

B-Engrossed
House Bill 3675

Ordered by the Senate February 18
Including House Amendments dated February 8 and Senate Amendments
dated February 18

Sponsored by COMMITTEE ON SUSTAINABILITY AND ECONOMIC DEVELOPMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Clarifies provisions related to energy efficiency and sustainable technology loan program. **Authorizes Director of State Department of Energy to delay or suspend pilot programs used to implement loan program if financial resources are insufficient.** Allows director [*of State Department of Energy*] by rule to establish base efficiency package fee. Limits fee.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to financing energy efficiency; creating new provisions; amending ORS 470.530, 470.575,
3 470.610, 470.635, 470.640, 470.655 and 470.660 and sections 42 and 49, chapter 753, Oregon Laws
4 2009; repealing section 46a, chapter 753, Oregon Laws 2009; and declaring an emergency.

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

6 **SECTION 1. (1) ORS 470.505 does not apply to the pilot programs described in sections**
7 **42 to 45, chapter 753, Oregon Laws 2009.**

8 **(2) Notwithstanding any other provision of ORS chapter 470, if the Director of the State**
9 **Department of Energy determines that available financial resources in the Loan Offset Grant**
10 **Fund established in ORS 470.575 are insufficient to allow operation of the pilot programs de-**
11 **scribed in sections 42 to 45, chapter 753, Oregon Laws 2009, the director may delay or sus-**
12 **pend the pilot programs.**

13 **SECTION 2. ORS 470.575 is amended to read:**

14 470.575. (1) The Loan Offset Grant Fund is established in the State Treasury, separate and dis-
15 tinct from the General Fund. Interest earned by the Loan Offset Grant Fund shall be credited to
16 the Loan Offset Grant Fund. Moneys in the fund are continuously appropriated to the State De-
17 partment of Energy for use as provided in this section.

18 (2) The fund shall consist of any moneys directed by law, gift, grant or donation to the fund **and**
19 **moneys from base efficiency package fees collected pursuant to ORS 470.655.**

20 (3) The department shall use fund moneys:

21 (a) To promote energy efficiency, renewable energy and energy conservation projects that would
22 otherwise result in a marginally higher overall cost to the applicant when energy costs and the fi-
23 nancing and repayment costs for the project are considered, by using the fund moneys to help
24 produce a monthly cost savings for the applicant; or

25 (b) To transfer to an appropriate fund for carrying out any purpose under this chapter specified
26 as a condition of a gift, grant or donation.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **SECTION 3.** ORS 470.635 is amended to read:

2 470.635. (1) The State Department of Energy may not complete an agreement for the issuance
3 of an energy efficiency and sustainable technology loan unless the sustainable energy project man-
4 ager, a contractor designated by the project manager or a person approved by the department
5 completes an energy savings projection or similar evaluation for the property that will benefit from
6 the small scale local energy project. The projection or other evaluation shall be in writing and shall,
7 at a minimum, identify the following:

8 (a) The recommended base efficiency package for the structure. A base energy package may in-
9 clude improvements to existing supply lines and equipment.

10 (b) Any optional package recommended for the structure.

11 (c) The estimated net monthly cost to the applicant when energy savings, project repayment
12 costs, tax or other incentives, loan offset grants, **base efficiency package fees** and other relevant
13 economic factors are considered.

14 (d) The monthly cost to the applicant to repay the loan principal and finance charges.

15 (e) If the base efficiency package or recommended optional package includes the use of nontra-
16 ditional technology, a description of the nontraditional technology.

17 (2) A base efficiency package or optional package may not provide for achieving energy effi-
18 ciency upgrades through the use of appliances or other equipment that lack sufficient relationship
19 to the structure to be subject to a fixture filing or real property lien.

20 (3) The projection or other evaluation shall state in a clear and conspicuous manner:

21 (a) That the estimated net monthly cost to the applicant contained in the projection or other
22 evaluation does not represent a guarantee of project performance or results; and

23 (b) That no liability attaches to the department, any state agency or officer, the project man-
24 agers or any utility if actual energy savings are less than the estimated savings or if the con-
25 struction process or constructed project is unsatisfactory in any way.

26 (4) If the base efficiency package or recommended optional package includes the use of nontra-
27 ditional technology, the projection or other evaluation shall include a statement that the technology
28 is nontraditional, initialed by the prospective loan applicant.

29 (5) An energy efficiency and sustainable technology loan may be used only for a project con-
30 structed by a contractor certified under ORS 701.119.

31 (6) Prior to the disbursement of the loan moneys to the contractor, a project manager or other
32 person approved by the department shall verify that the small scale local energy project has been
33 completed in a manner consistent with energy efficiency and sustainable technology loan program
34 requirements. If this state or any agency of this state adopts or recognizes an energy efficiency
35 scoring system for buildings, the department may require that the verification described in this
36 subsection include the determination of an energy efficiency score for the property benefited by the
37 project.

38 (7) The department shall periodically consult with contractors certified under ORS 701.119 for
39 the purpose of updating average cost and projected savings figures used for energy savings
40 projections or other evaluations under this section. The department shall encourage the use of
41 methods for conducting energy savings projections or other evaluations under this section that are
42 cost-effective and time-effective, take advantage of economies of scale and produce results that are
43 accurate and are replicable for equivalent base energy packages.

44 **SECTION 4.** ORS 470.655 is amended to read:

45 470.655. (1) Except as provided in ORS 470.650, an applicant for an energy efficiency and

1 sustainable technology loan approved by the State Department of Energy shall pay the department
 2 a project initiation fee. Upon request of the loan applicant, the department may add all or part of
 3 a project initiation fee to the principal of an issued loan. The department may establish the fee
 4 amount by rule, not to exceed four percent of the approved loan amount. If the department does not
 5 establish the fee amount, the fee shall be two percent of the approved loan amount.

6 **(2) The Director of the State Department of Energy may by rule establish a base effi-**
 7 **ciency package fee for energy efficiency and sustainable technology loans if the loans are not**
 8 **financed by moneys from the Loan Offset Grant Fund. The fee may not exceed 10 percent**
 9 **of the estimated economic benefit for the base efficiency package. Any fees collected by the**
 10 **department under this subsection shall be deposited in the fund.**

11 **SECTION 5.** ORS 470.610 is amended to read:

12 470.610. (1) The State Treasurer, at the request of the Director of the State Department of En-
 13 ergy, from time to time may issue and sell revenue bonds in the name of and on behalf of the State
 14 of Oregon in compliance with the applicable provisions of ORS chapter 286A in the principal amount
 15 [*the director considers*] necessary to carry out the purposes of ORS 470.500 to 470.710, or for paying
 16 or refunding any revenue bonds previously issued on behalf of the State Department of Energy for
 17 those purposes. **At least once every six months, the director shall estimate the anticipated**
 18 **demand for loans under the energy efficiency and sustainable technology loan program, and**
 19 **shall make a written declaration of this amount to the State Treasurer.**

20 (2) All bonds shall be special revenue obligations of the State of Oregon, and, unless paid from
 21 the proceeds of other bonds, shall be payable as to principal, redemption premium, if any, and in-
 22 terest, through the Energy Revenue Bond Repayment Fund solely from the revenues, moneys and
 23 other assets of the Energy Project Bond Loan Fund and the Energy Project Supplemental Fund that
 24 may be pledged for that payment. The Director of the State Department of Energy shall determine
 25 for each fiscal quarter the amount that will fall due during that fiscal quarter for bonds issued under
 26 this section, other amounts described in ORS 470.585 and any expected significant changes in bond
 27 obligations for upcoming fiscal quarters and the amount necessary to adequately fund reserves. The
 28 director shall request that the State Treasurer make transfers from the Energy Project Bond Loan
 29 Fund and Energy Project Supplemental Fund to the Energy Revenue Bond Repayment Fund as the
 30 director believes prudent to ensure the continuing payment of maturing obligations and the funding
 31 of reserves.

32 (3) Prior to an issuance of revenue bonds under this section, the director shall prepare and sign
 33 a written declaration setting forth the amount of the bonds to be issued and the terms and condi-
 34 tions for issuance. If the State Treasurer approves the declaration, the State Treasurer shall certify
 35 the approval on the declaration. The approved declaration shall be known as an “energy revenue
 36 bond declaration.” Each bond declaration shall be deemed to be and shall constitute conclusive
 37 proof of the authorization to issue the bonds described in the bond declaration and may contain
 38 further pledges and covenants as determined by the director or the State Treasurer.

39 **SECTION 6.** ORS 470.640 is amended to read:

40 470.640. (1) Except as provide in subsection (2) of this section, the amount of an energy effi-
 41 ciency and sustainable technology loan may not exceed \$40,000[.] **for residential dwellings served**
 42 **by a single meter of the utility that is to provide on-bill financing. The loan limit described**
 43 **in this subsection does not apply to other buildings such as multifamily housing and mixed-**
 44 **use structures.**

45 (2) The loan amount limit described in subsection (1) of this section shall increase annually on

1 January 1 of each year, beginning January 1, 2011. The loan amount limit shall increase from the
2 most recently established loan amount limit by a percentage equal to the percentage increase in the
3 Portland-Salem Consumer Price Index for All Urban Consumers for All Items as reported by the
4 Bureau of Labor Statistics of the United States Department of Labor.

5 **SECTION 7.** ORS 470.660 is amended to read:

6 470.660. (1) *[If]* **All investor-owned utilities, except those that have withheld consent under**
7 **ORS 470.510 (3), shall provide on-bill financing, except as described in subsection (4) of this**
8 **section. After** an investor-owned utility serving a sustainable energy territory has established an
9 on-bill financing system, an energy efficiency and sustainable technology loan shall be repaid by
10 on-bill financing unless the loan agreement specifies that the State Department of Energy and the
11 borrower have agreed to an alternative method for ensuring repayment of the loan.

12 (2) Unless the Public Utility Commission grants an investor-owned utility a waiver under sub-
13 section (4) of this section, the on-bill financing system of the utility must:

14 (a) Enable a customer to make a single payment to satisfy the periodic utility charges and re-
15 payment on an energy efficiency and sustainable technology loan;

16 (b) Provide a clearly identifiable line item or separate statement in the utility bill that shows
17 the energy efficiency and sustainable technology loan repayment amount; and

18 (c) Direct energy efficiency and sustainable technology loan repayment amounts collected by the
19 utility to the appropriate sustainable energy project manager or to the department for deposit to the
20 credit of the Small Scale Local Energy Project Administration and Bond Sinking Fund, Energy
21 Project Bond Loan Fund or Energy Project Supplemental Fund.

22 (3) The Public Utility Commission shall adopt rules for the use of on-bill financing by investor-
23 owned utilities. The rules may include, but need not be limited to, rules regarding nonpayment, in-
24 sufficient payment, delinquency notices, repayment charge transfers, processing fees, late fees and
25 refunds. The commission may not adopt any rule that imposes responsibility for the repayment of
26 an energy efficiency and sustainable technology loan on the utility.

27 (4) The commission may waive the requirement that an investor-owned utility provide on-bill fi-
28 nancing for one or more loans if the commission determines that providing the on-bill financing is
29 not practicable. If the commission grants a utility a waiver under this subsection, the utility shall
30 bill the affected customers for loan repayment separately from any utility customer meter billings.

31 **SECTION 8.** ORS 470.530 is amended to read:

32 470.530. (1) Except as provided in subsection (5) of this section, the Director of the State De-
33 partment of Energy may establish qualifications for sustainable energy project managers and may
34 exercise oversight to ensure project manager compliance with those qualifications. A project man-
35 ager shall provide the promotion, technical and financial support and verifications necessary to ad-
36 minister the energy efficiency and sustainable technology loan program in the territory served by
37 the project manager.

38 (2) The project manager shall serve a sustainable energy territory established by the director.
39 The project manager shall provide loan program information and technical and financial information
40 to promote energy efficiency and use of renewable energy at the neighborhood and community lev-
41 els. The project manager shall be responsible for small scale local energy project verification and
42 for monitoring program effectiveness for energy efficiency and sustainable technology loans and
43 small scale local energy program loans. The project manager may administer the energy efficiency
44 and sustainable technology loan program within the territory.

45 (3)(a) Except as provided in this subsection, the boundaries of a sustainable energy territory

1 must be consistent with the service territory of a local electric utility.

2 (b) The boundaries of a sustainable energy territory may be consistent with the service territory
3 of a local gas utility if:

4 (A) The local electric utility is a consumer-owned electric utility that elects not to be the
5 project manager for the sustainable energy territory; and

6 (B) The service territory of the local electric utility and the service territory of the local gas
7 utility overlap.

8 (c) Notwithstanding paragraphs (a) and (b) of this subsection, if the project manager for the
9 sustainable energy territory is other than the Public Purpose Fund Administrator or a consumer-
10 owned utility, the director may adjust the boundaries of the territory or create a larger or smaller
11 territory if the director believes that the territory boundaries as adjusted or created by the director
12 would better accomplish the goals of the energy efficiency and sustainable technology loan program.

13 (4) A **city, county, metropolitan service district or other local government entity, or a**
14 **nonprofit, for-profit, tribal or state entity,** may be a project manager if the entity meets the quali-
15 fications established by the director under this section and is approved by the director to provide
16 promotion, outreach and customer support related to the energy efficiency and sustainable technol-
17 ogy loan program within a sustainable energy territory. The Public Purpose Fund Administrator is
18 an ex officio sustainable energy project manager. The Public Purpose Fund Administrator shall act
19 as the project manager in any sustainable energy territory that is not served by another project
20 manager.

21 (5) The director shall establish a sustainable energy project manager certification program.
22 However, the Public Purpose Fund Administrator or a consumer-owned utility is not required to
23 obtain a sustainable energy project manager certificate and the Public Purpose Fund Administrator
24 is not subject to any qualifications established by the director for a project manager.

25 **SECTION 9. Section 10 of this 2010 Act is added to and made a part of ORS chapter 470.**

26 **SECTION 10. All investor-owned utilities and consumer-owned utilities that have cus-**
27 **tomers enrolled in energy efficiency and sustainable technology loan programs shall, at the**
28 **request of the Director of the State Department of Energy, provide the director with the**
29 **following information in aggregated form regarding the loans:**

30 (1) **Repayment performance;**

31 (2) **Default rates;**

32 (3) **Energy savings data; and**

33 (4) **Any other information specified by rule adopted by the director pursuant to ORS**
34 **470.140.**

35 **SECTION 11. Section 42, chapter 753, Oregon Laws 2009, is amended to read:**

36 **Sec. 42.** (1) The Director of the State Department of Energy shall initiate the energy efficiency
37 and sustainable technology loan program described in [*sections 2 to 41 of this 2009 Act*] **ORS 470.500**
38 **to 470.710** in phases through a series of pilot programs, limiting the geographic availability and
39 other features of the program as the director considers necessary to facilitate an orderly and suc-
40 cessful implementation of the program. The director shall initiate the program **on a statewide basis**
41 as quickly as the director considers practicable, **but in no event later than June 30, 2011,** to
42 achieve the benefits of the program while ensuring high participant satisfaction and program integ-
43 rity.

44 (2) The director shall endeavor to establish pilot programs initially in sustainable energy terri-
45 tories that reflect a variety of population densities. The director may give preference to territories

1 that request to participate in the pilot program.

2 **SECTION 12.** (1) The amendments to ORS 470.635 by section 3 of this 2010 Act apply to
3 energy savings projections or similar evaluations completed on or after the effective date of
4 this 2010 Act.

5 (2) The amendments to ORS 470.655 by section 4 of this 2010 Act apply to energy effi-
6 ciency and sustainable technology loans approved on or after the effective date of this 2010
7 Act.

8 (3) The amendments to ORS 470.610 by section 5 of this 2010 Act apply to revenue bonds
9 for which the Director of the State Department of Energy submits a written declaration
10 pursuant to ORS 470.610 (3) to the State Treasurer on or after the effective date of this 2010
11 Act.

12 (4) The amendments to ORS 470.640 by section 6 of this 2010 Act apply to energy effi-
13 ciency and sustainable technology loans approved on or after the effective date of this 2010
14 Act.

15 **SECTION 13.** The amendments to ORS 470.660 by section 7 of this 2010 Act become op-
16 erative June 30, 2011.

17 **SECTION 14.** (1) Section 1 of this 2010 Act is repealed January 2, 2016.

18 (2) Section 46a, chapter 753, Oregon Laws 2009, is repealed.

19 **SECTION 15.** Section 49, chapter 753, Oregon Laws 2009, is amended to read:

20 **Sec. 49.** Sections 42, 43, 44, 45, 46[, 46a] and 47a, **chapter 753, Oregon Laws 2009**, [*of this 2009*
21 *Act*] are repealed January 2, 2016.

22 **SECTION 16.** This 2010 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect
24 on its passage.

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