expedited review as specified in this section;

(b) The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and (L) to (o);

(c) The requirements of ORS 469.503 (3); and

(d) The requirements of ORS 469.504 (1)(b).

(7) Following submission of an application for a site certificate, the council shall hold a public informational meeting on the application. Following the issuance of the proposed order, the council shall hold at least one public hearing on the application. The public hearing shall be held in the area

affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall include, but need not be limited to, the following:

(a) A description of the energy facility and the general location of the energy facility;

(b) The name of a department representative to contact and the telephone number at which people may obtain additional information;

(c) A statement that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost; and

(d) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record, with sufficient specificity to afford the decision maker an opportunity to respond to the issue, will preclude consideration of the issue, by the council or by a court on judicial review of the council's decision.

(8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present additional written evidence, arguments or testimony regarding the application. In the alternative, prior to the conclusion of the hearing, the applicant may request a contested case hearing on the application. If the applicant requests an opportunity to present written evidence, arguments or testimony, the council shall leave the record open for that purpose only for a period not to exceed 14 days after the date of the hearing. Following the close of the record, the department shall prepare a draft final order for the council. If the applicant requests a contested case hearing, the council may grant the request if the applicant has shown good cause for a contested case hearing. If a request for a contested case hearing is granted, subsections (9) to (11) of this section do not apply, and the application shall be considered under the same contested case procedures used for a nonexpedited application for a site certificate.

(9) The council shall make its decision based on the record and the draft final order prepared by the department. The council shall, within six months of the date that the application is deemed filed:

- (a) Grant the application;
- (b) Grant the application with conditions;
- (c) Deny the application; or

(d) Return the application to the site certification process required by ORS 469.320.

(10) If the application is granted, the council shall issue a site certificate pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose conditions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based on those standards.

(11) Judicial review of the approval or rejection of a site certificate by the council under this section shall be as provided in ORS 469.403. [2001 c.683 §15]

Note: 469.373 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.374 [1985 c.569 §15; repealed by 1993 c.544 §9]

469.375 Required findings for radioactive waste disposal facility certificate.

The Energy Facility Siting Council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill by-product or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year floodplain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

(F) An area having experienced volcanic activity within the last two million years.

(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;

(3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of

federal government for disposal of such wastes;

(4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;

(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;

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

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

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

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.

(8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 §3; 1981 c.587 §3; 1985 c.4]

469.378 Land use compatibility statement for energy facility. Notwithstanding ORS 197.180, when a state agency action or recommendation concerning an energy facility requires a land use compatibility statement prior to the action being completed, the state agency shall satisfy any applicable requirement of ORS 197.180 by conditioning the agency action or recommendation on a determination by either the Energy Facility Siting Council or the applicable city or county that the energy facility as affected by the state agency action satisfies, or will continue to satisfy, the applicable requirements of ORS 197.180. [2001 c.683 §17]

Note: 469.378 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.380 [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2; 1993 c.569 §9; repealed by 1995 c.505 §32]

469.390 [Formerly 453.385; repealed by 1993 c.569 §31]

469.400 [Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3; repealed by 1993 c.569 §10 (469.401 and 469.403 enacted in lieu of 469.400)]

469.401 Energy facility site certificate; conditions; effect of issuance on state and local government agencies. (1) Upon approval, the site certificate or any amended site certificate with any conditions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the council and by the applicant. The certificate or amended certificate shall authorize the applicant to construct, operate and retire the facility subject to the conditions set forth in the site certificate or amended site certificate. The duration of the site certificate or amended site certificate shall be the life of the facility.

(2) The site certificate or amended site certificate shall contain conditions for the protection of the public health and safety, for the time for completion of construction, and to ensure compliance with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed, except that upon a clear showing of a significant threat to the public health, safety or the environment that requires application of later-adopted laws or rules, the council may require compliance with such later-adopted laws or rules. For a permit addressed in the site certificate or amended site certificate, the site certificate or amended site certificate shall provide for facility compliance with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules.

(3) Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the facility. After issuance of the site certificate or amended site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate or amended site certificate, subject only to conditions set forth in the site certificate or amended site certificate. After the site certificate or amended site certificate is issued, the only issue to be decided in an administrative or judicial review of a state agency or local government permit for which compliance with governing law was considered

and determined in the site certificate or amended site certificate proceeding shall be whether the permit is consistent with the terms of the site certificate or amended site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

(4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility. [1993 c.569 §11 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §12; 1999 c.385 §2]

469.402 Delegation of review of future action required by site certificate. If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the State Department of Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case. [1995 c.505 §27; 1999 c.385 §3]

Note: 469.402 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.403 Rehearing on approval or rejection of application for site certificate or amendment; appeal; judicial review vested in Supreme Court; stay of order.

(1) Any party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the Energy Facility Siting Council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council's approval or rejection of an application for a site certificate or a site certificate amendment shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate or amended site certificate process. Upon such application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the application shall be con-

sidered denied. The filing of an application for rehearing shall not, unless specifically ordered by the council, operate as a stay of the site certificate or amended site certificate for the facility.

(2) Any party to a contested case proceeding on a site certificate or amended site certificate application may appeal the council's approval or rejection of the site certificate or amended site certificate application. Issues on appeal shall be limited to those raised by the parties to the contested case proceeding before the council.

(3) Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate or amended site certificate is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the council's final order or within 30 days after the date the petition for rehearing is denied or deemed denied. Date of service shall be the date on which the council delivered or mailed its order in accordance with ORS 183.470.

(4) The filing of a petition for judicial review may not stay the order, except that a party to the contested case may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that:

(a) The petitioner will suffer irreparable injury; or

(b) Construction of the energy facility will result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.

(5) If the Supreme Court grants a stay pursuant to subsection (4) of this section, the court:

(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000.

(b) May grant a stay in whole or in part.

(c) May impose other reasonable conditions on the stay.

(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review and shall render a decision within six months of the filing of the petition for review.

(7) The following periods of delay shall be excluded from the six-month period within

which the court must render a decision under subsection (6) of this section:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

(8) No period of delay resulting from a continuance granted by the Supreme Court under subsection (7)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (7)(b) of this section are:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.

(9) No continuance under subsection (7)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [1993 c.569 §12 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §13; 1999 c.385 §4; 2001 c.683 §12]

469.405 Amendment of site certificate; judicial review; exemption; rules. (1) A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403.

(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law, the land use approval by an affected local government of a proposed amendment to a facility and the recommendation of the special advisory group of applicable substantive criteria shall be subject to judicial review only

as provided in ORS 469.403. If the applicant elects to show compliance with the statewide planning goals by demonstrating that the facility has received local land use approval, the provisions of this section shall apply only to proposed projects for which the land use approval by the local government occurs after the date an application for amendment is submitted to the State Department of Energy.

(3) An amendment to a site certificate is not required for a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline will connect to a council certified surface facility related to an underground gas storage reservoir or to a council certified gas pipeline, whether the proposed pipeline is to be located inside or outside the site of a council certified facility, the certificate holder must obtain, prior to construction, the approval of the department for the construction, operation and retirement of the proposed pipeline. The department shall approve such a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding ORS 469.503 (3), the department may not review the proposed pipeline for compliance with other state standards. Notwithstanding ORS 469.503 (4), or any council rule addressing compliance with land use standards, the department shall not review such a proposed pipeline for compliance with land use requirements. Notwithstanding ORS 469.401 (3), the approval by the department of such pipeline shall not bind any state or local agency. The council may adopt appropriate procedural rules for the department review. The department shall issue an order approving or rejecting the proposed pipeline. Judicial review of a department order under this section shall be as provided in ORS 469.403. [1995 c.505 §2; 1999 c.385 §5]

Note: 469.405 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.407 Amendment of application to increase capacity of facility. (1) A recipient may by amendment of its application for a site certificate or by amendment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council finds that:

(a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the council;

(b) The enlarged facility does not exceed 500 megawatts and meets the applicable carbon dioxide standard provided for in ORS 469.503 (2) for any increase in capacity be-

yond the capacity of the 500-megawatt exemption; and

(c) The enlarged facility meets all other applicable council standards.

(2) A recipient is deemed to meet any applicable need standard and carbon dioxide emissions standard for the nominal generating capacity of the 500-megawatt exemption provided that the recipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies the conditions.

(3) As used in this section:

(a) "Recipient" means any base load gas plant, as defined in ORS 469.503, determined by the council to have the lowest net monetized air emissions among the applicants participating in a contested case proceeding.

(b) "500-megawatt exemption" means the council order in which a recipient was determined to have the lowest net monetized air emissions. [1997 c.428 §8]

Note: 469.407 and 469.409 were added to and made a part of 469.300 to 469.563 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.409 Amendment of site certificate to demonstrate compliance with carbon dioxide emissions standard; binding arbitration to resolve disputes. Any site certificate holder that is required by its site certificate or by law to demonstrate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions standard applicable to the type of facility subject to the site certificate before beginning construction. Such a demonstration shall be made as an amendment to the site certificate. Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the Energy Facility Siting Council shall not conduct a contested case hearing on such amendment and the council's order shall not be subject to judicial review. Any dispute about the site certificate holder's demonstration of compliance with the applicable carbon dioxide emissions standard shall be settled through binding arbitration. [1997 c.428 §7]

Note: See note under 469.407.

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate; monitoring programs. (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site

certificate shall be issued by the Energy Facility Siting Council for:

(a) Any transmission lines for which application has been filed with the federal government and the Public Utility Commission of Oregon prior to July 2, 1975; and

(b) Any energy facility under construction on July 2, 1975.

(2) Each applicant for a site certificate under this section shall pay the fees required by ORS 469.421 (2) to (9), if applicable, and shall execute a site certificate in which the applicant agrees:

(a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and

(b) On and after July 2, 1975, to abide by the rules of the Director of the State Department of Energy adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930.

(3) The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the State Department of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the site certificate and any applicable health or safety standards.

(4) The council shall establish programs for monitoring the environmental and ecological effects of the operation and the decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

(5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of the director adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [1975 c.606 §24; 1983 c.740 §184; 1989 c.88 §5; 1993 c.569 §13; 1995 c.505 §15]

469.420 [Formerly 453.405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3; repealed by 1981 c.792 §4 (469.421 enacted in lieu of 469.420)]

469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a

request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under ORS 469.373, a request for the State Department of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate, commissioning an independent study by a contractor, state agency or local government under ORS 469.360, and changes to the rules of the council that are specifically required and related to the particular site certificate.

(2) Every person submitting a notice of intent to file for a site certificate, a request for exemption or a request for expedited review shall submit the fee required under the fee schedule established under ORS 469.441 to the State Department of Energy when the notice or request is submitted to the council. To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or request shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If costs are less than the fee paid, the excess shall be refunded to the person submitting the notice or request.

(3) Before submitting a site certificate application, the applicant shall request from the State Department of Energy an estimate of the costs expected to be incurred in processing the application. The department shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to

complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

(4) Any person who is delinquent in the payment of fees under subsections (1) to (3) of this section shall be subject to the provisions of subsection (11) of this section.

(5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the State Department of Energy's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the Director of the State Department of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the director estimates is needed to fund the cost of ensuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall include both the actual direct cost to be incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services to ensure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards, and the general costs to be incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility and its certificate conditions.

(6) Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for the remaining portion of the year. The amount of the fee shall be set at the cost of regulating the facility during the remaining portion of the year determined in the same manner as the annual fee.

(7) When the actual costs of regulation incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular

facility, are less than the annual fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When the actual regulation costs incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are projected to exceed the annual fee for that facility, the Director of the State Department of Energy may issue an order revising the annual fee.

(8) In addition to any other fees required by law, each energy resource supplier shall pay to the State Department of Energy annually its share of an assessment to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, determined by the Director of the State Department of Energy in the following manner:

(a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy by a regular session of the Legislative Assembly, the Director of the State Department of Energy 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 Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, 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 of the State Department of Energy 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 Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, 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 biennial budget of the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services 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 State Department of Energy 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. 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. The director may grant an extension of not more than 15 days for the requirements of this subsection if:

(A) The energy supplier makes a showing of hardship caused by the deadline;

(B) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon Department of Administrative Services or the State Department of Energy from fulfilling their statutory responsibilities.

(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 that must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

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

(9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal power plant or nuclear installation within this state shall pay to the State Department of Energy annually on July 1, an assessment in an amount determined by the director to be necessary to fund the activities of the state and the counties associated with emergency preparedness for a nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys collected as assessments under this subsection are continuously appropriated to the State Department of Energy for this purpose.

(b) The State Department of Energy shall maintain and shall cause other state agencies and counties to maintain time and billing records for the expenditure of any fees collected from an operator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

(10) Reactors operated by a college, university or graduate center for research purposes and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (5), (8) and (9) of this section.

(11)(a) All fees assessed by the director against holders of site certificates for facilities that have an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule for which shall be negotiated between the director and the site certificate holder.

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the director if the director prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [1981 c.792 §5 (enacted in lieu of 469.420); 1983 c.273 §5; 1987 c.450 §2; 1989 c.88 §4; 1993 c.569 §14; 1995 c.505 §14; 1995 c.542 §1; 1995 c.551 §11; 1995 c.618 §74a; 1995 c.696 §22; 1997 c.249 §166; 1999 c.385 §6; 2001 c.683 §13; 2003 c.186 §30]

469.430 Site inspections. The Energy Facility Siting Council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the State Department of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to assure that the facility is being operated consistently with the terms and conditions of the site certificate or any order issued by the department under ORS 469.405 (3). The council shall avoid duplication of effort with site inspections by other state and federal agencies and local governments that have issued permits or licenses for the facil-

ity. [Formerly 453.415; 1993 c.569 §15; 1995 c.505 §16; 1999 c.385 §7]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS chapter 183, a site certificate or an amended site certificate may be revoked or suspended:

(1) For failure to comply with the terms or conditions of the site certificate or amended site certificate;

(2) For violation of the provisions of ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992 or rules adopted pursuant to ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992; or

(3) If the site certificate was executed prior to July 2, 1975, for violation of the provisions of ORS 469.300 to 469.520 or rules adopted pursuant to ORS 469.300 to 469.520 or for failure to comply with applicable health or safety standards. [Formerly 453.425; 1993 c.569 §16; 1995 c.505 §17; 1999 c.385 §8]

469.441 Justification of fees charged; judicial review. (1) All expenses incurred by the Energy Facility Siting Council and the State Department of Energy under ORS 469.360 (1) and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the department or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption, a request for a pipeline described in ORS 469.405 (3) or a request for an expedited review must submit under ORS 469.421 at the time of submitting the notice of intent, request for exemption, request for pipeline or request for expedited review. The fee schedule shall be designed to recover the council's actual costs of evaluating the notice of intent, request for exemption, request for pipeline or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and department to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, request for exemption, request for pipeline or request for expedited review is submitted, whether the notice of intent, request for exemption, request for pipeline or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the department shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1989 c.88 §8; 1993 c.569 §17; 1999 c.385 §9]

(High Voltage Transmission Lines)

469.442 Procedure prior to construction of transmission line in excess of 230,000 volts; review committee. (1) Any person who proposes to construct a transmission line in excess of 230,000 volts capacity that is not otherwise under the jurisdiction of the Energy Facility Siting Council shall:

(a) Give public notice of the proposed action at least six months before beginning any process to obtain local permits required for the proposed transmission line. Notification shall be given:

(A) By publication once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the transmission line is to be constructed; and

(B) To the governing bodies and planning directors of cities and counties which are within or partially within the project study area.

(b) Provide an opportunity for public comment on the proposed transmission line and conduct public meetings to review the proposal.

(c) Respond specifically and in writing to local concerns and recommendations regarding the proposed transmission line.

(2) The Director of the State Department of Energy shall establish a committee to include technical experts and members of the public to coordinate public review of a proposed transmission line under subsection (1) of this section when requested to do so by ordinance or resolution of the affected governing body.

(3) At the conclusion of the public review, the committee shall make a summary report to the affected governing body including public concerns and recommendations concerning the proposed transmission line.

(4) The scope of work and cost of conducting the review shall be negotiated between the State Department of Energy and the project sponsor. The negotiated cost shall be paid by the project sponsor.

(5) Subsections (1) to (4) of this section shall not apply to a person who proposes to construct transmission lines entirely within 500 feet of an existing corridor occupied by transmission lines with a capacity in excess of 230,000 volts. [1987 c.200 §2; 1993 c.569 §18]

469.445 [1987 c.200 §3; repealed by 1993 c.569 §31]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established an Energy Facility Siting Council to be located within the Oregon Department of Administrative Services and consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

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

(3) No member of the council shall be an employee, director or retired employee or director of or a consultant to or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in 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 the term of the member accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or any agency thereof and held by the owner or operator of the energy facility that employs such person. [Formerly 453.435; 1995 c.551 §12]

469.460 Officers; meetings; compensation and expenses. (1) The Energy Facility Siting Council shall annually elect from among its members a chairperson and vice chairperson with such powers and duties as

the council imposes in accordance with ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The Governor or the chairperson of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.

(2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445]

469.470 Powers and duties; rules. The Energy Facility Siting Council shall:

(1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.

(2) In accordance with the applicable provisions of ORS chapter 183, and subject to the provisions of ORS 469.501 (3), adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.

(3) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in performing the functions vested by law in the council.

(4) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.

(5) Consult with the Water Resources Commission on the need for power and other areas within the expertise of the council when the Water Resources Commission is determining whether to allocate water for hydroelectric development.

(6) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [Formerly 453.455; 1991 c.480 §7; 1993 c.544 §5; 1993 c.569 §19; 1995 c.505 §18]

469.480 Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee; rules. (1) The Energy Facility Siting Council shall designate as a special advisory group the governing body of any local government within

whose jurisdiction the facility is proposed to be located.

(2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such advisory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.

(3) Subject to applicable laws regulating travel and other expenses of state officers and employees, members of any advisory committee appointed under subsection (1) of this section shall receive no compensation but may receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

(4) The council by rule shall form an Electric and Magnetic Field Committee which shall meet at the call of the council chair. The committee shall include representatives of the public, utilities, manufacturers and state agencies. The committee shall monitor information being developed on electric and magnetic fields and report the committee's findings to the council. The council shall report the findings of the Electric and Magnetic Field Committee to the Legislative Assembly. [Formerly 453.475; 1991 c.491 §1; 1993 c.569 §20; 1995 c.551 §17]

(Rules; Standards; Compliance)

469.490 Adoption of rules; determination of validity. All rules adopted by the Energy Facility Siting Council pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be adopted in the manner required by ORS chapter 183. The validity of any rule adopted by the council may be determined only upon a petition by any person to the Supreme Court. The petition must be filed within 60 days after the date the rule becomes effective under ORS 183.355. The review by the Supreme Court of the validity of any rule adopted by the council shall otherwise be according to ORS 183.400. The Supreme Court shall give priority on its docket to such a petition for review. [Formerly 453.495; 1995 c.505 §19]

469.500 [Formerly 453.505; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.501 Energy facility siting, construction, operation and retirement standards; exemptions. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

(a) The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.

(b) Seismic hazards.

(c) Areas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

(d) The financial ability and qualifications of the applicant.

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(f) Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(h) The accumulation, storage, disposal and transportation of nuclear waste.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities as defined in ORS 469.503.

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

(n) Soil protection.

(o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).

(2) The council may adopt exemptions from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.

(3) The council may issue a site certificate for a facility that does not meet one or more of the standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(4) Notwithstanding subsection (1) of this section, the council may not impose any standard developed under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for an energy facility producing power from wind, solar or geothermal energy. However, the council may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility. [1993 c.569 §22 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §20; 1997 c.428 §3; 2001 c.134 §7]

469.503 Requirements for approval of energy facility site certificate; carbon dioxide emissions standard; offset funds; use of offset funds by qualifying organization; rules. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

(1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.

(2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.

(a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the car-

bon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rulemaking record:

- (A) Promote facility fuel efficiency;
- (B) Promote efficiency in the resource mix;
- (C) Reduce net carbon dioxide emissions;
- (D) Promote cogeneration that reduces net carbon dioxide emissions;
- (E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
- (F) Minimize transaction costs;
- (G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
- (H) Allow either the applicant or third parties to implement offsets;
- (I) Be attainable and economically achievable for various types of power plants;
- (J) Promote public participation in the selection and review of offsets;
- (K) Promote prompt implementation of offset projects;
- (L) Provide for monitoring and evaluation of the performance of offsets; and
- (M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the pre-

dicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or any combination thereof. The council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved. The council shall determine the quantity of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

(i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) The ability of the council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed

measurement, monitoring and evaluation of mitigation measure performance; and

(iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the

offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall

give written notice of its selections to the council and to any person requesting notice. On petition by the State Department of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

(e) As used in this subsection:

(A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric

power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(C) "Fossil-fueled power plant" means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

(D) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A), (B) and (D).

(E) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

(F) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(G) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

(H) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(C) and (E) to (I).

(I) "Offset" means an action that will be implemented by the applicant, a third party

or through the qualified organization to avoid, sequester or displace emissions of carbon dioxide.

(J) "Offset funds" means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.

(K) "Qualified organization" means an entity that:

(i) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(ii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(iii) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;

(iv) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(v) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(vi) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

(3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the

council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission. [1993 c.569 §23 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §21; 1997 c.428 §4; 1999 c.365 §11; 2001 c.134 §10; 2003 c.186 §78]

469.504 Facility compliance with statewide planning goals; exception; amendment of local plan and land use regulations; conflicts; technical assistance; rules. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The Energy Facility Siting Council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(5) Upon request by the State Department of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either

determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (1)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a no-

tice of intent or an application for expedited processing is submitted to the State Department of Energy.

(9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction. [1997 c.428 §5; 1999 c.385 §10; 2001 c.134 §11; 2003 c.186 §79; 2005 c.829 §12]

Note: 469.504 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.505 Consultation with other agencies. (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the federal government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council's review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.

(2) Before resolving any conflicting conditions in site certificates or amended site certificates under ORS 469.503 (3) and 469.504, the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict resolution. [1993 c.569 §24 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1997 c.428 §9; 1999 c.385 §11]

469.507 Monitoring environmental and ecological effects of construction and operation of energy facilities. (1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.

(2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the oper-

ator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the Director of the State Department of Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

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

(4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation. [1993 c.569 §25 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §22]

469.510 [Formerly 453.515; 1977 c.794 §15; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development.

(1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the State Department of Energy, promptly of its activities and programs relating to energy and radiation.

(2) Each state agency proposing to adopt, amend or rescind a rule relating to energy facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.

(3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]

(Plant Operations; Radioactive Wastes)

469.525 Radioactive waste disposal facilities prohibited; exceptions; rules. 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 Energy Facility Siting 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 Department of Human Services.

(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 Review and approval of security programs. The Energy Facility Siting Council and the Director of the State Department of Energy shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval. [Formerly 453.535; 1981 c.707 §3; 1989 c.6 §1]

469.533 State Department of Energy rules for health protection and evacuation procedures in nuclear emergency. Notwithstanding ORS chapter 401, the State Department of Energy in cooperation with the Department of Human Services and the Office of Emergency Management shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear power plant or nuclear installation. [Formerly 453.765; 1983 c.586 §43]

469.534 County procedures. Each county in this state that has a nuclear-fueled thermal power plant located within county boundaries and each county within this state that has any portion of its area located within 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written procedures that are compatible with the rules adopted by the State Department of Energy under ORS 469.533. The department shall review the county proce-

dures to determine whether they are compatible with the rules of the department. [1983 c.586 §46]

469.535 Governor may assume control of emergency operations during nuclear accident or catastrophe. Notwithstanding ORS chapter 401, when an emergency exists because of an accident or catastrophe in the operation of a nuclear power plant or nuclear installation or in the transportation of radioactive material, the Governor, for the duration of the emergency, may:

(1) Assume complete control of all emergency operations in the area affected by the accident or catastrophe, direct all rescue and salvage work and do all things deemed advisable and necessary to alleviate the immediate conditions.

(2) Assume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.

(3) Close all roads and highways in such area to traffic or by order of the Director of the State Department of Energy limit the travel on such roads to such extent as the director deems necessary and expedient.

(4) Designate persons to coordinate the work of public and private relief agencies operating in such area and exclude from such area any person or agency refusing to cooperate with other agencies engaged in emergency work.

(5) Require the aid and assistance of any state or other public or quasi-public agencies in the performance of duties and work attendant upon the emergency conditions in such area. [1983 c.586 §47]

469.536 Public utility to disseminate information under ORS 469.533. A public utility which operates a nuclear power plant or nuclear installation shall disseminate to the governing bodies of cities and counties that may be affected information approved by the State Department of Energy which explains rules or procedures adopted under ORS 469.533. [Formerly 453.770]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs; transport and disposal of radioactive materials. (1) In instances where the Director of the State Department of Energy determines either from the monitoring or surveillance of the director that there is danger of violation of a safety standard adopted under ORS 469.501 from the continued operation of a plant or installation, the director may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards.

(3) The director may order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the director believes that ORS 469.300 to 469.619 and 469.930 or rules adopted pursuant thereto are being violated or are in danger of being violated. [Formerly 453.545; 1989 c.6 §2; 1993 c.569 §26; 2003 c.186 §31]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the Director of the State Department of Energy from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the Energy Facility Siting Council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the director shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.563 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the director based upon monitoring or surveillance by the director, or based upon information from the council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accumulation or storage of radioactive material located at a nuclear-fueled thermal power plant or a nuclear installation, the director shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.563.

(3)(a) If the director believes there is a clear and immediate danger to public health or safety, the director shall halt the trans-

portation or disposal of radioactive material or waste.

(b) The director shall serve an order to halt the transportation or disposal of radioactive material on the person responsible for the transport or disposal. The order may be served without prior hearing or notice.

(c) Within 24 hours after the director serves an order under paragraph (b) of this subsection, the director shall petition the appropriate circuit court for relief under ORS 469.563.

(4) The Governor, in the absence of the director, may issue orders and petition for judicial relief as provided in this section. [Formerly 453.555; 1977 c.794 §16; 1989 c.6 §3; 2003 c.186 §32]

469.553 Active uranium mill or mill tailings disposal facility site certification required; procedure for review; fees. (1) Any person desiring to construct or operate an active uranium mill or uranium mill tailings disposal facility after June 25, 1979, shall file with the Energy Facility Siting Council a site certificate application.

(2) The Energy Facility Siting Council shall review an application for a site certificate under this section using the procedure prescribed in ORS 469.350, 469.360, 469.370, 469.375, 469.401 and 469.403, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.421 in connection with site certificates applied for or issued under this section. [1979 c.283 §7; 1987 c.633 §1; 1993 c.569 §27; 1995 c.505 §25]

469.556 Rules governing uranium-related activities. The Energy Facility Siting Council shall adopt rules governing the location, construction and operation of uranium mills and uranium mill tailings disposal facilities and the treatment, storage and disposal of uranium mine overburden for the protection of the public health and safety and the environment. [1979 c.283 §8]

469.559 Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor; exception for inactive or abandoned site. (1) Notwithstanding the authority of the Department of Human Services pursuant to ORS 453.605 to 453.800 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, and perform or cause to be performed any and all acts necessary to be performed by the state,

including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS chapter 183 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Energy Facility Siting Council and the State Department of Energy may enter into and carry out cooperative agreements and arrangements with any agency of the federal government implementing the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. section 9601 et seq., to clean up wastes and contaminated material, including overburden, created by uranium mining before June 29, 1989. Any such project need not obtain a site certificate from the council, but shall nevertheless comply with all applicable, relevant or appropriate state standards including but not limited to those set forth in ORS 469.375 and rules adopted by the council and other state agencies to implement such standards.

(3) The Governor may do any and all things necessary to implement the requirements of the federal Acts referred to in subsections (1) and (2) of this section.

(4) Notwithstanding ORS 469.553, after June 25, 1979, no site certificate is required for the cleanup and disposal of an inactive or abandoned uranium mill tailings site as authorized under subsection (1) of this section and Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604. [1979 c.283 §9; 1987 c.633 §2; 1989 c.496 §1]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.501 to 192.505, any information filed or submitted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be made available for public inspection and copying during regular office hours of the State Department of Energy at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Insurance)

469.561 Property insurance required; exceptions; filing of policy. (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

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

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

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

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

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

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

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

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [Formerly 469.565]

469.562 Eligible insurers. (1) In order to provide the private insurance specified under ORS 469.561, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.561 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [Formerly 469.567]

(Enforcement)**469.563 Court orders for enforcement.**

Without prior administrative proceedings, a circuit court may issue such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.320, 469.405 (3), 469.410, 469.421, 469.430, 469.440, 469.442, 469.507, 469.525 to 469.559, 469.560, 469.561, 469.562, 469.590 to 469.619, 469.930 and 469.992 or with the terms and conditions of a site certificate. [Formerly 469.570; 1999 c.385 §12]

469.565 [1981 c.866 §§3,4; renumbered 469.561 in 1997]

(Oregon Hanford Cleanup Board)

469.566 Legislative findings. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing the Hanford Nuclear Reservation as a potentially suitable location for the long-term disposal of high-level radioactive waste; or

(b) Ensure adequate opportunity for public participation in the assessment process.

(2) Over the past 45 years, the United States has developed and produced nuclear weapons at the Hanford Nuclear Reservation and during this period large quantities of radioactive hazardous and chemical wastes have accumulated at the Hanford Nuclear Reservation, and the waste sites pose an immediate and serious long-term threat to the environment and to public health and safety.

(3) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Cleanup Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the federal government, to ensure a maximum of public participation in the assessment and cleanup process. [1987 c.514 §1; 1991 c.562 §3; 2001 c.104 §204; 2003 c.186 §33]

Note: 469.566 to 469.583 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.567 [1981 c.866 §5; renumbered 469.562 in 1997]

469.568 Construction of ORS 469.566 to 469.583. Nothing in ORS 469.566 to 469.583 shall be interpreted by the federal government or the United States Department of Energy as an expression by the people of

Oregon to accept the Hanford Nuclear Reservation as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 §2; 2001 c.104 §205]

Note: See note under 469.566.

469.569 Definitions for ORS 469.566 to 469.583. As used in ORS 469.566 to 469.583:

(1) "Board" means the Oregon Hanford Cleanup Board.

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 §3; 2003 c.186 §34]

Note: See note under 469.566.

469.570 [Formerly 453.575; 1995 c.505 §23; renumbered 469.563 in 1997]

469.571 Oregon Hanford Cleanup Board; members; appointment. There is created an Oregon Hanford Cleanup Board that shall consist of the following members:

(1) The Director of the State Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) A representative of the Governor;

(4) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(5) Ten members of the public, appointed by the Governor, one of whom shall be a representative of a local emergency response organization in eastern Oregon and one of whom shall serve as chairperson; and

(6) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4; 1991 c.562 §1; 1997 c.249 §271; 2003 c.186 §5]

Note: See note under 469.566.

469.572 Compensation of board members. (1) Each member of the Oregon Hanford Cleanup Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Note: See note under 469.566.

469.573 Purpose of Oregon Hanford Cleanup Board. The Oregon Hanford Cleanup Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the Hanford Nuclear Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6; 2001 c.104 §206]

Note: See note under 469.566.

469.574 Duties of Oregon Hanford Cleanup Board; coordination with Washington. In carrying out its purpose as set forth in ORS 469.573, the Oregon Hanford Cleanup Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste and other issues related to the Hanford Nuclear Reservation.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the federal government on any matter related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation. Notification of proposed plans includes notification of proposals to conduct field work, on-site evaluation or on-site testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American In-

dian tribal governing body, the general public and interested citizen groups in preparing this response.

(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation and the opportunities of the public to participate in procedures and decisions related to this waste.

(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation. If the board finds that the application is not consistent with the state's policy related to such issue or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the federal government related to the long-term disposal of high-level radioactive waste and other issues related to the Hanford Nuclear Reservation.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste or other issues related to the Hanford Nuclear Reservation.

(9) Coordinate with appropriate counterparts and agencies in the State of Washington. [1987 c.514 §7; 1991 c.562 §4; 2001 c.104 §207]

Note: See note under 469.566.

469.575 Duties of chairperson of Oregon Hanford Cleanup Board. The chairperson of the Oregon Hanford Cleanup Board shall:

(1) Supervise the day-to-day functions of the board;

(2) Hire, assign, reassign and coordinate the administrative personnel of the board, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(3) Request technical assistance from any other state agency. [1987 c.514 §8]

Note: See note under 469.566.

469.576 Review of Hanford as site selected for long-term disposal of high-level radioactive waste. (1) If the United States Department of Energy selects the Hanford Nuclear Reservation as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Cleanup Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall:

(a) Include a full scientific review of the adequacy of the selected site and of the site plan;

(b) Use recognized experts;

(c) Conduct one or more public hearings on the site plan;

(d) Make available to the public arguments and evidence for and against the site plan; and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site. [1987 c.514 §10; 2001 c.104 §208]

Note: See note under 469.566.

469.577 Lead agency; agreements with federal agencies related to long-term disposal of high-level radioactive waste. (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Cleanup Board.

(3) The Oregon Hanford Cleanup Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section or other issues related to the Hanford Nuclear Reservation. [1987 c.514 §11; 1991 c.562 §5; 2001 c.104 §209]

Note: See note under 469.566.

469.578 Oregon Hanford Cleanup Board to implement agreements with federal agencies. The Oregon Hanford Cleanup Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under ORS 469.577. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups. [1987 c.514 §12]

Note: See note under 469.566.

469.579 Authority to accept moneys; disbursement of funds; rules. The Oregon Hanford Cleanup Board may accept moneys from the United States Department of Energy, other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of ORS 469.566 to 469.583. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of ORS 469.566 to 469.583, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste or other issues related to the Hanford Nuclear Reservation. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under ORS 469.573. [1987 c.514 §13; 1991 c.562 §6; 2001 c.104 §210; 2003 c.186 §35]

Note: See note under 469.566.

469.580 [1977 c.296 §13; repealed by 1993 c.569 §31]

469.581 Advisory and technical committees. The Oregon Hanford Cleanup Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495. [1987 c.514 §14; 1991 c.562 §2]

Note: See note under 469.566.

469.582 Cooperation with Oregon Hanford Cleanup Board; technical assistance from other state agencies. All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Cleanup Board in carrying out any of its activities under ORS 469.566 to 469.583 and, at the request of the chairperson, provide technical assistance to the board. [1987 c.514 §15]

Note: See note under 469.566.

469.583 Rules. In accordance with the applicable provisions of ORS chapter 183, the Oregon Hanford Cleanup Board shall adopt rules and standards to carry out the requirements of ORS 469.566 to 469.583. [1987 c.514 §16]

Note: See note under 469.566.

(Federal Site Selection)

469.584 Findings. The Legislative Assembly and the people of the State of Oregon find that:

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford Nuclear Reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress.

(3) The United States Department of Energy has prematurely deferred consideration of numerous potential sites and disposal media that its own research indicates are more appropriate, safer and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1987 c.13 §1; 2001 c.104 §211]

Note: 469.584 and 469.585 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by leg-

islative action. See Preface to Oregon Revised Statutes for further explanation.

469.585 Activities of state related to selection of high-level radioactive waste disposal site. In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly, other statewide officials and state agencies shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste;

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal;

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act;

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste; and

(6) Ensure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford Nuclear Reservation site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 §2; 2001 c.104 §212]

Note: See note under 469.584.

(Hanford Nuclear Reservation)

469.586 Findings. The Legislative Assembly and the people of the State of Oregon find that:

(1) The maintenance of healthy, unpolluted river systems, airsheds and land are essential to the economic vitality and well-being of the citizens of the State of Oregon and the Pacific Northwest.

(2) Radioactive waste stored at the Hanford Nuclear Reservation is already leaking into and contaminating the water table and watershed of the Columbia River and radioactive materials and toxic compounds have been found in plants, animals and waters downstream from the Hanford Nuclear Reservation and constitute a present and poten-

tial threat to the health, safety and welfare of the people of the State of Oregon.

(3) The Hanford Nuclear Reservation is now one of the most radioactively contaminated sites in the world, according to government studies, and will require billions of dollars in costs for cleanup and the ongoing assessment of health effects.

(4) In November 1980, the people of the State of Oregon, by direct vote in a statewide election, enacted a moratorium on the construction of nuclear power plants, and no nuclear power plants are presently operating in the State of Oregon.

(5) In May 1987, the people of the State of Oregon, by direct vote in a statewide election, enacted Ballot Measure 1, opposing the disposal of highly radioactive spent fuel from commercial power plants at the Hanford Nuclear Reservation.

(6) In 1995, the Legislative Assembly resolved that Oregon should have all legal rights in matters affecting the Hanford Nuclear Reservation, including party status in the Hanford tri-party agreement that governs the cleanup of the reservation.

(7) Throughout the administrations of Presidents Ford, Carter, Reagan and Bush, the policy of the federal government banned the use of plutonium in commercial nuclear power plants due to the risk that the plutonium could be diverted to terrorists and to nations that have not renounced the use of nuclear weapons.

(8) The federal government has announced that it will process plutonium from weapons with uranium to produce mixed oxide fuel for commercial nuclear power plants and other nuclear facilities. The Hanford Nuclear Reservation, located on the Columbia River, is a primary candidate site being considered for the production facilities.

(9) The production of mixed oxide fuel will result in enormous new quantities of radioactive and chemical wastes that will present significant additional disposal problems and unknown costs. [1997 c.617 §1]

Note: 469.586 and 469.587 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.587 Position of State of Oregon related to operation of Hanford Nuclear Reservation. The Legislative Assembly and the people of the State of Oregon:

(1) Declare that the State of Oregon is unalterably opposed to the use of the Hanford Nuclear Reservation for operations that create more contamination at the Hanford Nuclear Reservation, divert resources from cleanup at the Hanford Nuclear Reservation

and make the Hanford Nuclear Reservation cleanup more difficult, such as the processing of plutonium to fuel nuclear power plants, reactors or any other facilities, and further declare that vitrification in a safe manner is the preferred means to dispose of excess plutonium, in order to protect human health and the environment.

(2) Request that the President of the United States and the Secretary of Energy continue their previous policy of banning the use of plutonium to fuel commercial power plants and nuclear facilities.

(3) Request that the federal government honor the federal government's original mandate to implement and complete the cleanup and restoration of the Hanford Nuclear Reservation. [1997 c.617 §2]

Note: See note under 469.586.

(Siting of Nuclear-Fueled Thermal Power Plants)

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

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

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

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

469.594 Storage of high-level radioactive waste after expiration of license prohibited; continuing responsibility for storage; implementation agreements. (1) Notwithstanding the definition of a "waste disposal facility" under ORS 469.300, no high-level radioactive waste should be stored at the site of a nuclear-fueled thermal power plant after the expiration of the operating license issued to the nuclear power plant by the United States Nuclear Regulatory Commission.

(2) Notwithstanding subsection (1) of this section, a person operating a nuclear power plant under a license issued by the United States Nuclear Regulatory Commission shall remain responsible for proper temporary storage of high-level radioactive materials at the site of the nuclear power plant after termination of a license and until such materi-

als are removed from the site for permanent storage.

(3) The State Department of Energy and the operators of nuclear-fueled thermal plants shall pursue agreements with the United States Department of Energy and the United States Nuclear Regulatory Commission to fulfill the provisions of this section. [1985 c.434 §2; 1991 c.480 §11; 1993 c.569 §28; 1995 c.505 §24; 2001 c.134 §12]

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

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

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

469.599 Public Utility Commission's duty. The Public Utility Commission shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.460 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 §6]

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

(1) The Energy Facility Siting Council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 §8]

(Transportation of Radioactive Material)

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

469.605 Permit to transport required; application; delegation of authority to issue permits; fees; rules. (1) No person shall ship or transport radioactive material identified by the Energy Facility Siting Council by rule as posing a significant hazard to public health and safety or the environment if improperly transported into or within the State of Oregon without first obtaining a permit from the State Department of Energy.

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

(3) Application for a permit under this section shall be made in a form and manner prescribed by the Director of the State Department of Energy and may include:

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

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

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

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

(4) The director shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the department of performing the duties of the department under ORS 469.550 (3), 469.563, 469.603 to 469.619 and 469.992. Fees collected under this subsection shall be deposited in the State Department of Energy Account established under ORS 469.120.

(5) The director shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.603 to 469.619 and if the proposed route complies with federal law as provided in ORS 469.606.

(6) The director may delegate the authority to issue permits for the transportation of radioactive material to the Department of Transportation. In exercising such authority, the Department of Transportation shall comply with the applicable provisions of ORS 469.603 to 469.619 and rules adopted by the director or the Energy Facility Siting Council under ORS 469.603 to 469.619. Permits issued by the Department of Transportation under this subsection shall be enforced according to the provisions of ORS 825.258. The director also may delegate other authority granted under ORS 469.605 to 469.619 to other state agencies if the delegation will maintain or enhance the quality of the transportation safety program. [1981 c.707 §5; 1989 c.6 §4; 1991 c.233 §3; 2003 c.186 §36]

469.606 Determination of best and safest route. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the State Department of Energy shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:

(a) The Oregon Department of Transportation, or a designee of the Oregon Department of Transportation;

(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and

(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Commission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determination is made that the proposed route is not the best and safest route for transporting the material, the Director of the State Department of Energy shall deny the application except as provided in subsection (3) of this section.

(3) If the applicant is prohibited by a statute, rule or other action of an adjacent state or a political subdivision in an adjacent state from using the route that complies with federal law, the director:

(a) Shall petition the United States Department of Transportation for an administrative determination of preemption of the ban, pursuant to section 13 of the Hazardous Materials Transportation Uniform Safety Act of 1990, P.L. 101-615.

(b) May issue a permit as provided under ORS 469.605 (5) with conditions necessary to ensure safe transport over a route available to the applicant, until the United States De-

partment of Transportation determines whether the prohibition by the other state or political subdivision is preempted. [1991 c.233 §2; 2003 c.186 §37]

469.607 Authority of council; rules. (1) After consultation with the Department of Transportation and other appropriate state, local and federal agencies, the Energy Facility Siting Council by rule:

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

(b) May designate those routes by highway, railroad, waterway and air where transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, 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) May establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.603 to 469.619 and 469.992.

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

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS chapter 183. [1981 c.707 §6; 1989 c.6 §5; 1995 c.733 §45]

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes. Annually, the Director of the State Department of Energy shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The director's report shall include:

(1) The type and quantity of material transported;

(2) Any mode of transportation used;

(3) The route or routes taken; and

(4) Any other information at the discretion of the director. [1981 c.707 §8; 1989 c.6 §6; 2003 c.186 §38]

469.611 Emergency preparedness and response program; radiation emergency response team; training. Notwithstanding ORS chapter 401:

(1) The Director of the State Department of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to ensure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

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

(b) Request all available training and planning materials.

(3) The Department of Human Services shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the team at the scene of a radiological accident, the Director of the State Department of Energy may designate other technical advisors to work with the local response agencies.

(4) The Department of Human Services shall assist the Director of the State Department of Energy to ensure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Department of Human Services shall report annually to the Director of the State Department of Energy on training of emergency response personnel. [1981 c.707 §9; 1983 c.586 §44; 1989 c.6 §7; 2003 c.186 §39; 2007 c.71 §151]

469.613 Records; inspection; rules. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the Energy Facility Siting Council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the Director of the State Department of Energy. Any requirement imposed by the council under this subsection shall be consistent with regulations of the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(2) The director may authorize any employee or agent of the director to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of

administration or enforcement of the provisions of ORS 469.550, 469.563, 469.603 to 469.619 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The director shall provide for:

(a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations. [1981 c.707 §10; 1989 c.6 §8; 2003 c.186 §40]

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident. (1) A person transporting radioactive materials in this state shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during that transportation and pay for the cost of response to an accident involving the radioactive material.

(2) With respect to radioactive materials, the Director of the State Department of Energy shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605.

(3) A person who owns, designs or maintains facilities, structures, vehicles or equipment used for handling, transportation, shipment, storage or disposal of nuclear material shall reimburse the state for all expenses reasonably incurred by the state or a political subdivision of the state, in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident caused by the person's acts or omissions. These expenses include but need not be limited to, costs incurred for precautionary evacuations, emergency response measures and decontamination or other clean-up measures. As used in this subsection "nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(4) Nothing in subsection (3) of this section shall affect any provision of subsection (1) or (2) of this section. [1981 c.707 §11; 1987 c.705 §9; 1989 c.6 §9]

469.617 Report to legislature; content. The Director of the State Department of Energy shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each

regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

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

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

(3) A summary of outstanding problems confronting the State Department of Energy in administering ORS 469.550, 469.563, 469.603 to 469.619 and 469.992; and

(4) Such recommendations for additional legislation as the Energy Facility Siting Council considers necessary and appropriate. [1981 c.707 §12; 1989 c.6 §10]

469.619 State Department of Energy to make federal regulations available. The State Department of Energy shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.550, 469.563, 469.603 to 469.619 and 469.992. [1981 c.707 §14; 1989 c.6 §11]

469.621 [1981 c.707 §7; repealed by 1993 c.742 §101]

RESIDENTIAL ENERGY CONSERVATION ACT (Investor-Owned Utilities)

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

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

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

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

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

of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 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 investor-owned utility.

(7) "Energy audit" means:

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

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

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

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

(B) The items installed; and

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

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

(B) Solar swimming pool heating, if applicable.

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

(9) "Investor-owned utility" means an electric or gas utility regulated by the com-

mission as a public utility under ORS chapter 757.

(10) "Residential customer" means a dwelling owner or tenant who, either directly or indirectly, pays a share of the cost for service billed by an investor-owned utility for electric or natural gas service received at the dwelling.

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

(12) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §2; 1989 c.233 §1; 1989 c.648 §66; 1995 c.551 §13; 2003 c.186 §41]

469.633 Investor-owned utility program. Each investor-owned utility shall have an approved residential energy conservation program that, to the Public Utility Commission's satisfaction:

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

(a) Energy conservation measures; and

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

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

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

(a) The following minimum levels of assistance:

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

(i) A principal amount of up to \$5,000;

(ii) For an electric utility, an interest rate that does not exceed six and one-half percent annually or, for a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property

improvement loans (24 C.F.R. 201.4 (a)) on the date of the loan application, but not lower than six and one-half percent or higher than 12 percent; and

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

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

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

(ii) \$350.

(b) That an otherwise eligible dwelling owner may obtain up to \$5,000 in loans or \$350 in cash payments for each dwelling.

(c) That there may be up to two loans or cash payments provided for each dwelling.

(d) That a dwelling owner who acquires a dwelling for which a previous loan was obtained under this section and ORS 469.631 may obtain a loan or a cash payment for 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) There remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

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

(A) Construction of a new dwelling; or

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

(i) An addition or substantial alteration; or

(ii) Remodeling.

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

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

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

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

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

(a) Water resources that have hydroelectric potential;

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

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

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

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

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §3; 1985 c.745 §6; 1989 c.233 §2; 1991 c.67 §141; 1991 c.78 §1]

469.634 Contributions for urban and community forest activities by customers of investor-owned utilities; rules; uses. (1)

The Public Utility Commission of Oregon by rule shall establish a system to allow customers of investor-owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill. Investor-owned utilities may choose to use the system established by the commission.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with the Public Utility Commission of Oregon and local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16

percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 §2]

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

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

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

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

(3) An investor-owned utility that has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that is determined by the commission to meet or exceed the requirements in ORS 469.633 and 469.641 shall not be required to submit a separate program. However, the provisions of ORS 469.637, 469.639, 469.643 and 469.645 nevertheless shall be applicable.

(4) In addition to the residential energy conservation program required in ORS 469.633, an investor-owned utility may offer other energy conservation programs if the

commission determines the programs will promote cost-effective energy conservation. [1981 c.778 §7; 1991 c.78 §2]

469.636 Additional financing program by investor-owned utility for rental dwelling. In addition to the residential energy conservation program approved under ORS 469.633, an investor-owned utility may offer an additional financing program for energy conservation measures for a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy for space heating from the investor-owned utility. The financing program may consist, at a minimum, of either of the following:

(1) Offering low-interest loans to fund the entire cost of installed energy conservation measures up to \$5,000 per dwelling unit. In addition to the loan subsidy provided under ORS 469.633 (3), the loan shall be further subsidized by applying the present value to the public utility of the tax credit received under ORS 469.185 to 469.225. Any portion of the present value of the tax credit shall accrue to the dwelling owner rather than to the investor-owned utility.

(2) Offering cash payments in addition to the cash payments required in ORS 469.633 (3). The additional cash payment shall be equal to the present value of the tax credit received under ORS 469.185 to 469.225. [1985 c.745 §11; 1989 c.765 §9]

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

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

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

469.641 Conditions for cash payments to dwelling owner by investor-owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, an investor-owned utility shall not make a cash payment

to a dwelling owner for energy conservation measures unless:

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

(2) The measures will not be paid for with other investor-owned utility grants or loans. [1981 c.778 §6; 1991 c.877 §39]

469.643 Formula for customer charges; rules. The Public Utility Commission shall adopt by rule a formula under which the investor-owned utility shall charge all customers to recover:

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

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

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

(Publicly Owned Utilities)

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

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

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

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

(4) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single

unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(5) "Dwelling owner" means the person:

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

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

(6) "Energy audit" means:

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

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

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

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

(B) The items installed; and

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

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

(B) Solar swimming pool heating, if applicable.

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

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

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

(b) Distributes electricity.

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

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

(11) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §10; 1989 c.648 §67; 1995 c.551 §14; 2003 c.186 §42]

469.651 Publicly owned utility program. Within 30 days after November 1, 1981, each publicly owned utility shall submit to the Director of the State Department of Energy a residential energy conservation program that:

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

(a) Energy conservation measures; and

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

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

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

(a) The following minimum levels of assistance:

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

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

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

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

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

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

(ii) \$350;

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

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

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

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

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

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

(A) Construction of a new dwelling; or

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

(i) An addition or substantial alteration; or

(ii) Remodeling; and

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

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

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

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

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

(a) Water resources that have hydroelectric potential;

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

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

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

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

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

469.652 Contributions for urban and community forest activities by customers of publicly owned utilities; rules; uses. (1) Publicly owned utilities may establish a system to allow customers of publicly owned utilities to voluntarily contribute an amount that is to be used for urban and community forest activities within the area served by the utility. The amount shall be in addition to the customer's utility bill.

(2) The utility shall pay to the State Forester the amount designated under subsection (1) of this section. The State Forester shall deposit the moneys collected under this section into the Urban and Community Forestry Subaccount established under ORS 526.060.

(3) The State Forester shall use the moneys collected under this section for urban and community forest activities. The State Forester by rule, in consultation with local utilities, shall establish guidelines to distribute moneys collected under this section through the Urban and Community Forestry Assistance Program. The guidelines shall include a requirement that moneys are distributed for energy conservation, by means of tree plantings, care and maintenance.

(4) A utility shall not use more than 16 percent of the moneys collected under this section for administrative expenses. The State Forester shall not use more than 16 percent of the moneys collected under this section for administrative expenses.

(5) As used in this section, "urban and community forest activities" means activities that promote cost-effective energy conservation. These activities may include the planting, managing and maintaining of residential, street and park trees on public and private land. [1993 c.388 §4]

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

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

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

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

(3) A publicly owned utility whose governing body has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that meets or exceeds the requirements of ORS 469.651 and 469.657 shall not be required to submit a separate program. However, the provisions of ORS 469.655 and 469.659 nevertheless shall be applicable. [1981 c.778 §14]

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

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

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

(2) The measures will not be paid for with other publicly owned utility grants or loans. [1981 c.778 §13; 1991 c.877 §40]

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

(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 State Department of Energy 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 State Department of Energy appointed under ORS 469.040.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 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 a fuel oil dealer.

(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 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.

(9) "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.

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

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

(12) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §16; 1987 c.749 §8; 1989 c.648 §68; 1995 c.551 §15; 2003 c.186 §43]

469.675 Oil dealer program. Within 30 days after November 1, 1981, each fuel oil dealer shall submit for the approval of the Director of the State Department of Energy 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 lim-

ited 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 of the State Department of Energy 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 chapter 183. [1981 c.778 §18; 2003 c.186 §44]

469.679 Implementation by fuel dealer. After the Director of the State Department of Energy 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 State Department of Energy annually its share of an assessment to fund:

(a) Information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the Director of the State Department of Energy contracts under ORS 469.677; and

(b) Cash payments to a dwelling owner or contractor for energy conservation measures.

(2) The amount of the assessment required by subsection (1) of this section shall be determined by the director in a manner consistent with the method prescribed in ORS 469.421. 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, or 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 State Department of Energy, 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 469.421 (8), 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 distillate fuel oil in the State of Oregon. [1981 c.778 §23; 1983 c.273 §3; 1987 c.450 §3; 1989 c.88 §6; 1993 c.434 §1; 1993 c.569 §29; 1995 c.79 §289; 2003 c.186 §45]

469.683 Oil-Heated Dwellings Energy Audit Account. (1) There is established, separate and distinct from the General Fund, 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 of the State Department of Energy contracts under ORS 469.677.

(2) The State Department of Energy 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 State Department of Energy for the purpose of:

(a) 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; and

(b) Providing cash payments to a dwelling owner or contractor for energy conservation measures.

(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 State Department of Energy shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy Audit Account. [1981 c.778 §§24,25; 1989 c.966 §55; 1993 c.434 §2; 2003 c.186 §46]

(Miscellaneous)

469.685 Use of earlier energy audit. A dwelling owner served by an investor-owned utility, as defined in ORS 469.631, or a publicly owned utility, as defined in ORS 469.649, who applies for financing under the provisions of ORS 316.744, 317.386 and 469.631 to 469.687, may use without obtaining a new energy audit an energy audit obtained from an energy supplier under chapter 887, Oregon Laws 1977, or a public utility under

chapter 889, Oregon Laws 1977, before November 1, 1981. [1981 c.778 §30; 2003 c.46 §51]

469.687 Title for ORS 469.631 to 469.687. ORS 316.744, 317.386 and 469.631 to 469.687 shall be known as the Oregon Residential Energy Conservation Act. [1981 c.778 §1; 2003 c.46 §52]

ENERGY CONSERVATION PROGRAMS (Single Family Residence)

469.700 Energy efficiency ratings; public information; “single family residence” defined. (1) The Residential Structures Board, after public hearing, shall adopt a recommended voluntary energy efficiency rating system for single family residences and provide the State Department of Energy with a copy thereof.

(2) The rating system shall provide a single numerical value or other simple concise means to measure the energy efficiency of any single family residence, taking into account factors including, but not limited to, the heat loss characteristics of ceilings, walls, floors, windows, doors and heating ducts.

(3) Upon adoption of the rating system under subsections (1) and (2) of this section, the department shall publicize the availability of the system, and encourage its voluntary use in real estate transactions.

(4) As used in subsections (1) to (3) of this section, “single family residence” means a structure designed as a residence for one family and sharing no common wall with another residence of any type. [1977 c.413 §§1,2,3; 1993 c.744 §113; 2003 c.675 §44]

(Low Interest Loans)

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

(1) “Annual rate” means the yearly interest rate specified on the note, and is not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

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

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

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

(4) “Dwelling” means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. “Dwelling” includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. “Dwelling” does not include a recreational vehicle as defined in ORS 446.003.

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

(6) “Energy audit” means:

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

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

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

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

(B) The items installed; and

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

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

(B) Solar swimming pool heating, if applicable.

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

(8) "Finance charge" means the total of all interest, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

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

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

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

(12) "Wood heating resident" means a person whose primary space heating is provided by the combustion of wood. [1981 c.894 §22; 1987 c.749 §5; 1989 c.648 §69; 2005 c.22 §342]

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

(2) The annual rate shall not exceed six and one-half percent annually for loans provided by commercial lending institutions to dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents for the purpose of financing energy conservation measures pursuant to ORS 469.710 to 469.720. [1981 c.894 §§23,24; 1987 c.749 §6]

469.717 When installation to be completed. (1) Installation of the energy conservation measures must be completed within 90 days after receipt of loan funds. The State Department of Energy may provide an inspection at the owner's request.

(2) Notwithstanding the provisions of subsection (1) of this section, the department may inspect installation of energy conservation measures to verify that all loan or other state subsidy funds have been used for energy conservation measures recommended in the audit, that installation has been performed in a workmanlike manner and that materials used satisfy prevailing industry standards. If requested to do so by the department, the dwelling owner shall provide the department with copies of receipts and any other documents verifying the cost of energy conservation measures. [1987 c.749 §3]

469.719 Eligibility of lender for tax credit not affected by owner's failure. Eligibility of the lender for any tax credit under ORS 317.112 shall not be affected by any dwelling owner's failure to use the loan for

qualifying energy conservation measures. [1987 c.749 §4]

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

(a) The dwelling owner, customer or resident has first requested and obtained an energy audit from a fuel oil dealer, a publicly owned utility or an investor-owned utility or from a person under contract with the State Department of Energy under ORS 316.744, 317.111, 317.386 and 469.631 to 469.687;

(b) The dwelling owner first submits to the department written permission to inspect the installations to verify that installation of energy conservation measures has been made;

(c) The dwelling owner presents to the lending institution a copy of the energy audit together with certification that the dwelling in question receives space heating from fuel oil or wood and a copy of the written permission to inspect submitted to the department under paragraph (b) of this subsection; and

(d) The dwelling owner does not receive any other state incentives for that part of the cost of the energy conservation measures to be financed by the loan.

(2) Any dwelling owner applying for low-interest financing under ORS 469.710 to 469.720 who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may use without obtaining a new energy audit any assistance and technical advice obtained from an energy supplier before November 1, 1981, under chapter 887, Oregon Laws 1977, or from a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials. [1981 c.894 §§25,26; 1987 c.749 §7; 1997 c.249 §167; 2003 c.46 §53]

(Public Buildings)

469.730 Declaration of purpose. It is the purpose of ORS 469.730 to 469.745 to promote voluntary measures to conserve energy in public buildings or groups of buildings constructed prior to January 1, 1978, through the adoption of energy conservation standards. [1977 c.853 §1]

469.735 Definitions for ORS 469.730 to 469.745. As used in ORS 469.730 to 469.745, unless the context requires otherwise:

(1) "Department" means the Department of Consumer and Business Services.

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Public building" means any publicly or privately owned building constructed prior to January 1, 1978, including the outdoor areas adjacent thereto, which:

(a) Is open to and frequented by the public; or

(b) Serves as a place of employment. [1977 c.853 §2; 1987 c.414 §154; 1993 c.744 §114]

469.740 Rules establishing energy conservation standards for public buildings; bases. In accordance with ORS chapter 183 and after consultation with the Building Codes Structures Board and the State Department of Energy, the Director of the Department of Consumer and Business Services shall adopt rules establishing energy conservation standards for public buildings. The standards shall provide means of measuring and reducing total energy consumption and shall take into account:

(1) The climatic conditions of the areas in which particular buildings are located; and

(2) The three basic systems comprising any functioning building, which are:

(a) Energized systems such as those required for heating, cooling, lighting, ventilation, conveyance and business equipment operation.

(b) Nonenergized systems such as floors, ceilings, walls, roof and windows.

(c) Human systems such as maintenance, operating and management personnel, tenants and other users. [1977 c.853 §3; 1987 c.414 §154a; 1993 c.744 §115]

469.745 Voluntary compliance program. To provide the public with a guide for energy conservation, the Director of the State Department of Energy shall adopt a program for voluntary compliance by the public with the standard adopted by the Director of the Department of Consumer and Business Services under ORS 469.740. [1977 c.853 §4; 1987 c.414 §155]

469.750 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 in-

cludes, but is not limited to, solid wastes or fuels derived from solid wastes.

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

Note: 469.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(State Agency Projects)

469.752 Definitions for ORS 469.752 to 469.756. As used in ORS 469.752 to 469.756, unless the context requires otherwise:

(1) "Project" means a state agency's improvement of the efficiency of energy use through conservation, development of cogeneration facilities or use of renewable resources. "Project" does not include a plan of a state agency to improve the efficiency of energy use in a state rented facility if the payback period for the project exceeds the term of the current state lease for that facility.

(2) "Savings" means any reduction in energy costs or net income derived from the sale of energy generated through a project.

(3) "State agency" has the meaning given that term in ORS 278.005. [1991 c.487 §1; 1993 c.86 §1; 1995 c.551 §16; 2003 c.186 §47]

Note: 469.752 to 469.756 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.754 Authority of state agencies to establish projects; use of savings; rules.

(1) State agencies are authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance projects on-site at state owned or state rented facilities. In developing such projects, state agencies shall offer a right of first refusal of two months for conservation and direct use renewable resources and three months for cogeneration and generating renewable resources to each local utility providing utility service to the agency to jointly develop, finance, operate and otherwise act together in the development and operation of such projects. The State Department of Energy shall adopt rules to establish the procedure by which the right of first refusal shall be administered. In adopting the rules, the department shall insure that the local utility providing utility service to the state agency is entitled to the first right to negotiate with the state agency and that the utility is entitled to match any offer made by any other entity to participate in the project. The department also shall adopt procedures that insure that the right to first negotiate and

the right to match any offer applies to the sale of electrical or steam output from the project.

(2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings:

(A) A state agency's budget shall not be cut because of savings due to the project; and

(B) A state agency shall retain 50 percent of the net savings to the state agency after any project debt service.

(b) Savings from a project shall be deposited in a revolving fund administered by the state agency.

(3) A state agency shall spend the savings under subsection (2) of this section to increase productivity through:

(a) Energy efficiency projects;

(b) High-tech improvements, such as the purchase or installation of new desktop or laptop computers or the linkage of computers into systems or networks; or

(c) Infrastructure improvements.

(4) The moneys credited to the revolving fund may be invested and reinvested as provided in ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or other earnings on moneys in the revolving fund shall be credited to the revolving fund.

(5) The remaining 50 percent of net savings to the state agency after any project debt service shall be deposited in the General Fund.

(6) Nothing in ORS 469.752 to 469.756 authorizes a state agency to sell electricity to an entity other than an investor owned utility, a publicly owned utility, an electric cooperative utility or the Bonneville Power Administration.

(7) Nothing in ORS 469.752 to 469.756 limits the authority of a state agency conferred by any other provision of law, or affects any authority, including the authority of a municipality, to regulate utility service under existing law. [1991 c.487 §2; 1993 c.86 §2]

Note: See note under 469.752.

469.756 Rules; technical assistance; evaluations. The State Department of Energy in consultation with other state agencies and utilities shall adopt rules, guidelines and procedures that are necessary to establish savings for projects and to implement other provisions of ORS 469.752 to 469.756, including, but not limited to, rules prescribing the procedures to be followed by an agency in negotiating with local utilities to develop agreements suitable for the joint de-

velopment of projects, and procedures to determine which local utility, if any, shall be chosen to jointly develop the project. The department may enter into agreements under ORS chapter 190 with state agencies to provide technical assistance in selecting appropriate projects and to evaluate and determine energy and cost savings. [1991 c.487 §3]

Note: See note under 469.752.

BIOFUELS AND BIOMASS

469.785 Fuel blends and solid biofuels; qualification for tax credits; rules. The State Department of Energy shall by rule identify categories of fuel blend and solid biofuel that qualify for the personal income tax credit allowed under ORS 315.465. [2007 c.739 §31]

Note: Sections 8a, 8b and 32, chapter 739, Oregon Laws 2007, provide:

Sec. 8a. The State Department of Energy shall periodically conduct an impact study of the biofuels program. The study will include but is not limited to the following criteria with respect to the biofuel sector in this state:

- (1) Jobs created;
- (2) Average wage rates for those jobs;
- (3) The provision of health care and other benefits;
- (4) The extent to which workforce training opportunities are being provided to employees;
- (5) The number of acres of biofuel feedstock planted;
- (6) The number of gallons of biofuel blended fuel produced and consumed in the state;
- (7) The cost of fuel with biofuel blends and how that compares with the cost of petroleum fuel;
- (8) Environmental impacts such as reductions in greenhouse gas emissions and other toxic air pollution;
- (9) The impact of biofuel feedstock production on the price of commodity crops and the cost of food staples; and
- (10) The extent to which Oregon producers import biofuel or biofuel feedstock from outside the state. [2007 c.739 §8a]

Sec. 8b. (1) The State Department of Energy shall conduct the first study under section 8a of this 2007 Act two years after the effective date of this 2007 Act [September 27, 2007].

(2) Section 8a of this 2007 Act is repealed January 2, 2025. [2007 c.739 §8b]

Sec. 32. The State Department of Energy shall adopt rules under section 31 of this 2007 Act [469.785] on or before 60 days after the effective date of this 2007 Act [September 27, 2007]. [2007 c.739 §32]

469.790 Biomass; eligibility for tax credits. To be eligible for the tax credit under ORS 315.141, the biomass must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates for biomass are:

- (1) For oil seed crops, \$0.05 per pound.
- (2) For grain crops, including but not limited to wheat, barley and triticale, \$0.90 per bushel.

(3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.

(4) For used cooking oil or waste grease, \$0.10 per gallon.

(5) For wastewater biosolids, \$10.00 per wet ton.

(6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from harvest or forest health stewardship, \$10.00 per green ton.

(7) For grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per green ton.

(8) For yard debris and municipally generated food waste, \$5.00 per wet ton.

(9) For animal manure or rendering offal, \$5.00 per wet ton. [2007 c.739 §5]

Note: Section 6, chapter 739, Oregon Laws 2007, provides:

Sec. 6. (1) Sections 2 [315.141], 3 [315.144] and 5 [469.790], chapter 739, Oregon Laws 2007, apply to tax credits for tax years beginning on or after January 1, 2007, and before January 1, 2013.

(2) Notwithstanding subsection (1) of this section, a tax credit is not allowed for wheat grain (other than nongrain wheat material) before tax years beginning on or after January 1, 2009, or on or after January 1, 2013. [2007 c.739 §6; 2007 c.590 §5]

469.800 [1981 c.49 §1; renumbered 469.803 in 1999]

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

469.802 Definition for ORS 469.802 to 469.845. As used in ORS 469.802 to 469.845, "council" means the Pacific Northwest Electric Power and Conservation Planning Council. [1999 c.59 §141]

469.803 Oregon participation in Pacific Northwest Electric Power and Conservation Planning Council. The State of Oregon agrees to participate in the formation of the Pacific Northwest Electric Power and Conservation Planning Council pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501. Participation of the State of Oregon in the council is essential to assure adequate representation for the citizens of Oregon in decision making to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the Pacific Northwest region of an efficient and adequate power supply and to fulfill the other purposes stated in section 2 of Public Law 96-501. [Formerly 469.800]

469.805 State members of council; confirmation; qualifications. (1) The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the Pacific Northwest Electric Power and Conservation Planning Council for terms of three years.

(2) In making the appointments under subsection (1) of this section, the Governor shall consider but is not limited to:

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

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

(c) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501.

(3) Of the persons appointed under subsection (1) of this section, not more than one member of the Oregon delegation to the council shall reside within the boundary of an area that includes the First and Third Congressional Districts as described in ORS 188.135 and the Portland, Oregon, Standard Metropolitan Statistical Area. [1981 c.49 §2; 1995 c.156 §1; 1997 c.249 §168]

469.810 Conflicts of interest prohibited. (1) A Pacific Northwest Electric Power and Conservation Planning Council member or member of the council member's household may not own or have any beneficial interest in any stock or indebtedness of any utility or direct service industry.

(2) A council member or a member of the council member's household may not be a director, officer, agent or employee of any utility or direct service industry.

(3) A council member or a member of the council member's household may not be a director, officer, agent or employee of or hold any proprietary interest in any consulting firm that does business with any utility or direct service industry.

(4) A council member or a member of the council member's household may not receive any compensation from any utility or direct service industry arising out of the member's business, trade or profession.

(5) A council member is a public official subject to the provisions and reporting requirements of ORS chapter 244.

(6) A council member must be a citizen of the United States and must have resided in the State of Oregon for at least one year preceding appointment.

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

(8) As used in this section:

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

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

(c) "Member of the household" means any relative who resides with the council member.

(d) "Relative" means the spouse of the council member, any children of the council member or of the council member's spouse, and brothers, sisters or parents of the council member or of the council member's spouse.

(e) "Utility or direct service industry" means a utility or direct service industry customer that purchases electrical energy directly from the Bonneville Power Administration. [1981 c.49 §3; 1987 c.566 §23; 2007 c.865 §38]

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

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

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

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

(2) A council member is eligible for reappointment, subject to Senate confirmation,

but no member shall serve more than three consecutive terms. A council member who serves 18 months or more of a term shall be considered to have served a full term. However, with respect to the initial term consisting of two years, a council member who serves 12 months or more shall be considered to have served a full term.

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

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

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

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

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

(5) Notwithstanding the status of council members as state officers, the provisions of 18 U.S.C. 207 relating to post-employment activities shall be considered to be state law in so far as they do not conflict therewith, applicable to council members appointed pursuant to ORS 469.802 to 469.845 and 469.990 (3), regardless of the salary paid to the council members.

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

469.830 Removal of members; grounds; procedure. (1) Pacific Northwest Electric Power and Conservation Planning Council members shall serve at the pleasure of the Governor, except as provided in subsection (2) of this section.

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

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

(b) Conviction of a felony.

(c) Violation of ORS chapter 244.

(d) Violation of ORS 469.810.

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

469.835 Salary of members; staff. (1) Each Pacific Northwest Electric Power and Conservation Planning Council member shall receive a salary not to exceed the salary of a member of the Public Utility Commission, or the maximum salary authorized under section 4(a)(3) of Public Law 96-501.

(2) Each council member is entitled to appoint one secretarial staff assistant who shall be in the unclassified service. [1981 c.49 §8; 1989 c.171 §64]

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

(2) The account created by subsection (1) of this section is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commission, the State Department of Energy, the State Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action. [1981 c.49 §9; 1987 c.158 §99; 2003 c.186 §48]

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

COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAM

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

(a) "Commercial building" means a public building as defined in ORS 455.560.

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

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

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

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

(2) As used in ORS 469.865 and 469.900 (2), "gas utility" means a public utility, as defined in ORS 757.005, which delivers or furnishes natural gas to customers for heat, light or power.

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

(a) "Commercial building" means a public building as defined in ORS 455.560.

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

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

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

Note: 469.860 (1) and (2) and 469.863 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.863 Gas utility to adopt commercial energy audit program; rules. (1) Within 365 days after November 1, 1981, the Public Utility Commission shall adopt rules governing energy conservation programs provided by gas utilities under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building.

(2) Within 180 days after the effective date of the rules adopted by the commission under subsection (1) of this section, each gas utility shall present for the commission's approval a commercial energy audit program which shall, to the commission's satisfaction:

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

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

(c) Provide to any commercial building customer of the gas utility, upon request, an on-site energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the recommended energy conservation measure; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section. [1981 c.708 §8]

Note: See note under 469.860.

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

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

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

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

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

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

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

469.878 Alternative fuels program. (1) An investor-owned utility may offer cash payments to assist the utility's commercial and industrial customers in purchasing a facility as defined in ORS 469.185, including but not limited to an alternative fuel vehicle refueling station. The utility may pay the customer the present value to the utility of the tax credit to which the customer would be entitled under ORS 469.185 to 469.225.

(2) As used in this section, "cash payment" and "investor-owned utility" have the meanings given those terms in ORS 469.631. [1991 c.711 §6; 1993 c.18 §123; 1995 c.746 §18a; 1999 c.623 §8; 1999 c.765 §6]

469.880 Energy audit program; rules. Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The Director of the State Department of Energy shall adopt rules governing the commercial energy audit program established under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. [1981 c.708 §14; 1987 c.158 §100; 2003 c.186 §49]

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

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

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

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

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

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§15,16; 2003 c.186 §50]

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

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

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

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

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

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§18,19; 2003 c.186 §51]

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

469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

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

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

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c.708 §17; 2003 c.186 §52]

469.900 Duty of commission to avoid conflict with federal requirements. (1) The Public Utility Commission shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

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

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

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

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

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

ARTICLE I
Policy and Purpose

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

ARTICLE II
Definitions

As used in this compact:

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

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

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

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

ARTICLE III
Regulatory Practices

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

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

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

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

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

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

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

ARTICLE IV
Regional Facilities

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

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste

is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state and shall contain at least the following:

- (a) The generator's name and address;
- (b) A description of the contents of the low-level waste container;
- (c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and
- (d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

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

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to assure that closure, perpetual care, and maintenance and contingency re-

quirements are met, including adequate bonding.

ARTICLE V Northwest Low-Level Waste Compact Committee

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

ARTICLE VI Eligible Parties and Effective Date

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

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

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

ARTICLE VII Severability

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

[1981 c.497 §1]

469.935 [1981 c.497 §3; repealed by 1997 c.632 §14]

POWER COSTS AND RATES

469.950 Authority to enter into interstate cooperative agreements to control power costs and rates; Bonneville Power Administration. The State of Oregon shall pursue and may enter into an interstate cooperative agreement with the states of Washington, Idaho and Montana for the purpose of making collective efforts to control Bonneville Power Administration wholesale power costs and rates by studying and developing a region-wide response to:

(1) Federal attempts to increase arbitrarily the interest rates on federal funds previously used to build public facilities in the Pacific Northwest.

(2) Federal initiatives to sell the Bonneville Power Administration.

(3) Bonneville Power Administration rate increase and budget expenditure proposals in excess of their actual needs.

(4) Regional uses of surplus firm power, including uses by existing or newly attracted Pacific Northwest industries, to provide long-term use of the surplus for job development.

(5) Power transmission intertie access. [1985 c.780 §1]

Note: 469.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

469.990 Penalties. (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, willfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2)(a) Willful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine of 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 a Class A violation.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c.606 §20; subsection (3) enacted as 1981 c.49 §11; 1999 c.1051 §185]

469.991 [1989 c.926 §40; 1991 c.67 §142; repealed by 1999 c.880 §2]

469.992 Civil penalties. (1) The Director of the State Department of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than \$25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 may be assessed by the circuit court upon complaint of any person injured by the violation. [Formerly 453.994; 1977 c.794 §17; 1981 c.707 §13; 1983 c.273 §4; 1987 c.158 §101; 1989 c.6 §12; 1991 c.480 §8; 1999 c.385 §13; 1999 c.1051 §309; 2003 c.186 §53]

Note: The amendments to 469.992 by section 17, chapter 653, Oregon Laws 1991, become operative when the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. See section 18, chapter 653, Oregon Laws 1991. The text of 469.992 that would become operative upon an exemption or change, including amendments by section 14, chapter 385, Oregon Laws 1999, section 310, chapter 1051, Oregon Laws 1999, and section 54, chapter 186, Oregon Laws 2003, is set forth for the user's convenience.

469.992. (1) The Director of the State Department of Energy or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.619 and 469.930, for violations of rules adopted under ORS 469.300 to 469.619 and 469.930, for violation of any site certificate or amended site certificate issued under ORS 469.300 to 469.601 or for violation of a State Department of Energy order issued pursuant to ORS 469.405 (3). A civil penalty in an amount of not more than \$25,000 per day for each day of violation may be assessed.

(2) Subject to ORS 153.022, violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.603 to 469.619 or section 14, chapter 653, Oregon Laws 1991, may be assessed by the circuit court upon complaint of any person injured by the violation.

Note: Section 18, chapter 653, Oregon Laws 1991, provides:

Sec. 18. Sections 12 to 16 of this Act and the amendments to ORS 469.992 by section 17 of this Act do not become operative until the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. [1991 c.653 §18]

469.994 Civil penalty when contractor certificate revoked. (1) The Director of the State Department of Energy may impose a civil penalty against a contractor if a contractor certificate is revoked under ORS

469.180. The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 or 317.115 to the contractor or to purchasers of the system for which a contractor's certificate has been revoked.

(2) The State 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 final certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469.180 (3) to collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's fraud or misrepresentation under ORS 469.180 (1)(a).

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) 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; 1983 c.346 §5; 1989 c.706 §18; 1989 c.880 §13a; 1991 c.734 §38; 1997 c.534 §13]

